

IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 7476 of 2025

Amit Gupta, Aged about 45 years, Son of Late Ramesh Chand, Resident of T 2, 13 C, Merlin, 5th Avenue, Salt Lake, Sector-5, Mahis Bathan, P.O & P.S-Bidhan Nagar, District-Kolkata (West Bengal)

.....**Petitioner**

Versus

Directorate of Enforcement, represented by Assistant Director (PMLA), Ranchi Zonal Office, Plot No.1502/B, Airport Road, Kunwar Singh Colony, Hinoo, P.O-Hinoo & P.S-Airport Police Station, Ranchi, Jharkhand-834002.

.....**Opposite Party**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner

: Mr. Ajit Kumar, Sr. Advocate
 Mr. Nitin Kumar Pasari, Advocate
 Mr. Shubham Gurung, Advocate

For the Opp. Party

: Mr. Amit Kumar Das, Advocate
 Mr. Saurav Kumar, Advocate
 Mr. Varun Girdhar, Advocate

C.A.V. on 24/09/2025

Pronounced on 08/10/2025

Prayer:

I. The instant application has been filed under Sections 483 and 484 of the Bhartiya Nagrik Suraksha Sanhita, 2023 praying for grant of bail in connection with ECIR Case No. 05 of 2025 arising out of ECIR No. ECIR/RZNO/18/2024 dated 23.09.2024 for the offence under Section 3 of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as PML Act, 2002] punishable under Section 4 of the Prevention of Money Laundering Act, 2002, based on the Complaint Case Nos.678 of 2024, 1280 of 2024 and 1281 of 2024 before the learned Court of Economic Offences, Jamshedpur under section 132 of the CGST Act, 2017 read with Sections 20 of the IGST, read with Sections 34, 120A, 193, 195A, 201, 203, 204, 406, 409, 420, 465, 467, 468 and 471 of the

Indian Penal Code, pending in the court of learned Special Judge CBI-cum- PML Act, Ranchi.

Factual Matrix of the Case

2. An ECIR bearing No. ECIR/RZNO/18/2024 was recorded on 23.09.2024 based on the Complaint Case Nos.678 of 2024, 1280 of 2024 and 1281 of 2024 before the learned Court of Economic Offences, Jamshedpur against the petitioner and other persons. Subsequently, the prosecuting agency, i.e., the Directorate of Enforcement while observing that Sections 420, 467 and 471 of the Indian Penal Code are scheduled offences under Part-A, Paragraph 1 of the PML Act, 2002 initiated the investigation under Prevention of the Money Laundering Act, 2002 by registering Enforcement Case Information Report having ECIR bearing No. ECIR/RZNO/18/2024 dated 23.09.2024.

3. The petitioner was arrested on 08.04.2024, by the officers of the Directorate General of GST Intelligence (hereinafter referred as DGGSTI) from the residential house at Kolkata and was produced before the learned Additional Chief Judicial Magistrate, Alipore at Kolkata and a transit remand was sought for, from the learned Trial Court at Kolkata for alleged offences of inadmissible/irregular ITC extended to the end-avilers, leading to the loss of Rs. 303.47 Crores to the Government Exchequer and in terms of the chart appended to the transit remand petition.

4. Based upon the said application made for transit remand, the petitioner was allowed to be taken to the State of Jharkhand by the Officers of Directorate General of GST Intelligence, Regional Unit,

Jamshedpur, to be produced before the Civil Court of Competent Jurisdiction at Jharkhand.

5. Further, on 09.04.2024, a complaint petition vide Complaint Case No. 1281 of 2024 was filed and it was alleged that the inadmissible/irregular ITC leading to loss to Government Exchequer is now at Rs. 522.91 crores, however, keeping the figure of the alleged amount over the petitioner to the tune of Rs. 1.50 Crores and based upon the same, the petitioner was sent to judicial custody vide order dated 09.04.2024.

6. Subsequently, Final Prosecution Report was filed by the DGGSTI and consequently, the Ld. Trial Court was pleased to take cognizance of offences under Sections 132(1)(i) to (iv) read with 132(4) and (5) of the Central Goods and Service Tax Act, 2017 and also under Sections 201, 204, 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860.

7. It is averred that thereafter the petitioner approached the learned Trial Court for grant of regular bail but the same was rejected and aggrieved thereof, the petitioner regular bail application before this Hon'ble Court in B.A. No. 5472 of 2024, and vide order dated 18.07.2024, this Hon'ble Court was pleased to allow the regular bail application of the petitioner, while categorically observing that the relevant evidences of the case pertains to electronic evidence and which cannot be tampered by the petitioner and other witnesses are official witnesses.

8. Since the some of the alleged offence come under the scheduled offences as stipulated in Section 2(1) (y) of the Act 2002, therefore, ED has started the investigation under Act 2002 and as per the mandate of Section 17 of the Act 2002, on 08.05.2025, at 06:30 AM, the officers of

Directorate of Enforcement conducted a search at the residential premises of the petitioner and the same lasted uptill 02:45 PM and on the same day, petitioner was arrested.

9. It is further averred that on the same day, at around 10:10 PM at late hours of night, the petitioner was produced before the learned Court of Chief Judicial Magistrate, Calcutta by filing Remand Petition, seeking transit remand of the petitioner and vide order dated 08.05.2025, the same was allowed by the learned Chief Judicial Magistrate, Calcutta.

10. The learned Advocate of the petitioner, objected to the manner in which the petitioner was arrested, sent an E-mail dated 09.05.2025, to the Enforcement Directorate, Delhi, regarding the manner in which the petitioner was arrested.

11. Thereafter, on 10.05.2025, the petitioner was produced before the learned Trial Court by filing an application under Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023, read with Section 65 and 19(3) of the Prevention of Money Laundering Act, 2002, for remanding the petitioner to the Judicial Custody and vide order dated 10.05.2025, the same was allowed by the learned Trial Court.

12. Being aggrieved, the petitioner approached the learned Trial Court in M.C.A. No. 1074 of 2025, for grant of regular bail and vide order dated 02.07.2025, the said regular bail application of the petitioner was rejected by the Special Court, PML Act, Ranchi.

13. Thereafter, the prosecuting agency filed the Prosecution Complaint dated 05.07.2025, before the learned Trial Court and

accordingly cognizance of the offence has been taken by the Court concerned.

14. Hence, the present petition has been filed.

Argument advanced by learned senior counsel for the petitioner:

15. Mr. Ajit Kumar, the learned senior counsel assisted by Mr. Nitin Kumar Pasari, the learned counsel appearing for the petitioner has argued *inter alia* on the following grounds:

I. That the petitioner is quite innocent and has falsely been implicated in this case with oblique motive and *mala fide* intention to harass the petitioner.

II. The petitioner has duly cooperated with the investigation agency and further as and when required he appeared before the concerned agency despite that he has been arrested in the present case.

III. It has been contended that no attributability is available from commission of offence said to be there attracting ingredient under **Sections 3 and 4** of PML Act, 2002.

IV. The basic procedure of arrest as provided under PML Act, 2002 has not been followed. Further, the officials of the prosecuting agency while arresting the petitioner has not shared arrest memo, reasons to believe or grounds of arrest with the petitioner or with any of the family members or people present at his house at the time of arrest.

V. The residence of the petitioner has been raided and searched on 08.05.2025 as per the time referred in the search warrant at 6:30

AM till 2:45 PM and immediately thereafter he has been taken into custody.

VI. The grounds of arrest and reason to believe has not been supplied in writing to the near relatives or friends as provided under the law laid down by the Hon'ble Apex Court in the case of ***"Pankaj Kumar Bansal V. Union of India"*** reported in ***(2024) 7 SCC 576***, therefore, since at the time of arrest the reason for arrest is to be communicated to the concerned but herein no such reason has been communicated and, hence, the very arrest of the petitioner is per se illegal and is fit to be quashed and set aside and, accordingly, the petitioner may be directed to be released from judicial custody.

VII. The ground has also been taken on behalf of the petitioner by challenging the issue of arrest that at the time of arrest the condition stipulated under Section 19(1) of the PML Act, 2002 has not been followed and in order to fortify this limb of argument reliance has been placed upon the judgment rendered by Hon'ble Apex Court in the case of ***V. Senthil Balaji Vs. State Represented by Deputy Director & Ors. [(2024) 3 SCC 51; Prabir Purkayastha Vs. State (NCT of Delhi) [2024 SCC OnLine 934;*** and recently in the case of ***Arvind Kejriwal Vs. Directorate of Enforcement [2024 SCC OnLine SC 1703]*** and in addition thereto the judgment rendered in the case of ***Vihaan Kumar v. State of Haryana, 2025 SCC OnLine SC 269*** has also been relied upon.

VIII. Submission has also been made that the statutory provision, as contained under Section 19(1) of the PML Act, has been clarified by the Hon'ble Apex Court while dealing with PML Act, 2002 in the case of *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.*, [(2022) SCC On Line SC 929].

IX. Further submission has been made that subsequent to the judgment passed by Hon'ble Apex Court in the case of *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)* again on the issue consideration has been given by Hon'ble Apex Court in the case of *Pankaj Bansal vs. Union of India and Ors., (supra)* followed by judgment rendered in the case of *V. Senthil Balaji Vs. State Represented by Deputy Director & Ors. (supra)* regarding the communication for reason of arrest at the time of arrest itself in writing.

X. The petitioner has no antecedent and no other criminal proceeding is pending against him. The petitioner has been cooperating with the ongoing investigation inquiries conducted by the prosecution and undertakes to continue doing so.

XI. The submission has been made that the petitioner has been implicated in the present case on the basis of statement recorded under Section 50 of the PML Act of the co-accused, who was already in custody, hence, the statement recorded under Section 50 of the PML Act of the co-accused, who were already in custody cannot be used against the present petitioner as per the mandate of judgment rendered by the Hon'ble Apex Court in the case of

Prem Prakash Vs. Union of India through the directorate of enforcement 2024 INSC 637.

XII. Learned senior counsel has relied upon paragraph 253 of the judgment in **Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (supra)** in order to buttress his argument on the issue of statement recorded under Section 50 of the PML Act.

XIII. Further, it has been contended that there is no allegation said to be committed so as to attract the offence under Section 3 of the PML Act since there is no allegation of laundering of money against the petitioner.

16. Learned senior counsel for the petitioner, based upon the aforesaid grounds, has submitted as per the ground agitated hereinabove, it is a fit case where the petitioner is to be given the benefit of privilege of bail.

Argument advanced by learned counsel for the opposite party-Enforcement Directorate:

17. Per contra, Mr. Amit Kumar Das, the learned counsel for the opposite party-Enforcement Directorate has seriously opposed the said submission/ground both based upon the fact and the law as referred hereinabove, on the following grounds.

I. The submission has been made that the petitioner was arrested on 08.05.2025 under Section 19 of PML Act, 2002, after recording reasons to believe that the petitioner is guilty of the offence of money laundering as defined under Section 3 and punishable under Section 4 of PML Act, 2002.

II. It has been contended by referring to Section 3 of the PML Act, 2002 that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

III. It is incorrect on the part of the petitioner to take a ground that the grounds of arrest and reason to believe has not been supplied to his near relatives or friends, rather each and every document has been supplied, i.e., the grounds of arrest and reason to believe which would be evident from the documents as appended as **Annexure-4 series** showing the acknowledgement of receipt of the petitioner **on 08.05.2025 at 7:15 PM. (running page no.245 of the petition)**

IV. The ground of arrest has also been supplied to the friends of the petitioner to whom it was asked to supply as per the reference of the name of Rajat Bhandari, who was said to be friends of the petitioner, has been communicated over telephone bearing no xxxxx87799 the reason for the same is that his friend has not agreed to come.

V. The fact about the grounds of arrest and reason to believe cannot be disputed said to be not supplied as is being claimed on behalf of the petitioner if the order dated 08.05.2025 passed by the learned Chief Judicial Magistrate, Calcutta will be considered

wherein the learned Court has taken note that each and every document has been supplied.

VI. Though, the order dated 08.05.2025 passed by the learned Chief Judicial Magistrate, Calcutta has not been brought on record by way of affidavit but the copy of the same has been produced in the Court in presence of the learned counsel appearing for the petitioner and a copy of the said order has been served to him in the Court to which he has raised no objection. Thereafter, with the consent of the parties, the said order has been taken on record, wherefrom it is evident that all established procedure has been followed in respect to the arrest of the present petitioner under Section 19 of the Act 2002.

VII. It has been argued that the petitioner has been arrested on 08.05.2025 and immediately after arrest, he was produced before the learned Chief Judicial Magistrate, Calcutta at **10:10 PM** on the same day.

VIII. Further, the learned Advocate has also represented the petitioner by filing “*vakalatnama*” and has contested the case. The argument has been advanced in presence of the learned counsel representing the petitioner on 08.05.2025 before the learned Chief Judicial Magistrate, Calcutta and in whose presence the ground of arrest and reason to believe has been submitted for the same on behalf of the learned Public Prosecutor appearing for the Enforcement Directorate.

IX. The learned Court has taken note of the same and recording in the said order while rejecting the prayer for bail made on behalf of the petitioner.

X. It has been contended that the content of the said order has not been challenged by the petitioner and even the same has not been produced on record along with bail application.

XI. It has been contended that the purpose of supply of grounds of arrest and reason to believe to have the access to the judicial system so as not to cause prejudice and miscarriage of justice, but in the instant case after arrest immediately the petitioner was produced before the concerned Court of learned Chief Judicial Magistrate at Kolkata and the petitioner has engaged his counsel who has argued the case based upon the ground of arrest and reason to believe as has been supplied to him by the Enforcement Directorate and in his presence the detail order was passed on 08.05.2025, hence, it cannot be said on behalf of the petitioner that the ground of arrest and reason to believe has not been supplied and prejudice has been caused.

XII. The question of prejudice is not available the moment the petitioner was represented by the learned counsel, i.e., on the basis of the communication given by the Enforcement Directorate to his friend namely, Rajat Bhandari.

XIII. The learned counsel appearing for the O.P-ED has further submitted that since all the parameters of arrest, i.e., supply of grounds of arrest and reason to believe has already been

communicated and information regarding arrest of the petitioner has been given to the friend of the petitioner and thereafter producing the petitioner forthwith before the learned Chief Judicial Magistrate, Calcutta seeking for transit remand wherein the prayer for bail has also been made on behalf of the petitioner being represented by the learned counsel, hence, in the facts of the present case, the ratio laid down by the Hon'ble Apex Court in the case of *“Pankaj Kumar Bansal V. Union of India”*(supra) has already been complied with.

XIV. So far as the nature of allegation as has been committed by the petitioner is concerned, it has been contended that implication of the petitioner is based upon the statement made by Shiv Kumar Deora, the co-accused whose statement has been recorded under section 50 of the PML Act while he was in custody.

XV. The statement of the petitioner has also been taken while he was in custody said to be confessional statement is not admissible.

XVI. The learned counsel appearing for the O.P-ED, in response to the argument that the implication of the petitioner is based upon the statement made by the co-accused while he was in custody is absolutely incorrect, rather the statement of the other persons(witnesses) have also been taken as referred in ECIR being ECIR No. RNZO/18/2024 who have disclosed that the petitioner is the coordinator of all the 135 Shell Companies

involving the withdrawal of the money based upon the fake invoices, e-way bills and other forged documentation etc.

XVII. It has been contended that the submission advanced on behalf of the petitioner for non-supply of grounds of arrest and reason to believe in favour of the friends or close relative of the petitioner is concerned, certainly the said requirement is there as per the settled position of law laid down by the Hon'ble Apex Court but it needs to refer herein that the purpose of communicating to the family members or the friends apprising the reason for grounds of arrest is that the concerned person may have immediate access to the legal assistance so that there may not be any miscarriage of justice and if such opportunity is not being given, then it will cause prejudice to the concerned accused person but herein since the full opportunity has been given to the petitioner and his friend and further the learned counsel for the petitioner has led the grievances before the learned CJM Court , therefore it cannot be stated that any miscarriage of justice is caused to petitioner herein.

XVIII. It has been contended that the statement, as has been recorded under Section 50 of the PML Act, 2002 is very much clear of the involvement of the present petitioner in relation to commission of crime as alleged in ECIR No. ECIR/RNZO/18/2024 dated 23.09.2024.

XIX. Submission has been made that ground which has been advanced that neither the statement of other co-accused persons is

to be taken into consideration since it is recorded while they were in custody but the law is otherwise as has been held by Hon'ble Apex Court in the case of *Rohit Tandon vs. Directorate of Enforcement (2018) 11 SCC 46* wherein the statement if recorded of the co-accused persons in custody under Section 50 of the PML Act will also have the impact in implicating a person under Section 3 of the PML Act and exactly the case herein.

18. Learned counsel for the O.P-Enforcement Directorate, based upon the aforesaid grounds, has submitted that it is not a fit case where the prayer for bail is to be allowed taking into consideration his involvement in directly acquiring the proceeds of crime.

Discussion:

19. This Court has heard the learned counsel for the parties, gone across the pleading available on record as also the finding recorded by learned trial court.

20. This Court, before appreciating the argument advanced on behalf of the parties, deems it fit and proper to discuss herein some of the provision of law as contained under the PML Act, 2002 with its object and intent.

21. The Act was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

22. It is evident that the PML Act, 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

23. It is evident from the definition of “proceeds of crime” as provided under Section 2(1)(u) of the Act, 2002 that “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

24. In the explanation part of the aforesaid section, it has been referred that for the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

25. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country but by way of explanation the

proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

26. The “property” has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

27. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002.

28. It is evident that the “scheduled offence” means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

29. The offence of money laundering has been defined under Section 3 of the PML Act, 2002 wherein it has been stipulated 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 crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

30. It is further evident from the aforesaid provision that “offence of money-laundering” means 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 crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

31. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

32. The punishment for money laundering has been provided under Section 4 of the PML Act, 2002.

33. Further the specific provision has been made under the PML Act, 2002 to be followed at the time of arrest i.e., the ground of arrest is to be informed to the person facing the accusation as soon as possible that is the original text of Section 19(1) of the Act, 2002. For ready reference, Section 19(1) of the PML Act, 2002 is quoted as under:

“19. Power to arrest. (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (that reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

34. Further, Section 50 of the PML Act, 2002 confers power upon the authorities regarding summons, production of documents and to give evidence.

35. It needs to refer herein that the various provisions of the Act, 2002 alongwith interpretation of the definition of “**proceeds of crime**” has been

dealt with by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (supra)*** wherein the Bench comprising of Three Hon'ble Judges of the Hon'ble Supreme Court have decided the issue by taking into consideration the object and intent of the Act, 2002, as would appear from paragraph 128, 129 and 130. For ready reference, relevant paragraph is being referred as under:

“128. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression “including”, which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word “and” preceding the expression “projecting or claiming” therein.

129. This Court in Pratap Singh v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created.

130. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as

also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India.”

36. The implication of Section 50 has also been taken into consideration. Relevant paragraph, i.e., paragraphs-327 to 332, 338, 339, 342 are quoted as under:

“327. The validity of this provision has been challenged on the ground of being violative of Articles 20(3) and 21 of the Constitution. For, it allows the authorised officer under the 2002 Act to summon any person and record his statement during the course of investigation. Further, the provision mandates that the person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of investigation. The person is also obliged to sign the statement so given with the threat of being punished for the falsity or incorrectness thereof in terms of Section 63 of the 2002 Act. Before we proceed to analyse the matter further, it is apposite to reproduce Section 50 of the 2002 Act, as amended. -----:

330. By this provision, the Director has been empowered to exercise the same powers as are vested in a civil Court under the 1908 Code while trying a suit in respect of matters specified in sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil Court for the purposes of imposing fine under Section 13, is obviously very specific and not otherwise.

331. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression “proceeding” in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for

the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established.

332. The Constitution Bench of this Court in M.P. Sharma had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against “testimonial compulsion” and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows: “Broadly stated the guarantee in article 20(3) is against “testimonial compulsion”. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is “to be a witness”. A person can “be a witness” not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See section 119 of the Evidence Act) or the like. “To be a witness” is nothing more than “to furnish evidence”, and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross

examination. It is not a guide to the connotation of the word “witness”, which must be understood in its natural sense, i.e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is “to be a witness” and not to “appear as a witness”. It follows that the protection afforded to an accused in so far as it is related to the phrase “to be a witness” is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case.” (emphasis supplied)

338. *In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself.*

339. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

342. It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually vesting in the Central Government.”

37. It is evident from the observation so made as above that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the

transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.

38. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the “proceeds of crime” as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words “any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence” will come under the fold of the proceeds of crime.

39. So far as the purport of Section 45(1)(i)(ii) is concerned, the aforesaid provision starts from the *non-obstante* clause that notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.

40. Sub-section (2) thereof puts limitation on granting bail specific in subsection (1) in addition to the limitations under the Code of

Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

41. The explanation is also there as under sub-section (2) thereof which is for the purpose of removal of doubts. A clarification has been inserted that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.

42. The fact about the implication of Section 45 has been interpreted by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(*supra*) at paragraphs-268-270.

For ready reference, the said paragraphs are being referred as under:

"268. Section 45 has been amended vide Act 20 of 2005, Act 13 of 2018 and Finance (No. 2) Act, 2019. The provision as it obtained prior to 23.11.2017 read somewhat differently. The constitutional validity of Sub-section (1) of Section 45, as it stood then, was considered in Nikesh Tarachand Shah. This Court declared Section 45(1) of the 2002 Act, as it stood then, insofar as it imposed two further conditions for release on bail, to be unconstitutional being violative of Articles 14 and 21 of the Constitution. The two conditions which have been mentioned as twin conditions are: (i) that there are reasonable grounds for believing that he is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail.

269. According to the petitioners, since the twin conditions have been declared to be void and unconstitutional by this Court, the same stood obliterated. To buttress this argument, reliance has been placed on the dictum in State of Manipur.

270. *The first issue to be answered by us is: whether the twin conditions, in law, continued to remain on the statute book post decision of this Court in Nikesh Tarachand Shah and if yes, in view of the amendment effected to Section 45(1) of the 2002 Act vide Act 13 of 2018, the declaration by this Court will be of no consequence. This argument need not detain us for long. We say so because the observation in State of Manipur in paragraph 29 of the judgment that owing to the declaration by a Court that the statute is unconstitutional obliterates the statute entirely as though it had never been passed, is contextual. In this case, the Court was dealing with the efficacy of the repealing Act. While doing so, the Court had adverted to the repealing Act and made the stated observation in the context of lack of legislative power. In the process of reasoning, it did advert to the exposition in BehramKhurshidPesikaka and Deep Chand including American jurisprudence expounded in Cooley on Constitutional Limitations and Norton v. Shelby County.”*

43. Subsequently, the Hon’ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, (2023) SCC OnLine SC 1486*** by taking into consideration the law laid down by the Larger Bench of the Hon’ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.(supra)***, has laid down that since the conditions specified under Section 45 are mandatory, they need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It has further been observed that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45

of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.

44. The Hon'ble Apex Court in the said judgment has further laid down that the twin conditions as to fulfil the requirement of Section 45 of the Act, 2002 before granting the benefit of bail is to be adhered to which has been dealt with by the Hon'ble Apex Court in *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)* wherein it has been observed that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

45. In the judgment rendered by the Hon'ble Apex Court in *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)*, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken to forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

46. So far as the issue of grant of bail under Section 45 of the Act, 2002 is concerned, at paragraph-412 of the judgment rendered in *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)* it has been

held therein by making observation that whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.

47. The Hon'ble Apex Court in the case of *Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1* has been pleased to hold at paragraph - 30 that the conditions specified under Section 45 of PML Act, 2002 are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PML Act, 2002. Section 65 requires that the provisions of Cr.P.C shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PML Act, 2002 shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PML Act, 2002 has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act.

48. Therefore, the conditions enumerated in Section 45 of PML Act, 2002 will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of

Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.

49. It requires to refer herein that the Hon'ble Apex Court in **Satender Kumar Antil vs. CBI and Anr., (2022) 10 SCC 51** has passed the order that if the investigation has been completed and if there is full cooperation of the accused persons, there may not be any arrest. The Hon'ble Apex Court categorised the offences in different group for purpose of bail. The reference may be taken from Paragraph -2 of the aforesaid judgment which reads as under:

“2. After allowing the application for intervention, an appropriate order was passed on 7-10-2021 [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153] . The same is reproduced as under : (Satender Kumar Antil case [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153] , SCC pp. 774-76, paras 2-11)

“2. We have been provided assistance both by Mr S.V. Raju, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior 28 B.A. No. 8321 of 2024 2025:JHHC:12446 Counsel and there is broad unanimity in terms of the suggestions made by the learned ASG. In terms of the suggestions, the offences have been categorised and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

‘Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc. (D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc.

50. However, the Hon'ble Apex Court recently in the case of **Gurwinder Singh vs. State of Punjab and Anr., 2024 SCC OnLine SC 109**, in the matter of UAP Act 1967 has observed that the conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act and the 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. For ready reference, relevant paragraph of the said judgment is being referred as under:

“28. The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC - 'may be released' - suggests the intention of the Legislature to make bail, the exception and jail, the rule.”

51. The reason for making reference of this judgment is that in the **Satender Kumar Antil vs. CBI and Anr (supra)**'s judgment, the UAPA has also been brought under the purview of category 'c' wherein while laying observing that in the UAPA Act, it comes under the category 'c' which also includes money laundering offences wherein the bail has been directed to be granted if the investigation is complete but the Hon'ble Apex Court in **Gurwinder Singh vs. State of Punjab and Anr. (supra)** has taken the view by making note that the penal offences

as enshrined under the provision of UAPA are also under category ‘c’ making reference that jail is the rule and bail is the exception.

52. In the backdrop of the aforesaid legal provisions and settled law this court is now adverting to merit of the case.

Issue of legality of Arrest

53. Now coming to the ground as has been raised on behalf of the petitioner that at the time of arrest the condition stipulated under Section 19(1) of the PML Act, 2002 has not been followed and the memo of arrest, ground of arrest and reason to believe has not been provided, in writing, as required to be provided under the provision of Section 19(1) of the PML Act, 2002 and per the settled position of law as settled by the Hon’ble Apex Court, hence the very arrest of the petitioner is per se illegal and in that view of the matter the order of arrest is fit to be quashed and set aside and in consequence thereof, appellant may be directed to be released from judicial custody.

54. Per contra, the learned counsel for the O.P-ED has submitted that it is incorrect on the part of the petitioner to take the ground that the reason for arrest has not been communicated rather the reason for arrest has been communicated along with the exhaustive grounds, the day when the petitioner was arrested, which would be evident from running page 245 of the petition wherein annexure -4 has been appended in which the entire details has been furnished regarding the the reason to believe for arrest of the present petitioner.

55. In the aforesaid context, it needs to refer herein the core of the Section 19 the Act 2002, for ready reference the same is being quoted as under:

19. power to arrest.—(1) if the director, deputy director, assistant director or any other officer authorised in this behalf by the central government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) the director, deputy director, assistant director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the adjudicating authority, in a sealed envelope, in the manner as may be prescribed and such adjudicating authority shall keep such order and material for such period, as may be prescribed.

(3) every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a 78[special court or] judicial magistrate or a metropolitan magistrate, as the case may be, having jurisdiction:

provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the 79[special court or] magistrate's court.

56. It is evident from perusal of the Section 19 of PMLA which gives the power to arrest if the officer concerned has “reason to believe” on the basis of material in his possession, that the person is guilty. As per Section 19 the arrest has to be on the basis of material in possession with the ED, there is reason to believe that the accused is guilty of the offence, with the reason recorded in writing and the grounds for arrest should be communicated with the accused.

57.As discussed herein above the entire PML Act, 2002 fell for consideration before the three-Judge Bench of the Hon’ble Apex Court in the case of *Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. (supra)* wherein the provision of Section 19(1) has also been taken

into consideration, which would be evident from paragraphs, which reads as under:

371. The next issue is : Whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the authority and recording satisfaction of reason to believe that the person is guilty of money laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money laundering. In any case, upon filing of the complaint before the statutory period provided in the 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the authority under Section 44(1)(b) of the 2002 Act before the Special Court.

372. Viewed thus, supply of ECIR in every case to the person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to

observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of the 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution.

58. It is evident from the aforesaid consideration as referred in the aforesaid judgment that once the person is informed of the grounds of arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution and it is not necessary that a copy of the ECIR be supplied in every case to the person concerned, as such, a condition is not mandatory and it is enough if ED discloses the grounds of arrest to the person concerned at the time of arrest.

59. It needs to refer herein the judgment which has come in the case of **V. Senthil Balaji Vs. State Represented by Deputy Director & Ors. (supra)** which was passed on 07.08.2023 wherein consideration has been given with respect to the issue of Section 19(1) holding therein that that after forming a reason to believe that the person has been guilty of an offence punishable under PMLA, the officer concerned is at liberty to arrest him, while performing his mandatory duty of recording the reasons, and that the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest.

60. Subsequent thereto, the matter has again come before the Hon'ble Apex Court in the case of *Pankaj Bansal Vs. Union of India & Ors (supra)*, wherein the factual aspect pertaining to the said case was that no written communication was made and only on the basis of oral communication of reason of arrest, the said Pankaj Bansal has taken into custody, which would be evident from discussion of the factual aspect, which would be evident from following paragraphs of the judgment, which reads as under:

“2. The genesis of these appeals is traceable to FIR No. 0006 dated 17-4 2023 registered by the Anti-Corruption Bureau, Panchkula, Haryana, under Sections 7, 8, 11 and 13 of the Prevention of Corruption Act, 1988, read with Section 120-BIPC for the offences of corruption and bribery along with criminal conspiracy. The names of the accused in this FIR are: “(i) Mr Sudhir Parmar (the then Special Judge, CBI and ED, Panchkula); (ii) Mr Ajay Parmar [nephew of Mr Sudhir Parmar and Deputy Manager (Legal) in M3M Group]; (iii) Mr Roop Bansal (promotor of M3M Group); and (iv) other unknown persons.”

3. Significantly, prior to this FIR, between the years 2018 and 2020, 13 FIRs were gotten registered by allottees of two residential projects of the IREO Group, alleging illegalities on the part of its management. On the strength of these FIRs, ED recorded Enforcement Case Information Report No. GNZO/10/2021 dated 15-6-2021 (hereinafter “the first ECIR”) in connection with the money laundering offences allegedly committed by the IREO Group and Lalit Goyal, its Vice-Chairman and Managing Director. Neither in the FIRs nor in the first ECIR were M3M Group or the appellants herein arrayed as the accused. Further, no allegations were levelled against them therein. On 14-1-2022, ED filed Prosecution Complaint No. 01/2022, titled “Enforcement Directorate v. Lalit Goyal and others”, against seven named accused, under Section 200CrPC read with Sections 44 and 45 PMLA. Notably, M3M

Group and the appellants did not figure amongst those named accused. The number of FIRs had also increased from 13 to 30, as per this complaint. This case was numbered as COMA/01/2022, titled “Enforcement Directorate v. Lalit Goyal and others”, and was pending in the Court of Sudhir Parmar, Special Judge. At that stage, the Anti Corruption Bureau, Panchkula, received information that Sudhir Parmar was showing favouritism to Lalit Goyal, the owner of IREO Group, and also to Roop Bansal and his brother, Basant Bansal, the owners of M3M Group. This led to the registration of FIR No. 0006 dated 17-4-2023. On 12-5-2023, ED issued summons to M3M India Pvt. Ltd., calling upon it to provide information and documents pertaining to transactions with certain companies. Thereafter, on 1-6-2023, ED raided the properties of M3M Group and effected seizures of assets and bank accounts. Roop Bansal was arrested by ED on 8-6-2023 apropos the first ECIR.

4. Apprehending that action would be taken against them also in the context of the first ECIR, Pankaj Bansal and Basant Bansal secured [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] , [Pankaj Bansal v. State (NCT of Delhi), 2023 SCC OnLine Del 3590] interim protection from the Delhi High Court in Bail Applications Nos. 2030 and 2031 of 2023. By separate orders dated 9-6-2023 [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] passed therein, the Delhi High Court noted that Pankaj Bansal and Basant Bansal had not been named in the first ECIR and that ED had not yet been able to implicate them in any of the scheduled offences under the 2002 Act. Further, the High Court noted that Pankaj Bansal had not even been summoned by ED in that case. The High Court accordingly granted them interim protection by way of anticipatory bail, subject to conditions, till the next date of hearing i.e. 5-7-2023. Special Leave Petitions (Crl.) Nos. 7384 and 7396 of 2023 were filed by ED assailing the orders dated 9-6-2023 [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] , [Pankaj Bansal v. State (NCT of Delhi), 2023 SCC OnLine Del 3590] , [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] before this Court and the same are stated to be pending.

5. In the meanwhile, on the basis of FIR No. 0006 dated 17-4-2023, ED recorded another ECIR viz.

ECIR/GNZO/17/2023, on 13-6-2023 (hereinafter “the second ECIR”) against: (i) Mr Sudhir Parmar; (ii) Mr Ajay Parmar; (iii) Mr Roop Bansal; and (iv) others who are named in the FIR/unknown persons. 6. However, summons were issued by ED to Pankaj Bansal and Basant Bansal on 13-6-2023 at 6.15 p.m. in relation to the first ECIR, requiring them to appear before ED on 14-6-2023 at 11.00 a.m. Though the copy of the summons placed before this Court pertains to Pankaj Bansal alone, the email dated 13-6-2023 of the Assistant Director of ED, bearing the time 6.15 p.m., was addressed to both Pankaj Bansal and Basant Bansal and required their compliance with the summons on 14-6-2023 at 11 a.m. While Pankaj Bansal and Basant Bansal were at the office of ED at Rajokri, New Delhi, in compliance with these summons, Pankaj Bansal was served with fresh summons at 4.52 p.m. on 14-6-2023, requiring him to be present before another investigating officer at 5.00 p.m. on the same day. This summons was in connection with the second ECIR. There is lack of clarity as to when summons in relation to the second ECIR were served on Basant Bansal. According to ED, he was served the summons on 13-6-2023 itself and refused to receive the same. However, it is an admitted fact that Basant Bansal was also present at ED's office at Rajokri, New Delhi, on 14-6-2023 at 11.00 a.m. It is also not in dispute that, while he was there, Basant Bansal was arrested at 6.00 p.m. on 14-6-2023 and Pankaj Bansal was arrested at 10.30 p.m. on the same day. These arrests, made in connection with the second ECIR, were in exercise of power under Section 19(1) PMLA. The arrested persons were then taken to Panchkula, Haryana, and produced before the learned Vacation Judge/Additional Sessions Judge, Panchkula. There, they were served with the remand application filed by ED. 10. It was the specific case of the father and son in their writ petitions before the High Court that their arrest under the provisions of PMLA was a wanton abuse of power/authority and an abuse of process by ED, apart from being blatantly illegal and unconstitutional. They also asserted that ED acted in violation of the safeguards provided in Section 19 PMLA. In this milieu, they made the following prayers: “In view of the facts and circumstances mentioned above, it is, therefore, respectfully prayed that this Hon'ble

Court may kindly be pleased to issue appropriate writ(s), order(s) and/or direction(s) to: A. Read down and/or read into as well as expound, deliberate upon and delineate the ambit, sweep and scope of Section 19(1) PMLA in consonance with the principles, inter alia, enunciated by the Hon'ble Supreme Court in Vijay Madanlal Choudhary v. Union of India [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929 : (2022) 10 Scale 577] and hold that: (i) The expression "material in possession" occurring therein must be confined, circumscribed and limited to legally admissible evidence of sterling quality and unimpeachable character on the basis whereof "reasons to believe" could be recorded in writing that the arrestee is "guilty" of the offence under Section 4 PMLA; (ii) The word "guilt" occurring therein would qualify a higher yardstick than a mere suspicion and the learned Court at the stage of remand is required to apply its judicial mind to the grounds as well as necessity for arrest as, inter alia, held in Arnesh Kumar v. State of Bihar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] and as accorded imprimatur in Satender Kumar Antil v. CBI [Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1] ; (iii) The expression "communicate" occurring therein would definitely entail physical communication and furnishing the grounds of arrest to the arrestee in the context of the obligation for "reason for such belief to be recorded in writing" read with Rules 2(1)(g) and 2(1)(h) of the PMLA Rules, 2005 (the Arrest Rules) which postulates the meaning of the word "order" to include the grounds of such arrest."

61. The Hon'ble Apex Court in the aforesaid pretext has laid down the proposition to communicate the reasons for arrest in writing by making reference of word 'henceforth'. The Hon'ble Apex Court while considering the particular case of said Pankaj Bansal has considered the admitted position that the investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants and hence, it has been held

that their arrest was not in keeping with the provisions of Section 19(1) PMLA, 2002. Accordingly, the appeals before the Hon'ble Apex Court were allowed, setting aside the impugned orders passed by High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, and all orders consequential thereto. Accordingly, the appellants were directed to be released forthwith. For ready reference, the relevant paragraph is quoted as under:

39. We may also note that the language of Section 19 PMLA puts it beyond doubt that the authorised officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the 2002 Act. Section 19(2) requires the authorised officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the adjudicating authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the adjudicating authority under Section 19(2), he/she has a constitutional and statutory right to be "informed" of the grounds of arrest, which are compulsorily recorded in writing by the authorised officer in keeping with the mandate of Section 19(1) PMLA. As already noted hereinbefore, it seems that the mode of informing this to the persons arrested is left to the option of ED's authorised officers in different parts of the country i.e. to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

45. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi

[Moin Akhtar Qureshi v. Union of India, 2017 SCC OnLine Del 12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal [Chhagan Chandrakant Bhujbal v. Union of India, 2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929] , which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained.

46. The appeals are accordingly allowed, setting aside the impugned orders [Pankaj Bansal v. Union of India, 2023 SCC OnLine P&H 2045] , [Pankaj Bansal v. Union of India, 2023 SCC OnLine P&H 2028] passed by the Division Bench of the Punjab and Haryana High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, and all orders consequential thereto.

47. The appellants shall be released forthwith unless their incarceration is validly required in connection with any other case.¶

62. Subsequent to the said judgment, the judgment has come in the case of ***Ram Kishor Arora Vs. Directorate of Enforcement [2023 SCC OnLine SC 1682]***. The Hon'ble Apex Court while taking in to consideration the judgment passed by ***Vijay Madanlal Choudhary v. Union of India (supra)*** has observed that the law laid down by the three-

Judge Bench in “***Vijay Madanlal Choudhary***” (*supra*) that Section 19(1) PMLA has a reasonable nexus with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliant with the mandate of Article 22(1) of the Constitution of India, any observation made or any finding recorded by the Division Bench of lesser number of Judges contrary to the said ratio laid down in “***Vijay Madanlal Choudhary***” (*supra*) would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches. For ready reference the relevant paragraph is being quoted as under :

16. In view of the aforestated proposition of law propounded by the Constitution Benches, there remains no shadow of doubt that the law laid down by the three-Judge Bench in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] that Section 19(1) PMLA has a reasonable nexus with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliant with the mandate of Article 22(1) of the Constitution of India, any observation made or any finding recorded by the Division Bench of lesser number of Judges contrary to the said ratio laid down in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches in cases referred above. The three-Judge Bench in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] having already examined in detail the constitutional validity of Section 19 PMLA on the touchstone of Article 22(1) and upheld the same, it holds the field as on the date.

63. Further, The Hon’ble Apex Court in the aforesaid judgment while taking in to consideration the judgment passed in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)***, come out with a view that

since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest. However, the Hon'ble Apex Court refused to invalidate the arrest of said Ram Kishor Arora. For ready reference, the relevant paragraph of the judgment is quoted as under:

21. In view of the above, the expression “as soon as may be” contained in Section 19 PMLA is required to be construed as — “as early as possible without avoidable delay” or “within reasonably convenient” or “reasonably requisite” period of time. Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest. 22. In Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] , it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance with mandate of Article 22(1) of the Constitution. It is also observed that the arrested person before being produced before the Special Court within twenty four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money laundering. Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication

about the grounds of arrest as soon as may be i.e. as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 PMLA but also of Article 22(1) of the Constitution of India. 23. As discernible from the judgment in Pankaj Bansal case [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 PMLA, directed to furnish the grounds of arrest in writing as a matter of course, “henceforth”, meaning thereby from the date of the pronouncement of the judgment. The very use of the word “henceforth” implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of the said judgment. The submission of the learned Senior Counsel Mr Singhvi for the appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary “henceforth” that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Hence, non-furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal case [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] could neither be held to be illegal nor the action of the officer concerned in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 PMLA as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] .

64. Thereafter, the Hon’ble Apex Court has considered the issue of Section 19(1) in the case of ***Prabir Purkayastha Vs. State (NCT of Delhi) (supra)*** wherein the Hon’ble Apex Court has passed the order of release of said Prabir Purkayastha, the appellant in the said case, on the ground that no reason said to be in writing was communicated even

though the law has been laid down in the case of *Pankaj Bansal Vs. Union of India & Ors (supra)*.

65. So far as the fact of the said case is concerned the officers of PS Special Cell, Lodhi Colony, New Delhi carried out extensive raids at the residential and official premises of the appellant and the company, of which the appellant is the Director in connection with FIR No. 224 of 2023 dated 17-8-2023 registered at PS Special Cell, Lodhi Colony, New Delhi for the offences punishable under Sections 13, 16, 17, 18, 22-C of the Unlawful Activities (Prevention) Act, 1967 read with Sections 153-A, 120-B of the Penal Code.

66. The appellant was arrested in connection with the said FIR on 3-10-2023 vide arrest memo. Thereafter, the appellant was presented in the court of the learned Additional Sessions Judge-02, Patiala House Courts, New Delhi on 4-10-2023, sometime before 6.00 a.m. which fact is manifested from the remand order and the appellant was remanded to seven days' police custody vide order dated 4-10-2023. The proceedings of remand have been seriously criticised as being manipulated by Shri Kapil Sibal, learned Senior Counsel for the appellant and aspersions of subsequent insertions in the remand order have been made.

67. The appellant promptly questioned his arrest and the police custody remand granted by the learned Remand Judge vide order dated 4-10-2023 by preferring Criminal Miscellaneous Case No. 7278 of 2023 in the High Court of Delhi which stands rejected by the learned Single Judge of the High Court of Delhi vide judgment dated 13-10-2023. The said order is subjected to challenge by special leave before the Hon"ble Apex Court.

68. The Hon'ble Apex Court has taken into consideration the ratio of the judgment rendered in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)***. The arrest of the said appellant was on 03.10.2023 but the judgment rendered in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)*** has been uploaded on 04.10.2023 and as such the ground was taken not to give any aid of judgment passed in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)*** even though the written communication regarding the ground of arrest of the appellant has not been furnished but the Hon'ble Apex Court has passed the order that merely because the judgment in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)*** has been uploaded on 04.10.2023 but the said Prabir Purkayastha was arrested on 04.10.2023 while the judgment passed in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)*** was delivered on 03.10.2023 and as such the case of Prabir Purkayastha has come within the ratio of judgment rendered in the case of Pankaj Bansal Vs. Union of India & Ors (supra) and since the written communication was not there, hence, he was directed to be released on bail, for ready reference the relevant paragraph is being quoted as under::

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.

30. Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal

v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.

69. Again, in the case of **Arvind Kejriwal Vs. Directorate of Enforcement (supra)** the view has been taken for communication of reason of arrest and it has been observed by the Hon’ble Apex Court that the written “grounds of arrest”, though a must, does not in itself satisfy the compliance requirement. The authorized officer's genuine belief and reasoning based on the evidence that establishes the arrestee's guilt is also the legal necessity. As the “reasons to believe” are accorded by the authorised officer, the onus to establish satisfaction of the said condition will be on the DoE and not on the arrestee. The Hon’ble Apex Court while taking in to consideration the judgment rendered by the Hon’ble Apex Court in *Vijay Madanlal Choudhary (supra)* is a decision rendered by a three Judge Bench, hence after formulating the questions of law has referred the matter for consideration by a larger Bench. For ready reference the relevant paragraphs are being quoted as under:

11. Arrest under Section 19(1) of the PML Act may occur prior to the filing of the prosecution complaint and before the Special Judge takes cognizance.¹¹ Till the prosecution complaint is filed, there is no requirement to provide the accused with a copy of the ECIR.¹² The ECIR is not a public document. Thus, to introduce checks and balances, Section 19(1) imposes safeguards to protect the rights and liberty of the arrestee. This is in compliance with the mandate of Article 22(1) of the Constitution of India. V. Senthil Balaji v. State similarly states that the designated officer can only arrest once they record “reasons to believe” in writing, that the person being

arrested is guilty of the offence punishable under the PML Act. It is mandatory to record the “reasons to believe” to arrive at the opinion that the arrestee is guilty of the offence, and to furnish the reasons to the arrestee. This ensures an element of fairness and accountability.

16. Recently, in Prabir Purkayastha v. State (NCT of Delhi), this Court reiterated the aforesaid principles expounded in Pankaj Bansal (supra). The said principles were applied to the pari materia provisions of the Unlawful Activities (Prevention) Act, 1967. The Court explained that Section 19(1) of the PML Act is meant to serve a higher purpose, and also to enforce the mandate of Article 22(1) of the Constitution. The right to life and personal liberty is sacrosanct, a fundamental right guaranteed under Article 21 and protected by Articles 20 and 22 of the Constitution. Reference was made to the observations of this Court in Roy V.D. v. State of Kerala¹⁷ that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution and any infringement of this fundamental right vitiates the process of arrest and remand. The fact that the chargesheet has been filed in the matter would not validate the otherwise illegality and unconstitutionality committed at the time of arrest and grant of remand custody of the accused. Reference is also made to the principle behind Article 22(5) of the Constitution. Thus, this Court held that not complying with the constitutional mandate under Article 22(1) and the statutory mandate of the UAPA, on the requirement to communicate grounds of arrest or grounds of detention, would lead to the custody or detention being rendered illegal.

28. Providing the written “grounds of arrest”, though a must, does not in itself satisfy the compliance requirement. The authorized officer's genuine belief and reasoning based on the evidence that establishes the arrestee's guilt is also the legal necessity. As the “reasons to believe” are accorded by the authorised officer, the onus to establish satisfaction of the said condition will be on the DoE and not on the arrestee.

70. Further the Hon‘ble Apex Court in the case of **V. Senthil Balaji v.**

Director, 2024 SCC OnLine SC 2626 has again considered the issue of

Section 19(1) of the Act 2002. The factual aspect of the case is like that

between 2011 and 2016, the appellant was holding the post of Transport Minister in the Government of Tamil Nadu. Broadly, the allegation against the appellant is that while discharging his duties as a Minister, in connivance with his personal assistant and his brother, he collected large amounts by promising job opportunities to several persons in various positions in the Transport Department. This led to the registering of three First Information Reports against the appellant and others. The said First Information Reports are FIR no. 441 of 2015 dated 29th October 2015 (CC Nos. 22 and 24 of 2021), FIR No. 298 of 2017 registered on 9th September 2017 (CC No. 19 of 2020) and FIR no. 344 dated 13th August 2018 (CC No. 25 of 2020).

71.In the first FIR, six charge sheets have been filed. More than 2000 accused have been named in the charge sheets. 550 witnesses have been named. In the case of the second FIR, there are 14 accused named in the chargesheet. In connection with this FIR, 24 witnesses have been cited. In the third FIR, 24 accused have been named in the charge sheet and 50 prosecution witnesses have been cited. The offences alleged in the aforementioned crimes are mainly under Sections 120B, 419, 420, 467 and 471 of the Penal Code, 1860 and Sections 7, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Section 34 of the Penal Code, 1860 has been invoked.

72.These offences are scheduled offences within the meaning of Section 2(y) of the PMLA. Therefore, relying on the final reports filed in aforementioned scheduled offences, for an offence of money laundering under Section 3 of the PMLA punishable under Section 4, the

Enforcement Directorate (ED) registered an Enforcement Case Information Report (for short-ECIR) bearing ECIR No. MDSZO/21/2021 on 29th July 2021.

73. Consequently, the appellant was arrested on 14th June 2023 in connection with the said ECIR and was remanded to judicial custody. A complaint was filed for the offence under Section 3 of the PMLA Act, which is punishable under Section 4, on 12th August 2023. The appellant is the only accused named in the complaint. Cognizance has been taken based on the complaint by the Special Court under the PMLA. The scheduled offences cases have been transferred to the learned Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu (Special MPMLA Court), Chennai.

74. The Hon'ble Apex Court while taking note of the settled principle that the stringent provisions regarding the grant of bail, such as Section 45(1)(iii) of the PMLA, cannot become a tool which can be used to incarcerate the accused without trial for an unreasonably long time has allowed the appeal and direction has been passed that the appellant shall be enlarged on bail till the final disposal of the case.

75. Consequent to the aforesaid judgments recently the Hon'ble Apex Court has expressed its view in the case of *Vihaan Kumar v. State of Haryana (supra)* wherein the judgment and order dated 30th August 2024 passed by the learned Single Judge of Punjab and Haryana High Court has been assailed. The appellant of the said case was arrested in connection with first information report no. 121 of 2023 dated 25th

March 2023 registered for the offences under Sections 409, 420, 467, 468 and 471 read with Section 120 B of the Penal Code, 1860 (for short, “IPC”). According to the appellant's case, he was arrested on 10th June 2024 at about 10.30 a.m. at his office premises on the 3rd-5th floor of HUDA City Centre, Gurugram, Haryana. He was taken to DLF Police Station, Section 29, Gurugram. He was produced before the learned Judicial Magistrate (in charge) at Gurgaon on 11th June 2024 at 3.30 PM.

76. It had been contended that there was a violation of Article 22(2) of the Constitution and Section 57 of the Code of Criminal Procedure Code, 1973 (for short, “CrPC”). The allegation is that neither in the remand report nor in the order dated 11th June 2024 passed by the learned Magistrate was the time of arrest mentioned. The FIR was registered at the instance of the 2nd respondent.

77. Further, in the aforesaid case a vital issue was emerged when the learned counsel appearing for the appellant produced photographs which showed that while he was admitted to the hospital, he was handcuffed and chained to the hospital bed. Therefore, a notice was issued on 4th October 2024 to the Medical Superintendent of PGIMS, calling upon him to file an affidavit stating whether the appellant was handcuffed and chained to the hospital bed. The order dated 21st October 2024 records the admission of the Medical Superintendent of PGIMS that when the appellant was admitted to the hospital, he was handcuffed and chained to the bed.

78. The Hon‘ble Apex Court while taking in to consideration the mandate of Article 22 of the Constitution of India has held that the requirement of

informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. Article 22 is included in Part III of the Constitution under the heading of Fundamental Rights. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. The Hon'ble Apex Court has further observed as under:

15. We have already referred to what is held in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal¹. This Court has suggested that the proper and ideal course of communicating the grounds of arrest is to provide grounds of arrest in writing. Obviously, before a police officer communicates the grounds of arrest, the grounds of arrest have to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing, what is stated in paragraphs 42 and 43 of the decision in the case of Pankaj Bansal¹ are suggestions that merit consideration. We are aware that in every case, it may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non-compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

79.It is, thus, evident that in all these judgments the issue at the time of arrest was the primary factor, which was questioned before the Hon'ble Apex Court and the same has been dealt with by the Hon'ble Apex Court in those judgments.

80.It is, thus, evident from the cumulative consideration of the judgment rendered by Hon'ble Apex Court, as referred above, that the law under statutory provision as contained under Section 19(1) of the PML Act,

2002 is that the reason is to be communicated to the person concerned then only the arrest would be said to be valid.

81. We are conscious that in any nature of arrest the mandatory requirement is to be fulfilled. Herein, the mandatory requirement as per Article 19(1) of the PML Act, 2002 coupled with the judgment as referred hereinabove by laying down the ratio to communicate the reason for arrest in writing and as such we have to consider as to whether the said statutory command in the facts and circumstances of the present case has been followed or not, if yes, then the arrest cannot be held to be invalid and if no, then certainly the arrest would be held to be invalid.

82. Now, adverting to the factual aspect of the present case and on consideration of the submissions advanced on behalf of petitioner, we have gone through the record particularly annexure-4 appended with the instant petition/application wherefrom it is evident that petitioner was arrested on 08.05.2025 and thereafter he has been produced forthwith before the learned C.J.M, Calcutta for transit remand. From annexure -4 it appears that arrest of the petitioner was made on 08.05.2025 under Section 19 of the Act 2002 after recording detail “reasons to believe” based on material which indicates the petitioner’s involvement in the alleged crime.

83. It is further evident that the contemporaneous record including arrest memo, personal search memo and the grounds of arrest documents bear the signature of the petitioner which stands as irrefutable proof of service and acknowledgement at the time of arrest.

84. Further the order of transit remand dated 08.05.2025 passed by the learned C.J.M, Calcutta has been led before this Court and with consent of both the parties the order became the part of record. It is evident from the aforesaid order that the petitioner was produced before the learned CJM, Calcutta within statutory 24 hour period and the learned Court of CJM after due consideration found the arrest to be proper and granted the transit remand. The relevant part of the aforesaid order is being quoted as under:

Perused case record. Heard both sides. Considered.

It appears that this is case U/Sec. 201/204/420/465/467/468/471 of IPC. Ld Special Court (PMLA), Ranchi has already taken cognizance of the offence and the matter is pending before that Court, The original case record is lying with that Court only. The allegation against these accused persons are that a syndicate is operational in several parts of India, which is indulged in creation, operation and management of fake companies for passing on ineligible ITC by issuing fake GST Bills without actually delivering the related goods and services and the accused persons are part of such syndicate. This case involves economic offence of Rs.750 crores at least.

*The materials of this skeleton case record shows that **ground of arrests have been intimated to the accused persons** and they are medically fit for transit to Ranchi. It also suggest that no specific order of Hon'ble High Court of Jharkhand has been passed in respect to this case whereby, Enforcement Director can not arrest these accused persons.*

Considering above discussion, incriminating material available against accused persons and the allegation of economic offence of huge amount of money, I am not inclined to grant bail to the accused persons.

Hence, it is ordered that the bail prayers made on behalf of the accused persons are considered and rejected.

Accordingly, the prayer for transit remand is allowed. The custody of arrested accused persons namely (1) Shiv Kumar

Deora, (2) Mohit Deora and (3) Amit Kumar Gupta are given to I.O of this case, i.e. Sudhir Lamgota AD(PMLA), Ranchi Zonal Office. Said I.O is directed to be produced the above mentioned accused persons before the Ld. Special Court (PMLA), within 48 hours.

85. Thus from the aforesaid it is evident that in the instant case after arrest immediately the petitioner was produced before the concerned court of learned Chief Judicial Magistrate at Calcutta and the petitioner has engaged his counsel who has argued the case based upon the ground of arrest and reason to believe as has been supplied to him by the Enforcement Directorate and in his presence the detail order was passed on 08.05.2025, hence, it cannot be said on behalf of the petitioner that the ground of arrest and reason to believe has not been supplied and prejudice has been caused.

86. The question of prejudice is not available the moment the petitioner was represented by the learned counsel, i.e., on the basis of the communication given by the Enforcement Directorate to his friend namely, Rajat Bhandari.

87. Further the question arises herein that as to whether in the facts of the present case the prejudice will be caused to the petitioner if the O.P-ED has communicated regarding the arrest to the friend of the petitioner over telephone, although it has been submitted by Mr. Amit Kumar Das, the learned counsel appearing for the O.P-ED that the said friend had not turned up. It has also been submitted that as said by the petitioner who informed to communicate to his friend over the telephone as would be evident from column no.5 of the arrest memo which has been annexed as Annexure-4 to the petition.

88. Accordingly, the said friend has been informed but he was not agreed to come to the residence of the petitioner where the petitioner has been taken into custody.

89. This Court is not going to the issue whether the said friend has refused to come to the residence or not, rather this Court is proceeding that even if the friend whose name has been disclosed by the petitioner has not come to the residence of the petitioner whether any prejudice has been caused to the petitioner, if the petitioner has been duly represented by the learned counsel in the Court of the learned Chief Judicial Magistrate, Calcutta on 08.05.2025 at 10:10 PM.

90. This Court has gone through the order dated 08.05.2025 relevant part as referred and quoted hereinabove, although the same has not been brought on record by the petitioner, rather it has been placed for its perusal by the learned counsel appearing for the O.P-ED, copy of which has been handed over to the learned senior counsel appearing for the petitioner and recording his no objection the said document has been taken on record as is being referred in the very first paragraph of the order as above.

91. It is evident from the arrest memo that the petitioner was arrested on 08.05.2025 and he was produced before the learned Chief Judicial Magistrate, Calcutta at 10:10 PM for seeking transit remand for his production in the Court of PMLA, Ranchi in the State of Jharkhand.

92. The petitioner was represented by the learned counsel who has filed '*Vakalatnama*' on his behalf as also made prayer for bail.

93.It is evident from the order dated 08.05.2025 as quoted and referred hereinabove, the argument has been advanced on merit on behalf of the petitioner.

94.The learned Public Prosecutor appearing for the Enforcement Directorate has also argued, in response, making opposition to the prayer for bail.

95. The averment has been made by the learned counsel for the petitioner that the grounds of arrest and reason to believe has not been supplied, but the same has been rebutted by the learned counsel appearing for the O.P-ED that the grounds of arrest and reason to believe has already been supplied.

96.The learned Chief Judicial Magistrate, Calcutta based upon the imputation made against the petitioner, as also by taking note of the fact that the grounds of arrest has been supplied to him, has rejected the prayer for bail of the petitioner and passed an order for transit for production of the petitioner in the Court of learned Special Judge, PMLA, Ranchi in the State of Jharkhand.

97.It is, thus, evident that in the aforesaid pretext, it cannot be said that merely because the telephonic communication has been given to friend of the petitioner, the requirement to communicate about the arrest to relatives or the friends has not been carried out, rather the friend, namely, Rajat Bhandari has been communicated of counsel was made on 08.05.2025. who filed *Vakalatnama* on behalf of the petitioner, contested the case by pressing the application for bail on behalf of the petitioner.

As such, in the aforesaid fact, this Court is of the view that no prejudice has been caused to the petitioner.

98. On the basis of discussion made herein above, it is evident from the record that the petitioner was informed about the ground of arrest immediately by the Enforcement Directorate with his acknowledgement. Further, it is also an admitted position that within 24 hours of the arrest, the arrestee was produced before the learned CJM Court for transit remand therefore the legal requirement of informing the grounds of arrested "as soon as may be" also stood fulfilled as per the statutory requirement under S. 19(1) of the PMLA as well as the constitutional mandate under Article 22(1) of the Constitution of India. Thus as per the of mandate of Hon'ble Supreme Court rendered in the case of *Pankaj Bansal (supra)* has been complied with by the respondent. So far the "reason to believe" is concerned the same has also been complied with and the acknowledgment to this effect was obtained. Hence, the law as it prevailed on the date of arrest was complied with.

99. This Court is conscious with the fact that the moment a person is being arrested that infringes the fundamental right of personal liberty as provided under Article 21 of the Constitution of India and as such without any valid reason the personal liberty of the person cannot be infringed.

100. This Court, in view of the discussions made hereinabove and taking into consideration the aforesaid fact is of the view that the mandatory provision as contained under Section 19(1) of the PML Act, 2002, and the ratio laid down in the case of *Vijay Madanlal Choudhary*

& Ors. Vs. Union of India & Ors. (supra), and other judgments of the Hon'ble Apex Court which has been referred herein in preceding paragraphs, has been followed by the O.P-ED.

101. From the perusal of annexure-4 it is evident that the Arrest Memo dated 08.05.2025, duly signed by the petitioner, clearly records the time, place, and manner of arrest. The written Grounds of Arrest were served upon the petitioner at the time of arrest, in strict compliance with Section 19 of the PMLA, 2002, and the law laid down by the Hon'ble Apex Court in the case of **Pankaj Bansal v. Union of India (supra)** and further "the reason to believe" has also been acknowledged. The petitioner's signatures on the Arrest Memo, Grounds of Arrest, and Personal Search Memo stand as of service and contemporaneous documentary proof acknowledgment therefore, this Court is of the view that the argument which has been advanced on behalf of the learned counsel for the petitioner is not tenable based upon the discussion made hereinabove.

Issue of culpability of the present petitioner:

102. It is evident from the record that the Directorate General of GST Intelligence (in short DGGI), Jamshedpur filed three complaint cases i.e. Complaint Case No. 678/2024 dt. 29.04.2024 against Shiva Kumar Deora, Complaint Case No. 1280/2024 dt. 04.06.2024 against Sumit Gupta and Complaint Case No. 1281/2024 dt. 04.06.2024 against present petitioner Amit Gupta u/s 132 of the GST Act r/w section 20 of the Integrated GST Act, 2017 r/w section 34, 120A, 193, 195A, 201, 203, 204, 406, 409, 420, 465, 467, 468, 471 of IPC in the court of Economic

Offices, Jamshedpur. Since u/s 420, 467 and 471 of the IPC, above stated complaints filed by the DGGI, Jamshedpur are scheduled offences as per paragraph 1 Part A of the schedule provided under PMLA 2002, the ECIR No. RNZO/18/2024 was recorded on 23.09.2024 for conducting an investigation under PMLA, 2002.

103. As per aforesaid three complaints cases it is revealed that a syndicate is operational in Jharkhand, West Bengal, Delhi and other states of the country. Syndicate is indulged in creation, operation and management of fake companies / firms for passing on ineligible ITC (Input Tax Credit) by issuing fake GST bills, without actually delivering the related goods and services and the persons namely Shiva Kumar Deora, Sumit Kumar Gupta and present petitioner Amit Kumar Gupta are a part of the said syndicate who are knowingly a party with each other and or directly involved in illegal activities of creation of fake companies / firms in the name of various dummy directors/ proprietors in order to avail and pass on ITC to several end beneficiaries in lieu of money, which are proceeds of crime. Further, it has been stated in the complaints that several bogus GST invoices have been generated in Delhi and have traveled to Jharkhand via West Bengal in three to four layers. A portion of these bogus ITCs have also been transferred to other State such as Tamil Nadu, Telangana, Andhra Pradesh, Maharashtra and Odisha and bogus ITC claims have also been taken on the basis of the said fake invoices. As per aforesaid complaint cases Shiva Kumar Deora is the mastermind behind the said fraud committed of availing ITC on the strength of bogus invoices, by way of creation of multiple

companies/firms in the name of innocent persons. They hired innocent and needy persons in the name of job at the remuneration of Rs. 10,000/- to 15,000/- per month and they were not required to attend the office daily. Instead, they were asked to provide OTP and PIN, whenever required by them. Subsequently, fake firms and companies were floated in the name of those innocent needy persons after using their identity, documents, without their knowledge or consent. Further it is also revealed that Sumit Kumar Gupta, the accomplice of Shiva Kumar Deora worked as an office staff member on his instructions for creating DSCs, rent agreements for various firms and companies for which, he was initially paid a monthly salary of Rs. 30,000/-. Shiva Kumar Deora and his accomplices namely present petitioner Amit Kumar Gupta and Sumit Kumar Gupta are beneficial owners of total 135 shell companies/firms which are floated in names of various dummy directors and by these firms they availing fake ITC to the tune of Rs. 750 crores (Approx) and passed them to several end beneficiaries thereby causing significant loss to the government exchequer.

104. It has been alleged that the petitioner Amit Gupta a close associate and financial handler of main accomplice Shiv Kumar Deora in the ongoing money laundering operations while Deora orchestrated creation of shell firms, petitioner Amit Gupta manage the financial layer of the syndicate including transaction, laundering of proceeds of crime and routing illicit funds through numerous bank accounts and entities under his control. He is the proprietor / director of several entities, such as Tirumala Enterprises, Tirubala Manufacturing Marketing Pvt. Ltd. and

Aja Enterprises Pvt. Ltd. which collectively claimed fake ITC of Rs. 47.51 crores. The accounts of these firms, despite their GST registration being canceled, were actively used to launder proceeds of crime.

105. It has further been alleged that the petitioner is also Director of fake shell companies and along with them deliberately generating and availing fake Input Tax Credit (ITC) by issuing bogus invoices and all of them are a party with each other in acquisition, possession, use and concealment of proceeds of crime as well as claiming the said proceeds of crime as untainted property and they have deliberately generated proceeds of crime to acquire and use it for personal gains. He also transferred proceeds amounting over Rs. 45 lakhs directly to Mohit Deora and routed several crores to other associates and shell firms. He has been arrested for the offence u/s 3 PML Act punishable u/s 4 of the PML Act on 08.05.2025, hence this petition.

106. Now advertent to the contention of the learned counsel for the parties on the point of culpability of the petitioner.

107. The learned senior counsel for the petitioner has submitted that the allegation leveled against the present petitioner cannot be said to attract the ingredient of Section 3 of PML Act, 2002.

108. While on the other hand, the learned counsel appearing for the ED has submitted by referring to various paragraphs of prosecution complaint that the offence is very much available attracting the offence under provisions of PML Act, 2002.

109. This Court, in order to appreciate the rival submission, is of the view that various paragraphs of prosecution complaint upon which the reliance has been placed on behalf of both the parties, needs to be referred herein so as to come to the conclusion as to whether the parameter as fixed under Section 45(ii) of the Act 2002, is being fulfilled in order to reach to the conclusion that it is a fit case where regular bail is to be granted or not.

110. For ready reference the relevant paragraphs of the prosecution complaint are being quoted as under:

Shri Amit Kumar Gupta (Accused-3) has been identified as the primary financial manager of the syndicate.

His role was crucial in managing the proceeds of crime. He controlled the movement and complex layering of illicit funds generated from the bogus billing operations, routing them through the various bank accounts of the shell firms and individuals to obscure their origin. He is also accused of channelizing these funds back to different entities within the syndicate and facilitating the extraction of cash through a network of money agents (Angadiyas) and Hawala channels. He was the proprietor/director in key entities like M/s Tirumala Enterprise, M/s Tirubala Manufacturing & Marketing Pvt. Ltd., and M/s Aja Enterprise Pvt. Ltd., which were instrumental in the fraud. The entities directly controlled by him claimed fake ITC worth 135.82 Crores.

D. Scale of the Fraud - Details of the 135 Shell Entities:

The DGGI complaints (Prosecution Complaint no. 678/2024 against Shiva Kumar Deora) provides a comprehensive list of the 135 shell firms involved in this syndicate, detailing the fraudulent ITC availed by each entity, which collectively amounts to 734.57 Crores.

A. Statements of the Accused Persons (Masterminds)

9.1 Statement of Shri Shiva Kumar Deora (Accused-1) (RUD-8 and RUD- 19):

In his statements recorded on 08.05.2025, 21.05.2025, 22.05.2025, and 23.05.2025, the accused Shiva Kumar Deora confessed to being the principal architect of the entire fraudulent scheme. He admitted to incorporating over 25 shell companies with fictitious directors, which were then sold to other operators like Amit Gupta for nominal amounts (48,000 to ₹20,000 each). He provided a detailed explanation of the syndicate's modus operandi, admitting to the generation of fake invoices without any corresponding supply of goods or services. He confessed to earning commission for his role, which he deceptively understated as 0.15% but which was in reality a substantial share of the fraudulent ITC. He further admitted to using a network of 'Angadias (hawala operators) for rotating cash and distributing the illicitly earned commissions. When confronted with substantial cash deposits of over 797 lakhs in his personal bank accounts, he failed to provide any legitimate source, offering a flimsy explanation of them being re-deposits of his own withdrawals. He also admitted to using the proceeds of crime to acquire assets, including high-value flats in Kolkata and Lucknow, and funding the repayment of loans for these properties from the same illicit earnings. His statements amount to a direct confession to his role in the generation, acquisition, layering, and use of proceeds of crime.

9.3 Statement of Shri Amit Kumar Gupta (Accused-3) (RUD-9 and RUD-21):

In his statements recorded on 08.05.2025, 03.06.2025, 04.06.2025, and 05.06.2025, the accused Amit Kumar Gupta confessed to his role as a key mastermind and the primary financial manager of the syndicate. He admitted to establishing and controlling key entities like M/s Tirumala Enterprise and M/s Tirubala Manufacturing & Marketing Pvt. Ltd. He confessed that 30-40% of his business involved generating bogus invoices without any actual supply of goods. He specifically admitted to providing fake invoices worth crores to other beneficiaries, including Amit Agarwal@ Vicky Bhalotia

(Accused-4) (23-5 crores) and Vivek Narsaria (15-7 crores). He detailed his use of various Angadias' for cash transfers and admitted to investing the commission earned from the fake invoicing scam into acquiring multiple immovable properties valued at over ₹14.35 crores. He failed to provide any legitimate explanation for credits of over 14.99 crores in his bank accounts, thereby confirming his role in laundering the proceeds of crime. He also implicated Shiva Kumar Deora in witness tampering stating that Shiva kumar deora directed dummy directors to file false affidavits and complaints against GST officials.

B. Statements of Dummy Directors/ Employees & Other Persons:

9.5 Statement of Shri Dipesh Kejriwal (RUD- 23):

In his statements recorded on 02.06.2025 and 11.06.2025, Shri Dipesh Kejriwal, an accountant for the syndicate, provided a detailed insider account of the entire conspiracy. He confirmed being hired by Shiva Kumar Deora (Accused-1) and Amit Kumar Gupta (Accused-3) and being made a director in shell companies like M/s Lambodar Traders Pvt. Ltd. and M/s Lambodar Iron Pvt. Ltd. He confessed to investing approximately 240 lakhs with the syndicate on the promise of high returns. Crucially, he stated that after the arrest of Shiva Kumar Deora, Amit Gupta instructed him to destroy his phone and abscond for a few days to evade investigation. He further revealed that Shiva Kumar Deora later pressured and threatened him to sign a false affidavit contradicting his statement given to DGGI. His testimony corroborates the modus operandi, the roles of the masterminds, and their attempts to tamper with evidence and witnesses.

9.6 Statement of Smt. Anindita Banerjee (recorded on 04.06.2025) (RUD-27)

Smt. Anindita Banerjee, a graduate, stated that following her husband's death in 2017, she was in a precarious financial situation. She was recruited by Shiva Kumar Deora (Accused-1) and Amit Gupta (Accused-3) for a purported work-from-home

job with a monthly salary of \$12,500. She stated that she was made a director in shell companies like M/s RNR Metal and Steel Private Limited and M/s SBAG Metal and Iron Private Limited entirely without her knowledge, a fact she only discovered after Shiva Kumar Deora's arrest by DGGI in February 2024. She categorically stated that the accused misused her personal KYC documents, along with those of her children (Panchadeep Nag Choudhury and Nijhum Nag Chowdhury), to create this web of entities. She vehemently denied any knowledge of the fraudulent activities, including the generation of fake invoices or the illegal passing of ITC. Upon discovering the fraud, she filed a formal complaint with the Kolkata Police, corroborating her claim of being a victim of identity theft.

9.7 Statement of Ms. Nijhum Nag Chowdhury (recorded on 54.06.2025) (RUD-24):

Ms. Nijhum Nag Chowdhury stated that she was introduced to Shiva Kumar Deora (Accused-1) and Amit Gupta (Accused-3) in 2019 for a part-time job with a salary of 15,000 per month. She was unaware that she had been made a Director/Proprietor in entities like M/s Sweko Enterprise (OPC) Pvt. Ltd. and M/s Modicum Enterprise (OPC) Pvt. Ltd. until she received summons from tax authorities. She asserted that the accused misused her personal documents and those of her family members. She confessed that Sumi supta frequently contacted her for OTPs for "office related work," which she provided in good faith. Crucially, she stated that Shiva Kumar Deora (Accused-1) threatened her, warning her not to cooperate with the DGGI investigation, which establishes his role in witness intimidation.

12 SPECIFIC ROLE OF THE ACCUSED PERSONS IN OFFENCE OF MONEY LAUNDERING -SHRI AMIT KUMAR GUPTA (ACCUSED NO. 3):

Investigation has established that Shri Amit Kumar Gupta was a central ligam and mastermind in the criminal syndicate, operating as its primary financial manager. In collaboration with Shiva Kumar Deora, he orchestrated the laundering of vast

sums of criminal proceeds. He was directly involved in the creation and operation of numerous shell companies, managed the complex web of illicit financial transactions, and was a principal beneficiary of the fraud. His actions demonstrate a clear and deliberate commission of the offence of money laundering under Section 3 of the PMLA, 2002.

A Commission of Offence of Money Laundering under Section 3 of PMLA

Shri Amit Kumar Gupta, directly and indirectly, indulged, knowingly assisted, and was knowingly a party to and actually involved in the following processes and activities connected with the proceeds of crime.

1. Generation, Acquisition, and Possession of Proceeds of Crimes

Generation & Acquisition:

He was directly involved in the generation of proceeds of crime by establishing and controlling key shell entities, including M/s Tirumala Enterprise and Tiruhala Manufacturing & Marketing Private Limited. He admitted in his statement that 30-40% of his business involved generating bogus invoices without any actual supply of goods and specifically confessed to providing fake invoices worth crores to other entities.

Possession

He was found in possession of proceeds of crime as evidenced by unexplained credits of over 714.99 crores in his Indusind Bank accounts between 2021 and 2025, for which he could not provide any legitimate source of income

2. Concealment and Layering:

His primary role was to manage and layer the illicit funds. He controlled the movement of criminal proceeds, transferring them across the various bank accounts of the shell firms to obscure their origin.

He admitted to using a network of 'Angadias' (hawala operators) to channel funds and convert illicit electronic

transfers into cash, a deliberate act to conceal the money trail and break the chain of evidence

3. Use and Integration:

Amit Gupta used the proceeds of crime for significant personal enrichment, thereby integrating the tainted money into the legitimate economy including payments of his personal expenses/purposes from the credit cards maintained in the name of shell entities.

He had admitted to investing the commission earned from the fake invoking scam into acquiring multiple high-value immovable properties worth ₹ 14.35 crores. He also acquired luxury vehicles, including an Audi, a Volvo, and a Jeep Compass, using the illicit gains from the fraud.

B. Conclusion of Role and Liability for Punishment under Section 4 of PMLA

Shri Amit Kumar Gupta was a key mastermind who managed the financial lifeblood of the criminal syndicate. His role was not limited to financial management, he was also actively involved in creating the fraudulent infrastructure, and he personally benefited from it. His attempts to destroy evidence and influence witnesses by instructing them to file false FIRs against officials further demonstrate his culpability. In view of the foregoing, as Shri Amit Kumar Gupta has directly indulged, knowingly was a party, and was actually involved in the processes and activities of preparation, concealment, possession, acquisition, layering, use, and projection of proceeds of crime as untainted property, he is guilty of the offence of money laundering as defined under Section 3 of the PMLA, 2002. He is therefore liable to be prosecuted and punished with rigorous imprisonment and a fine under Section 4 of the said Act.

III. From the various paragraphs of the prosecution complaint as mentioned hereinabove it is evident that the allegation against the petitioner that he is part of organized syndicate operating through 135

shell companies for issuance of bogus GST invoices involving ITC exceeding Rs. 750 crores. These invoices were used to illegally avail and pass on Input Tax Credit (ITC) to various entities causing wrongful loss to the government exchequer. The proceeds of crime were layered through several accounts to project them as legitimate.

112. It has been revealed that petitioner collectively claimed fake ITC of Rs. 47.51 crores through the three companies namely Tirumala Enterprises, Tirubala Manufacturing Marketing Pvt. Ltd. and Aja Enterprises Pvt. Ltd. The bank accounts of those above-mentioned firms despite their GST registration being canceled, were actively used to launder proceeds of crime. He also transferred proceeds amounting to over Rs. 15,29,000/- directly to Mohit Deora and routed several crores through other associates and shell firms.

113. The said funds after clearing into the bank accounts, were utilized towards purchase of various high value immovable properties and as per the averment made in the counter affidavit, the investigation in this regard is under progress.

114. At this juncture it requires to refer herein that the Hon'ble Apex Court in the case of *Rohit Tandon v. Directorate of Enforcement* (*supra*) while referring the ratio of *Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra & Ors., (2005) 5 SCC 294* has categorically held that the Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh

the evidence meticulously but to arrive at a finding on the basis of broad probabilities.

115. Further the Hon'ble Apex Court in the case of *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors(supra)* has reiterated the same view and has observed that the Court while dealing with the application for grant of bail need not to delve deep into the merits of the case and only a view of the court based on available material on record is required. For ready reference the relevant paragraph is being quoted as under:

303. We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma [Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294 : 2005 SCC (Cri) 1057] . The Court while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the court based on available material on record is required. The court will not weigh the evidence to find the guilt of the accused which is, of course, the work of the trial court. The court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the trial court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad [Nimmagadda Prasad v. CBI, (2013) 7 SCC 466 : (2013) 3 SCC (Cri) 575] , the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.

116. Thus, prima-facie on the basis of the material available in prosecution complaint the role of the present petitioner in the alleged money laundering cannot be negated.

117. It needs to refer herein that the Hon'ble Apex Court in the case of *Rana Ayyub v. Directorate of Enforcement* (2023) 4 SCC 357 observed as follows:

"19. The word "money-laundering" is defined in Section 2(1)(p) of the Act to have the same meaning as assigned to it in Section 3. Section 3 of the Act makes a person guilty of the offence of money laundering, if he (1) directly or indirectly attempts to indulge, or (n) knowingly assists or, (im) knowingly is a party, or (iv) is actually involved in any process or activity. Such process or activity should be connected to "proceeds of crime " including its concealment or possession or acquisition or use. In addition, a person involved in such process or activity connected to proceeds of crime, should be projecting or claiming it as untainted property. The Explanation under Section 3 makes it clear that even if the involvement is in one or more of the following activities or processes, namely: (i) concealment; (ii) possession; (im) acquisition; (iv) use; (o) projecting it as untainted property, or (vi) claiming it as untainted property, the offence of money-laundering will be made out.

20. Thus, Section 3 comprises of two essential limbs, namely: (i) involvement in any process or activity, and (ii) connection of such process or activity to the proceeds of crime. The expression "proceeds of crime" is defined in Section 2(1)(u) to mean any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad."

118. In the light of the aforesaid statutory definitions, it can safely be inferred that it is enough if the prosecution establishes that there was generation of proceeds of crime and the accused was involved in any process or activity in connection with the proceeds of crime.

119. Hence, it appears that the petitioner is directly indulged and is actually involved in all the activities connected with the offence of money laundering, i.e., use or acquisition, possession, concealment, and

projecting or claiming as untainted property, as defined u/s 3 of PML Act, 2002.

120. Further, the role of the petitioner in the laundering of proceeds of crime generated out of the commission of scheduled offence has been discussed in detail in the prosecution complaint as the paragraphs abovementioned.

121. In this context, it is pertinent to mention here that the provisions of the PML Act, 2002 is an independent offence and the investigation conducted by the Enforcement Directorate under the PML Act, 2002 is triggered after committing, the commission of a scheduled offence, out of which proceeds have been generated. During the investigation, there is the active involvement of the petitioner in the layering, transfer and use as well as the petitioner entering into transactions to launder the proceeds of crime generated out of such scheduled offence.

122. Thus, *prima-facie*, it appears that the petitioner has involved himself in accumulating proceeds of crime and the aforesaid plea of the learned counsel for the petitioner does not hold water.

123. Further the offence of money laundering as contemplated in Section 3 of the PML Act, 2002 has been elaborately dealt with by the three Judge Bench in *Vijay Madanlal Choudhary (supra)*, in which it has been observed that Section 3 has a wider reach. The offence as defined captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and is not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering. Of course, the authority of the Authorised Officer

under the Act to prosecute any person for the offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the Act and further it is involved in any process or activity. Not even in case of existence of undisclosed income and irrespective of its volume, the definition of “Proceeds of Crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of “Proceeds of Crime” under Section 2(1)(u) of the Act. As observed, in all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “Proceeds of Crime” under Section 2(1)(u) will necessarily be the crime properties.

124. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime.

125. The learned senior counsel for the petitioner has further contended that the petitioner has been implicated in the present case on the basis of statement recorded under Section 50 of the PML Act of the co-accused, who was already in custody, hence, the statement recorded under Section 50 of the PML Act of the co-accused, who were already in

custody cannot be used against the present petitioner as per the mandate of judgment rendered by the Hon'ble Apex Court in the case of *Prem Prakash Vs. Union of India through the Directorate Of Enforcement(supra)* .

126. In the aforesaid context it needs to refer herein that there is no dispute regarding the settled proposition of law that the statements recorded which are merely confessional in nature ought to be ignored while adjudicating upon a case as confessional statement of co-accused cannot be treated as substantive evidence and such statements can only be pressed into service when the Hon'ble Courts are inclined to accept other evidences. Thus, instead of placing reliance solely upon the statements of the petitioner and the other co-accused persons recorded under Section 50 of PMLA, the opposite party ought to have collected and relied upon other evidence in order to prosecute the petitioner.

127. Herein The argument is that the imputation of the petitioner is based upon the statement recorded under section 50 of the PML Act, 2002 of the co-accused person, namely, Shiva Kumar Deora while he was in custody but this Court after going through the prosecution report has found that other witnesses who have not been arrayed as an accused in their statements recorded under section 50 of the PML Act have made specific imputation against the petitioner.

128. Further herein it is evident from the various paragraphs of the prosecution complaint filed which have been referred hereinabove, is supported by substantial evidence gathered during the investigation and culpability against the petitioner is not based solely upon on the

statements of the petitioner and his accomplices. Furthermore, prima facie there is ample evidence establishing the petitioner's involvement in the offence of money laundering, which is further corroborated by statements of other witnesses who were not arraigned as accused in the instant case. Further, the petitioner's role has already been discussed herein in detail in the preceding paragraphs, therefore, the averments of the petitioner are unfounded and liable to be dismissed.

129. It needs to refer herein that the three Judge Bench the Hon'ble Apex Court in the case of "***Rohit Tandon vs. Directorate of Enforcement***" (*supra*) held that the statements of witnesses recorded by Prosecution - ED are admissible in evidence in view of Section 50. Such statements may make out a formidable case about the involvement of the accused in the commission of the offence of money laundering. For ready reference the relevant paragraph is being quoted as under:

31. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetised currency and also new currency has been acquired by him. The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the 2002 Act. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence. Further, the courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the 2002 Act

while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other words, the fact that the investigation in the predicate offence instituted in terms of FIR No. 205/2016 or that the investigation qua the appellant in the complaint CC No. 700 of 2017 is completed; and that the proceeds of crime are already in possession of the investigating agency and provisional attachment order in relation thereto passed on 13-2-2017 has been confirmed; or that charge-sheet has been filed in FIR No. 205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2-1-2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence.

130. In a recent judgment, the Hon'ble Supreme Court in “***Abhishek Banerjee & Anr. v. Directorate of Enforcement***”, (2024) 9 SCC 22 has again made similar observations:

"21. ...Section 160 which falls under Ch. XII empowers the police officer making an investigation under the said chapter to require any person to attend within the limits of his own or adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case, whereas, the process envisaged by Section 50 PMLA is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the authorities referred to in Section 48 PMLA are not the police officers as held in Vijay Madanlal [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] .

22. It has been specifically laid down in the said decision that the statements recorded by the authorities under Section 50 PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the judicial proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a police officer in the course of an investigation under Ch. XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Sections 160/161CrPC, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof."

131. In light of the foregoing judicial pronouncements, it is evident that statements recorded under Section 50 of the PML Act, 2002 hold evidentiary value and are admissible in legal proceedings. The Hon'ble Supreme Court, while emphasizing the legal sanctity of such statements, observed that they constitute valid material upon which reliance can be placed to sustain allegations under the PML Act, 2002.

132. In the aforesaid judgment, the Hon'ble Supreme Court also reaffirmed the admissibility of Section 50 of the PML Act, 2002 distinguishing them from statements recorded under the Cr.PC. The Court underscored that such statements, being recorded during an inquiry rather than an investigation, are not subject to the restrictions under Article 20(3) and Article 21 of the Constitution. Instead, they are deemed to be judicial proceedings under Section 50(4) of the PML Act, 2002 and, therefore, admissible as evidence in proceedings under the PML Act, 2002. The Hon'ble Apex Court further clarified that the provisions of Section 50 of the PML Act, 2002 having an overriding effect by virtue of Sections 65 and 71 of the PML Act, 2002 prevail over the procedural safeguards under the CrPC.

133. In the instant case, it has been found that during the course of investigation statement so recorded of the accused persons as also of the statement of various other witnesses.

134. Thus, the petitioner knowingly is as the party and is actually involved in all the activities connected with the offence of money laundering, i.e., use or acquisition, possession, concealment, and projecting or claiming as untainted property.

135. Having examined the admissibility of statements recorded under Section 50 of the PML Act, 2002, this Court shall now proceed to analyze the statutory framework governing the burden of proof under Section 24 in proceedings related to proceeds of crime.

*"24. Burden of proof. --In any proceeding relating to proceeds of crime under this Act, -- (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and
(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."*

136. From the bare perusal of Section 24 of the PML Act, 2002, it is evident that once a person is charged with the offence of money laundering under Section 3 of the PML Act, 2002, the law presumes that the proceeds of crime are involved in money laundering unless the contrary is proven by the accused.

137. In the present case, the investigating agency has relied not only on the statement of co-accused under Section 50 of the PML Act, 2002 but also other evidences which indicate the applicant's active role in the alleged money laundering activities.

138. By virtue of Section 24 of the PML Act, 2002, the O.P- ED is not required to conclusively establish the applicant's guilt at the pre-trial stage, rather, the applicant must demonstrate that the proceeds of crime attributed to him are not linked to money laundering. In the absence of any rebuttal by the applicant, the presumption under Section 24 of the PML Act, 2002 stands in favor of the O.P-ED, thereby, justifying his continued detention.

139. With regard to the above, this Court has referred to the judgment of the Hon'ble Supreme Court in ***Prem Prakash v. Union of India through Directorate of Enforcement, (supra)*** wherein, the following observations were made:

"18. In Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] dealing with Section 24 PMLA, the three-Judge Bench held as under : (SCC pp. 229-31, paras 237 & 239-40)

"237. Be that as it may, we may now proceed to decipher the purport of Section 24 of the 2002 Act. In the first place, it must be noticed that the legal presumption in either case is about the involvement of proceeds of crime in money-laundering. This fact becomes relevant, only if, the prosecution or the authorities have succeeded in establishing at least three basic or foundational facts. First, that the criminal activity relating to a scheduled offence has been committed. Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime. On establishing the fact that there existed proceeds of crime and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money-laundering. The nature of process or activity has now been elaborated in the form of Explanation inserted vide Finance (No. 2) Act, 2019. On establishing these foundational facts in terms of Section 24 of the 2002 Act, a legal presumption would arise that such proceeds of crime are involved in money-laundering. The fact that the person concerned had no causal connection with such proceeds of crime and he is able to disprove the fact about his involvement in any process or activity connected therewith, by producing evidence in that regard, the legal presumption would stand rebutted.

140. Be it noted that the legal presumption under Section 24(a) of the Act 2002, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in

any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money- laundering to rebut the legal presumption that the proceeds of crime are not involved in money-laundering, by producing evidence which is within his personal knowledge of the accused.

141. In other words, the expression "presume" is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the authority or the court, without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge.

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

143. In the case of “*Collector of Customs, Madras & Ors. v. D. Bhoormall*”, (1974) 2 SCC 544 proceedings were initiated under Section 167(8)(c) of the Customs Act for confiscation of contraband or smuggled goods and it was observed by the Hon’ble Apex Court that on the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or

explain those facts, an adverse inference of facts may arise against him. The relevant paragraph of the aforesaid Judgment is being quoted as under:

“Since it is exceedingly difficult, if not absolutely impossible, for the prosecution to prove facts which are especially within the knowledge of the opponent or the accused, it is not obliged to prove them as part of its primary burden.

... On the principle underlying Section 106, Evidence Act, the burden to establish those facts is cast on the person concerned; and, if he fails to establish or explain those facts, an adverse inference of facts may arise against him, which coupled with the presumptive evidence adduced by the prosecution or the Department would rebut the initial presumption of innocence in favour of that person, and in the result, prove him guilty.”

144. Thus, in light of the aforesaid principles and the law enunciated by the Hon’ble Supreme Court in *Vijay Madanlal Choudhary (Supra)*, this Court must determine whether the foundational facts necessary to invoke the presumption under Section 24 of the PML Act, 2002 have been established by the O.P-ED.

145. The Hon’ble Supreme Court has categorically held that the prosecution must satisfy three essential ingredients. First, the commission of a scheduled offence must be established. Second, the property in question must be shown to have been derived or obtained, directly or indirectly, as a result of such criminal activity and third, the accused must be linked, directly or indirectly, to any process or activity connected with the proceeds of crime.

146. It requires to refer herein that the petitioner was on regular bail in the predicate offence or that no complaint has been filed by the DGGI does not dilute or nullify the independent action taken under the PMLA since both are the parallel proceeding.

147. Now in the light of the aforesaid discussion, at this juncture, this Court thinks it fit to revisit the scope of Section 45 of the PML Act, 2002. As discussed in preceding paragraphs that Section 45 of the PML Act, 2002 provides twin test. First '*reason to believe*' is to be there for the purpose of reaching to the conclusion that there is no *prima facie* case and second condition is that the accused is not likely to commit any offence while on bail.

148. Sub-section (1)(ii) of Section 45 of the PML Act, 2002, provides that if 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, meaning thereby, the parameter which is to be followed by the concerned court that satisfaction is required to be there for believing that such accused person is not guilty of such offence and is not likely to commit offence while on bail.

149. Section 45(2) of the Act 2002 provides to consider the limitation for grant of bail which is in addition to the limitation under the Code of Criminal Procedure, 1973, i.e., limitation which is to be considered while granting the benefit either in exercise of jurisdiction conferred to this Court under BNSS, 2023 is to be taken into consideration.

150. It is, thus, evident by taking into consideration the provision of Sections 19(1), 45(1) and 45(2) of PML Act, 2002 that the conditions provided therein are required to be considered while granting the benefit of regular bail in exercise of power conferred under statute apart from the

twin conditions which has been provided under Section 45(1) of the Act, 2002.

151. Thus, Section 45 of the PML Act, 2002 turns the principle of bail is the rule and jail is the exception on its head. The power of the Court to grant bail is further conditioned upon the satisfaction of the twin conditions prescribed under Section 45(1) (i) and (ii) PML Act, 2002. While undertaking this exercise, the Court is required to take a *prima facie* view on the basis of materials collected during investigation. The expression used in Section 45 of PML Act, 2002 are “reasonable grounds for believing” which means that the Court has to find, from a *prima facie* view of the materials collected during investigation that there are reasonable grounds to believe that the accused has not committed the offence and that there is no likelihood of him committing an offence while on bail. Recently, in ***Tarun Kumar v Assistant Directorate of Enforcement, (supra)*** the Hon’ble Supreme Court has held as under:

“17.As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.”

152. Further, at the stage of recording statements during enquiry, it cannot be construed as an investigation for prosecution. The process envisaged under Section 50 of PML Act, 2002 is in the nature of an inquiry against the proceeds of crime and it is not an investigation and the authorities who are recording the statements are not police officers and therefore, these statements can be relied upon as admissible piece of evidence before the Court. The summons proceedings and recording of statements under PML Act, 2002 are given the status of judicial proceedings under Section 50(4) of PML Act, 2002.

153. The statements that were recorded from the witnesses during the investigation have been dealt with in prosecution complaint and many of the statements clearly implicate the petitioner. Therefore, the statements that have been recorded from the witnesses and which has been relied upon, is also a strong material that prima facie establishes the offence of money laundering against the present petitioner.

154. Thus, on the basis of the discussion made hereinabove, the contention of the learned counsel for the petitioner that even if the entire ECIR will be taken into consideration, no offence will be said to be committed so as to attract the ingredients of Sections 3 & 4 of the PML Act, 2002, is totally misplaced in the light of accusation as mentioned in prosecution complaint.

155. Thus, this Court, after taking note of the settled legal proposition, is of view that the aforesaid contention is not tenable in the eye of law.

156. This Court is conscious with the fact that personal liberty is

utmost requirement to maintain the individuality of the person concerned but at the same time it is equally settled that the balance between personal liberty and societal impact of the alleged offence should be taken care of by the Court concerned.

157. Further in the counter affidavit it has been averred that in the present case, substantial portions of the proceeds of crime remain untraced, unrecovered, and potentially in circulation within the financial system. The investigation into the identification of the complete chain of transactions, the full extent of assets acquired from such tainted funds, and the persons/entities involved in their possession and concealment is still ongoing. During the course of further investigation in the matter, certain properties acquired by the petitioner accused has been identified. It is revealed that the petitioner intentionally transferred/tried to transfer the said properties, acquired out of the proceeds of crime, to his associates without payment of consideration purposefully to frustrate the proceedings under the law therefore, releasing the petitioner at this crucial stage would not only impede and prejudice the ongoing investigation but would also frustrate the statutory objective of tracing, attaching, and ultimately confiscating the property derived from or involved in money laundering, as envisaged under Sections 5 and 8 of the PMLA.

158. Thus, on the basis of the aforesaid discussion and taking into consideration the grave nature of the allegations, the sophisticated modus operandi employed to project tainted property as untainted, and the strict statutory framework governing bail under the PML Act, 2002,

it is considered view of this Court that no ground exists for the petitioner to claim the benefit of bail on merits. The gravity of the offence, and the serious allegations of facilitating the laundering of proceeds of crime continue to justify the petitioner's custody under the strict rigours of Section 45 of the Act 2002.

159. This Court while considering the prayer for regular bail has taken into consideration that though this Court is not sitting in appeal on the order passed by learned Trial Court but only for the purpose of considering the view which has been taken by learned Court while rejecting the prayer for bail, this Court is also in agreement with the said view based upon the material surfaced in course of investigation, as referred hereinabove.

160. This Court is conscious of this fact that while deciding the issue of granting bail in grave economic offences it is the utmost duty of the Court that the nature and gravity of the alleged offence should have been kept in mind because corruption poses a serious threat to our society should be dealt with by iron hand.

161. Further, it is required to refer herein that the Money Laundering is an economic offence and economic offences comes under the of grave offences hence needs to be visited with a different approach in the matter of bail as held by the Hon'ble Apex court in the case of "***Y. S Jagan Mohan Reddy v/s Central Bureau of Investigation***", reported in (2013) 7 SCC 439. For ready reference, the relevant paragraphs of the aforesaid judgments are being quoted 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.”

162. Similarly, the Hon’ble Apex Court in case of “***Nimmagadda Prasad Vs. Central Bureau of Investigation***”, reported in (2013) 7 SCC 466 has reiterated the same view in paragraphs-23 to 25 which reads as under:

“23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat v. Mohanlal Jitmalji Porwal [(1987) 2 SCC 364 : 1987 SCC (Cri) 364] this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under: (SCC p. 371, para 5)

“5. ... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. 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. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

24. 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. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at

this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

163. The Hon’ble Apex Court in the case of “***Central Bureau of Investigation Vs Santosh Karnani and Another***”, **2023 SCC OnLine SC 427** has observed that corruption poses a serious threat to our society and must be dealt with iron hands. The relevant paragraph of the aforesaid judgment is being referred as under:-

“31. The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, “Corruption is a tree whose branches are of an unmeasurable length; they spread everywhere; and the dew that drops from thence, Hath infected some chairs and stools of authority.” Hence, the need to be extra conscious.”

164. It requires to refer herein that the Hon’ble Apex Court in catena of judgments has held that the 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.

165. The Hon’ble Apex Court has further observed that with the advancement of technology and Artificial Intelligence, the economic

offences like money laundering have become a real threat to the functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of “***Tarun Kumar vs. Assistant Director Directorate of Enforcement***” (*supra*). The relevant paragraphs of the aforesaid Judgment are being quoted as under:

“22. Lastly, it may be noted that as held in catena of decisions, the 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. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation, Nimmagadda Prasad v. Central Bureau of Investigation, Gautam Kundu v. Directorate of Enforcement (supra), State of Bihar v. Amit Kumar alias Bachcha Rai. This court taking a serious note with regard to the economic offences had observed as back as in 1987 in case of State of Gujarat v. Mohanlal Jitamalji Porwal as under:—

“5... 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. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest...”

23. With the advancement of technology and Artificial Intelligence, the economic offences like money laundering have become a real threat to the

functioning of the financial system of the country and have become a great challenge for the investigating agencies to detect and comprehend the intricate nature of transactions, as also the role of the persons involved therein. Lot of minute exercise is expected to be undertaken by the Investigating Agency to see that no innocent person is wrongly booked and that no culprit escapes from the clutches of the law. When the detention of the accused is continued by the Court, the courts are also expected to conclude the trials within a reasonable time, further ensuring the right of speedy trial guaranteed by Article 21 of the Constitution.

24. With the afore-stated observations, the appeal is dismissed.”

166. This Court, considering the aforesaid material available against the petitioner in such a grave nature of offence and applying the principle of grant of bail wherein the principle of having *prima facie* case is to be followed, is of the view that it is not a fit case of grant of bail.

167. Having regard to the entirety of the facts and circumstances of the case, this Court is of the opinion that the petitioner has miserably failed to satisfy this Court that there are reasonable grounds for believing that he is not guilty of the alleged offences. On the contrary, there is sufficient material collected by the O.P-ED to show that he is *prima facie* guilty of the alleged offences.

168. For the foregoing reasons, having regard to facts and circumstances, as have been analyzed hereinabove, since the petitioner has failed to make out a special case to exercise the power to grant bail and considering the facts and parameters, necessary to be considered for adjudication of bail, this Court does not find any exceptional ground to exercise its discretionary jurisdiction to grant bail.

169. Further it needs to refer herein that after detailed investigation, the Directorate of Enforcement has filed a Prosecution Complaint dated 05.07.2025 before the Special Judge, CBI-cum-PMLA, Ranchi, against

the petitioner Amit Gupta, along with other accused persons, for commission of the offence of money laundering punishable under Section 4 of the PMLA, 2002. The Learned Court has taken cognizance of the offence on the basis of the said complaint, and the matter is presently pending trial.

170. It is evident from the various paragraphs of the prosecution report dated 05.07.2025 which have been quoted and refer hereinabove that the allegations levelled against the petitioner are of an extremely grave and serious nature, striking at the very foundation of the country's economic and financial system. They pertain to fraudulent transactions running into hundreds of crores of rupees, executed through a complex and deliberate layering of illicit funds, and culminating in the acquisition and projection of properties derived from such tainted sources as untainted assets. The petitioner's activities have been found to be indispensable to the layering and integration stages of the laundering process, involving multiple shell companies and bank accounts under his de facto control.

171. Thus, the magnitude of the fraud, its organized nature, and the systematic siphoning of funds, the present case strikes at the core of the country's economic and financial fabric. The fraudulent availment and passing of fake ITC not only caused direct financial loss to the Government but also undermined the sanctity of the GST regime, which is based on self-declaration and trust.

172. The seriousness of the offence has been recognized by the special Court in the cognizance order, and further the evidence collected

during the PMLA investigation provides strong prima facie proof of the petitioner's complicity in the alleged commission of crime.

173. On the basis of discussion made hereinabove it is considered view of this Court that granting bail to the petitioner would send a wrong signal to society and embolden economic offenders, thereby undermining public confidence in the justice delivery system. The offence in question is not a mere fiscal offence but a crime against the economic health of the nation, with a cascading effect on honest taxpayers, market integrity, and state revenue, therefore, this Court is of the view that it is not a case where the prayer for bail is to be granted, as such the instant application stands dismissed.

174. It is made clear that any observations made herein are *prima-facie* for consideration of matter of bail only and the view expressed herein shall not be construed as an expression on the merits of the case.

175. The learned Trial Court shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

(Sujit Narayan Prasad, J.)

Sudhir
Dated: 08./10/2025
Jharkhand High Court, Ranchi
AFR

Uploaded on 09/10/2025.