CNR No.DLCT11-000084-2021
Bail Application No.02/2021
ECIR/09/DLZO-I/2018
Kanwar Deep Singh & Anr. Vs. Directorate of Enforcement

06.04.2021

O R D E R

1. The present bail application has been filed under Section 439 Cr.P.C. for grant of bail to the applicant/ accused averring that the applicant/ accused is a victim of grave persecution and harassment being meted out to him in a manner alien to the settled tenets of criminal jurisprudence and the actions of the respondents were grossly violative of his fundamental right to life and liberty as guaranteed under Article 21 of the Constitution. It is submitted that the applicant was arrested on 12.01.2021 and thereafter was remanded to the custody of ED and was then sent to judicial custody and since then he was languishing in judicial custody.

2. It is stated that the applicant/ accused is aged about 61 years and his family comprises of old mother, wife and two sons. It is also stated that the applicant/ accused has a distinguished educational background and career. It is submitted that the applicant was neither a director nor a shareholder nor any other officer bearer of the companies which are primarily the subject matter of

the present investigations including Alchemist Infra Realty Ltd. (hereinafter referred to as AIRL), Alchemist Township India Ltd. (hereinafter referred to as ATIL) and Alchemist Holdings Ltd. (hereinafter referred to as AHL). It is submitted that on certain accusations relating to investment in the said three companies, cases had been registered in certain States including State of Uttar Pradesh and West Bengal. Though, the applicant/ accused had nothing to do with the affairs of either of the said companies or with the act and conduct of the companies in question, yet he was arraigned as a suspect/ accused in some of those cases for blatantly extraneous and vexatious considerations.

3. It is submitted that considering the proceedings initiated by Securities & Exchange Board of India (hereinafter referred to as SEBI) as a Scheduled Offence, the ED registered ECIR/05/DLZO/2016. Consequently, AIRL challenged those proceedings before the Hon'ble High Court of Delhi vide W.P. (C) No.4974 of 2018 (**Alchemist Infra Realty Ltd. & Anr.** v. **Directorate of Enforcement & Ors.**) seeking quashing of the said proceedings instituted under PMLA on the principal ground that the said proceedings were premised on violation of certain provisions of SEBI Act and SEBI (Collective Investment Scheme) Regulations, 1999 which were not Scheduled Offences under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the

PMLA). It was inter-alia urged that proceedings being carried out by ED were illegal and without jurisdiction. It is submitted that interim order dated 16.05.2018 was passed in the said Writ Petition to the effect that in case further coercive measures were intended to be taken by the ED, it would in the first instance approach the Hon'ble High Court. Subsequently, vide order dated 22.01.2019 the said Writ Petition (C) No.4974 of 2018 was disposed of by quashing the action of freezing of the bank account of AIRL with PNB and HDFC Bank, however, the ED was permitted to go ahead with passing of orders under PMLA including provisional attachment with liberty to AIRL to contest the same in accordance with law.

4. It is submitted that in the said proceedings before the Hon'ble High Court of Delhi, affidavits were filed by ED on 07.09.2018 and 11.10.2018 stating that it was not necessary to register a separate ECIR in respect of the alleged scheduled offence as per the FIRs registered against AHL, AIRL, ATIL etc. and that the investigations into the alleged offence of money laundering arising therefrom could be investigated in the same ECIR. On 24.01.2019, the ED issued Provisional Attachment Order (PAO) in ECIR/05/DLZO/2016 attaching various properties of the Alchemist Group and in the said PAO, it was disclosed for the first time, contrary to the stand taken in the affidavits that a separate

ECIR bearing No.ECIR/09/DLZO-I/2018 had been registered in New Delhi on the basis of FIR No.84/2017 dated 16.03.2017 registered under Sections 406, 408, 420 and 120-B IPC at P.S. Bowbazar, District Kolkata as a scheduled offence.

5. It is submitted that against the order dated 22.01.2019, to the extent that the Hon'ble Single Bench had not decided the issue of jurisdiction, AIRL preferred L.P.A. No.104/2019. Vide order dated 13.02.2019, a Division Bench of the Hon'ble High Court of Delhi stayed the order dated 22.01.2019 and also stayed all further proceedings under PMLA during the pendency of the appeal and directed to maintain status quo in respect of the properties forming subject matter of the provisional attachment order. The said order was clarified by an order dated 22.02.2019.

6. It is stated that based upon FIR Nos.84 dated 16.3.2017, 82 dated 01.04.2017, 83 dated 01.04.2017 registered at Chipore Police Station, Kolkata, FIR No.84 dated 01.04.2017 registered at PS Bowbazar, Kolkata for commission of offences under Sections 406, 420, 120B of IPC and taking them as scheduled/ predicate offences, apparently ED commenced investigation, *inter alia* vide ECIR No.09/DLZO-1/2018 on 11.07.2018. It is averred that as regards the cases

in the State of West Bengal, the matter is sub-judice before the Hon'ble High Court of Calcutta where various orders had been passed by the Hon'ble High Court, supervising the process of repayment by all the companies of the Alchemist Group through the mechanism of a One-Man Committee. It is averred that a perusal of the FIRs registered by PS Bowbazar would show that certain investors who were claiming return of their investments by way of such cases had the option of approaching the One-Man Committee which was overseeing the payments made to all investors of the Alchemist Group. Further the proceedings relating to the cases in the State of Uttar Pradesh were sub-judice before the Hon'ble High Court of Judicature at Allahabad, wherein during the course of hearing of quashing petition, interim orders directing no coercive action had been passed and the matters were at the advanced stage of hearing.

7. It is stated that the proceedings in relation to the companies which are the subject matter of investigation are also pending under the Insolvency and Bankruptcy Code, 2016, wherein orders had been passed declaring moratorium and appointment of the resolution professional. It is submitted that apparently it is the case of the said companies that their assets are more than the liability and once a proper resolution process is adopted, each and every investor's claim would be satisfied and it was also a case where no money from the bank or

financial institution was involved.

8. It is submitted that on 19.09.2019, certain searches and seizure operations were carried out at various office and residential premises including the residence of the applicant/ accused leading to seizure of certain documents, digital devices, mobile phones etc. An application bearing O.A. No.356/2019 dated 16.10.2019 was filed by ED under Section 17 (4) PMLA for retention of property and records of the Alchemist Group as also the applicant/ accused which were seized in the course of search and seizure operation carried out on 19.09.2019. Vide order dated 03.03.2020, the Adjudicating Authority allowed the application filed by ED in the interest of investigation and in the interest of justice. Against the order dated 03.03.2020, the applicant/ accused etc. filed appeals before the Appellate Tribunal under PMLA in terms of Section 26 but the application was rejected by the Appellate Tribunal on 30.06.2020. Aggrieved the applicant/ accused approached the Hon'ble High Court of Delhi vide W.P. (Crl.) 1123 of 2020 in which an interim order was passed on 27.07.2020 that the further investigation undertaken in the matter in relation to retrieval of materials from the mobile phones of the applicant/ accused shall be subject to final decision in the Writ Petition. However, it was made clear that investigation shall continue unhampered by the pendency of the writ petition.

9. It is contended that on 17.11.2020, ED had taken time to file the counter affidavit. It is submitted that the applicant/ accused was regularly appearing before the respondents during the course of investigation, wherein, his statements on a number of occasions had been recorded. Applicant/ accused had joined investigation on various occasions (more than 20 times) and he rendered full assistance as well as co-operation. He had taken an emphatic stand that he had nothing to do with the affairs of the companies in question. On 07.01.2021, the applicant/ accused was summoned by the ED to appear before it for the purpose of recording of his statement under Section 50 of PMLA. He accordingly appeared and tendered his statement whereupon, he was asked to come again on 12.01.2021 for continuing with the recording of his statement. In this regard, the applicant/ accused was asked to make an endorsement on his statement that he would come back on 12.01.2021.

10. It is submitted that on 11.01.2021, the counsel for the applicant/ accused was contacted by the counsel for the ED (respondent in W.P (Crl.)1123 of 2020) requesting for a 'no objection' to their written prayer for an adjournment moved before the Hon'ble Delhi High Court in W.P. (Crl.) 1123 of 2020 which was listed on 12.01.2021. While on the one hand, the ED avoided to file a reply in

the said W.P. (Crl.) 1123 of 2020, on the other hand, the applicant/ accused who was regularly appearing before the respondents during the course of investigation wherein his statements on a number of occasions had been recorded, was arrested in a blatant abuse of the process of law. Neither the procedure established by law was followed, nor the postulates contemplated under Section 19(1) of PMLA and the yardstick of guilty were fulfilled. It is submitted that the applicant/ accused was not furnished with the Grounds of Arrest as were mandatory under the said provisions as well as in terms of Article 22 (1) of the Constitution.

11. It is submitted that the applicant/ accused was produced before the Court and remanded to custody of Directorate of Enforcement till 16.01.2021 and on 27.01.2021 he was remanded to judicial custody. It is stated that the applicant/ accused approached the Hon'ble Supreme Court vide W.P. (Crl.) 70 of 2021 and also filed SLP (Crl.) 1172-1174 of 2021 challenging the remand orders. But thereafter the said writ petition and SLP were dismissed as withdrawn with liberty to approach the Hon'ble High Court. The applicant/ accused then approached the Hon'ble High Court of Delhi vide Crl. M.C. No.656 of 2021 and also filed bail application No.660 of 2021 and vide order dated 26.02.2021, the said petitions were withdrawn with liberty to file afresh with better particulars. It

is submitted that the applicant/ accused is in the process of taking recourse to appropriate remedies in accordance with law.

12. It is submitted that the proceedings against the applicant/ accused are absolutely illegal, unconstitutional and non-est. It is averred that it was the self-undertaking and unequivocal stand of the ED that there was no need to register a separate ECIR in the wake of the earlier ECIR/05/DLZO/2016 and they would be investigating the offence under Section 3 read with Section 4 of PMLA *inter-alia* arising out of FIR(s) registered at Kolkata in the said ECIR/05/DLZO/2016 itself and it was a matter of record that the entire proceedings arising out of ECIR/05/DLZO/2016 stood stayed by Hon'ble Delhi High Court. Therefore, viewed from any perspective, the subsequent investigation by a separate ECIR/09/DLZO-I/2018 and arrest of the applicant/ accused was most unfortunate and tantamounted to overreaching the process of the Hon'ble High Court. It is submitted that in the FIRs which were taken as Scheduled Offence, proceedings were sub-judice before various Hon'ble High Courts and interim orders had been passed including taking of no coercive action. Also, the matter was sub-judice before the Hon'ble Delhi High Court in W.P.(Crl.) 1123 of 2020 relating to the use of electronic data and digital devices wherein the Hon'ble High Court had directed that further investigation undertaken in the matter

would be subject to the final decision in the writ petition.

13. It is submitted that the applicant/ accused had associated himself with the investigation and had appeared before the ED on several occasions pursuant to being summoned. The resort to coercive action of his arrest was most unfortunate and unjustified and the action of arresting the applicant/ accused was aimed at circumventing the orders passed by the Hon'ble High Court of Delhi in LPA No.104 of 2019 and W.P.(Crl.) 1123 of 2020. It is submitted that the arrest of the applicant/ accused was depictive of arbitrariness in the approach of ED as despite the claim that the applicant/ accused was not a Director, Shareholder or any office bearer in the companies in question, no evidence had been gathered to show his involvement and only after the arrest of the applicant/ accused, statements had been procured against him under threat, duress and coercion as the persons making such statements would be subject to the same fate at the applicant/ accused unless they stated as per the dictates of ED.

14. It is stated that the applicant/ accused had raised several issues touching the lack of jurisdiction and violation of the 'procedure established by law' in the commencement and continuation of investigation by ED; procedure to be followed under Chapter XII of Cr.P.C. while investigating an offence under

PMLA and the requirement of physically furnishing the grounds of arrest instead of merely communicating the same. Reliance was placed on the judgment **Rajbhushan Omprakash Dixit** v. **Union of India & Anr.** 2018 SCC OnLine Del20 7281 which it is submitted had since been transferred to the Hon'ble Supreme Court but neither the said judgment had been stayed, nor the interim order had been varied or modified. It is averred that on the contrary, the interim order in the connected/tagged matter had been continued.

15. It is contended that there is apparent grave violation of the postulates contemplated in Section 19 of PMLA and at the time of remand, nothing had been brought to the notice of the Court that the postulates contained in Section 19(2) PMLA had been complied with by the arresting officer. It is submitted that as per Section 19(1) PMLA there has to be prior material on the basis of which the arresting officer could record reason to believe that the applicant/ accused had been guilty but the same had not been satisfied.

16. It is averred that further incarceration of the applicant/ accused would be a grave miscarriage of justice. The applicant/ accused is a former parliamentarian and has held key posts. He is neither a flight-risk, nor can he ever be in a position to tamper with evidence. It is stated that the previous

conduct of the applicant/ accused is unblemished as he had rendered full assistance in the ongoing investigation and the gravity of the allegations was a subject matter of trial. Moreover, the applicant/ accused was a senior citizen aged 61 years and suffering from various ailments. It is submitted that as the investigation in the Scheduled Offence was pending, the trial of both the cases is likely to take long. It is submitted that the applicant belongs to a respectable family and had deep roots in the society and had been falsely implicated in the present case. It is thus prayed that the applicant/ accused be granted bail for the offence under Sections 3/ 4 of the PMLA.

17. Reply was filed on behalf of ED to the bail application making the preliminary submissions that the averments, contentions and submissions made in the application under reply were false and baseless. It is stated that the prosecution complaint against the applicant and others for commission of offences under Sections 3/4 of the Prevention of Money Laundering Act, 2002 had already been filed and was pending at the stage of taking cognizance of the offence. It is stated that from the investigation carried out thus far, total proceeds of crime in the instant matter were Rs.1900 crores approximately.

18. The facts of the case were adverted to that FIR No.84 dated 16.03.2017

was registered by Bowbazar Police Station, Kolkata-12 wherein it had been alleged that the applicant/ accused along with other persons entered into criminal conspiracy and in pursuance to that conspiracy cheated the investors /victims and fraudulently collected money in the guise of agents and thus committed criminal breach of trust with the false assurance of high return on maturity and also presented them documents/ certificates. Further FIR No.82, 83 and 84 all dated 01.04.2017 were registered by Chitpore Police Station, Kolkata-2 wherein it had been alleged that the applicant/ accused entered into criminal conspiracy and induced the complainants to invest in the MIS Scheme but after the maturity of the scheme they did not return the amount and thereby committed cheating. It was revealed that Rs.444.67 crores approximately were raised from investors from different States in India by issuing redeemable preference shares by Alchemist Holdings Limited from 2005 onwards by luring them with high rate of interest on their investments after maturity. The funds so raised from the investors were not used for the intended purposes and were diverted/ siphoned off into the Group companies of Alchemist Group. Therefore, investors/public were cheated of their amount. It is submitted that offence under Section 3 of the Prevention of Money Laundering Act, 2002 is a continuing offence.

19. It is further averred that it was found that Rs.1403 crores approximately

were raised from investors from different States in India in the garb of giving plots/flats/villas/high rate of interest by issuance of certificates by Alchemist Township India Limited from the year 2012 onwards. The funds so raised from the investors were not used for the intended purposes and were diverted/siphoned off into the Group companies of Alchemist Group. It is averred that the funds diverted/siphoned off by Alchemist Holdings Limited and Alchemist Township India Limited to other group companies of Alchemist group were still outstanding to be paid back to the said two companies and had been used for the benefit of promoters/ Chairman/ Chairman Emeritus i.e. Kanwar Deep Singh and his family members.

20. It is submitted that the applicant/ accused had cheated lacs of investors of their hard-earned money by luring them into Ponzi schemes and had later caused wrongful loss to them and a corresponding wrongful gain to himself by laundering the proceeds of crime in multiple companies, of which he was the beneficial owner. It is submitted that the evidence *inter-alia* in the form of statements recorded under Section 50 of the PMLA of the employees, auditors and Directors of the Group companies of Alchemist Group along with the statements of the victims as well as documentary evidence including e-mail dumps, WhatsApp chats retrieved and emails and WhatsApp chats submitted by

various Directors/ employees of accused companies clearly revealed that the applicant/ accused was the Chairman Emeritus and beneficial owner of the Alchemist Group and the day to day affairs of the said companies were conducted on the instructions of the applicant/ accused. It is averred that the instant case was one which had resulted in huge losses to the public at large only on account of the greed of the applicant/ accused and to satisfy his greed the applicant/ accused had duped lakhs of people all over the country. It is averred that the applicant/ accused being an ex-MP should have acted as a custodian of the hard earned money of the people he had duped, however, it was a matter of grave concern that the applicant/ accused while he was a sitting MP instead of acting as the custodian of public funds, cheated them of their hard earned money and laundered the same into his group companies.

21. It is averred that the applicant/ accused was arrested under Section 19 of PMLA on 12.01.2021 for committing offence defined under Section 3 of PMLA. It is submitted that the applicant/ accused was remanded to judicial custody but he was sent by the Jail Authorities to an outside hospital without intimation to the Court and subsequently also he was not produced before the Court. It is averred that the facts clearly suggested that the applicant/ accused had taken the judicial proceedings lightly and made a mockery of the judicial process and also

reflected his influence as despite being sent to Judicial Custody he had not spent even a single day in Jail. Such being the influence of the applicant/ accused, his tampering with the evidence, which was still to be recovered and his influencing the witnesses, which he had done, as stated by a number of witnesses could not be ruled out.

22. It is averred that the applicant/ accused had committed an offence which had economically affected the public at large and gravity of offence needs to be analyzed. It is submitted that it was the settled law that economic offences constituted a class apart and needed to be visited with a different approach and the Hon'ble Supreme Court had emphasized that gravity of the offence and the role played by an applicant in an economic offence ought to be viewed with severity in matter concerning bail and the Court while granting bail had to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction would entail, the character of the applicant, circumstances which were particular to the applicant, reasonable possibility of securing the presence of the applicant, reasonable apprehension of the witnesses being influenced and larger interests of the public/ State and other similar considerations. It is also submitted that it had been held in a catena of judgments that economic offences are considered to be the gravest offence

against the society at large and are to be treated differently in the matter of bail. Reliance is placed on the judgments of Hon'ble Supreme Court in **State of Gujarat** v. **Mohanlal Jitamalji Porwal**, (1987) 2 SCC 364; **Y.S. Jagan Mohan Reddy** v. **CBI**, (2013) 7 SCC 439; **Anil Kumar Yadav** v. **State (NCT of Delhi)** (2018) 12 SCC 129 and **Sunil Dahiya** v. **State (Govt. of NCT of Delhi)** 2016 SCC OnLine Del 5566.

23. The averments made in the application were denied. It is stated that the applicant/ accused was arrested as per the mandate of law which fact was affirmed after the applicant/ accused was remanded to ED custody and later to judicial custody. It is averred that the applicant/ accused is the sole controller of the companies which are the subject matter of the present complaint as well as those which are under investigation, which fact was affirmed by a number of witnesses and from the documentary evidence collected during the course of investigation. It is submitted that the applicant had not joined investigation on 20 occasions and prior to his arrest, he joined investigation only after searches were conducted by the ED. Further, he had never cooperated with the investigation by not submitting the requisite information/documents on one pretext or another and had also influenced witnesses not to join investigation and mere joining the investigation could not be termed as co-operation in the investigation. It is

submitted that the applicant/ accused was mandated under law to join investigation and that could not be the ground to say that he had not committed an offence and not joining the investigation would have been a further offence under Section 174 IPC.

24. It is averred that the stand of the applicant/ accused that he had nothing to do with the companies under investigation and those which were accused in the prosecution complaint was hollow. It is submitted that the applicant/ accused at the stage of remand also vehemently argued in respect of furnishing the grounds of arrest which submission was considered by the Court and thereafter the applicant/ accused was remanded to ED custody and then to judicial custody. It is averred that the case pending before the Hon'ble High Court was in relation to a separate company. It is submitted that the applicant/ accused was totally non-cooperative during the investigation and concealed documents to frustrate the investigation and had also influenced the witnesses to not join investigation in the instant case which fact was revealed by some witnesses. It is stated that the applicant/ accused was arrested in terms of Section 19 PMLA after recording reasons as mandated in the PMLA and no act on the part of the respondent agency was to circumvent the order of any court.

25. It is averred that the applicant/ accused as of today may not be a Director or any office bearer in the Alchemist Group of Companies but he was the Director in various companies of Alchemist Group at the time when proceeds of crime generated by Alchemist Holdings Limited were diverted to the group companies. Further, the documents and electronic evidence recovered during searches and the statements and submissions of witnesses clearly revealed that the applicant/ accused was the sole controller of the Alchemist Group and all decisions whether major or minor, with respect to policy, finances, salaries were taken after approval of the applicant/ accused. It is stated that the allegation that the statements of the witnesses were recorded under duress and coercion was an after-thought and a last-ditch effort and a blatant lie to derail the investigation and the applicant/ accused was confronted with such witnesses and their statements to which he had no reply.

26. It is submitted that the applicant/ accused though was sent to judicial custody on 27.01.2021 but he was shifted to DDU Hospital on the same day and from there he was shifted to GB Pant Hospital without intimating the Court. While GB Pant Hospital discharged the accused on 18.02.2021 stating that further admission of the accused was not required, the applicant/ accused was then shifted by the jail authorities to LNJP Hospital, again without informing the

Court and he had not been in jail for even a single day. It is averred that the applicant/ accused is not suffering from any ailment and he had not placed on record any medical document to corroborate the same. It is submitted that the trial for offences under PMLA is independent of the trial in the Scheduled Offence. Further, trial for Scheduled Offence and PMLA offence cannot be a joint trial in terms of Section 44 of the PMLA. It is averred that the present is a clear case of money laundering committed by the applicant/ accused which was supported by sufficient evidence.

27. I have heard arguments of Shri Vikram Chaudhri, Ld. Senior Advocate along with Shri Raktim Gogoi, Shri Harshit Sethi, Shri Akshay Anand, Shri Kartikeya Singh, Shri Samarth Shandilya and Shri Sarvaswa Chhajer, Ld. Counsels for the accused, Shri Amit Mahajan CGSC and Shri N.K. Matta and Shri Mohd. Faraz, Ld. SPPs for ED along with IO Manish Choudhry, AD (PMLA) also through CISCO Webex on request. Shri Ajai Tondon had appeared on behalf of the investors. I have also perused the documents filed on behalf of ED.

28. The Ld. Senior Counsel for the applicant/ accused had reiterated the averments made in the application. It was submitted that the investigation and

the arrest were contumnacious in nature and an over reach of the proceedings before the Hon'ble High Court. Reference was made to the fact that one ECIR was registered in 2016 and when the matter went before the Hon'ble High Court, ED had filed an affidavit therein that no separate ECIR was required to be registered in respect of FIRs pending in Kolkata and that the proceedings under PMLA could be carried out in the said ECIR itself. It was submitted that the Hon'ble High Court in the LPA had directed that the proceedings in PMLA shall remain stayed so the ED could not have proceeded against the applicant/ accused as per law and all PMLA proceedings stood stayed. It was submitted that the matter was still pending before the Hon'ble High Court. On 11.07.2018, the second ECIR was registered about which the applicant/ accused came to know only when search was carried out at his premises. On 19.09.2019, electronic devices of the applicant/ accused were taken and the contention of the ED was that the said proceedings were in a different ECIR and the stay was granted in a different ECIR. The applicant/ accused filed a Writ Petition as his right to privacy stood violated and the Hon'ble High Court had held that investigation in respect of electronic devices would be subject to the outcome of the Writ Petition and reply in the said matter had been filed by ED in Hon'ble High Court only on 16.03.2021.

29. It was argued that on 12.01.2021, the ED had sought adjournment before the Hon'ble High Court but when the applicant/ accused appeared before ED for recording of his statement, he was arrested. It was submitted that the applicant/ accused had appeared before ED on a number of occasions but it was only on 12.02.2021 that he was arrested based on the FIRs registered in Kolkata etc. It was submitted that it was not the case of any non-performing assets or of any public servant but regarding deposits with companies. It was pointed out that at one point of time, the applicant/ accused was Chairman of some of the companies but Chairman Emeritus was not statutorily recognized and the applicant/ accused had severed his links with the companies much earlier. Further the case regarding the FIRs in Kolkata was pending before the Hon'ble High Court of Kolkata since December, 2017 and One-Man Committee had been appointed to look into the claims and the investors could approach the said Committee. As regards the FIR in Kanpur, the matter was pending before the Hon'ble High Court of Allahabad which had directed that no coercive action be taken. In October 2020, even a resolution professional had been appointed by the order of NCLT and moratorium had been declared by the NCLT and a concrete proposal was there for settlement. The. Ld. Senior Counsel had further submitted that the applicant/ accused was aged about 62 years and had deep roots in the society. He had remained a parliamentarian for about 10 years and had some face before the public.

30. It was contended that there was no parallel to PMLA in the country and it had no independent existence with the scheduled predicate offence being the mother. The proceeds of crime had been defined as those derived from criminal activity. It was submitted that the main purpose of PMLA was to attach and confiscate proceeds of crime. Though the power of arrest existed under PMLA but it was of a different nature. The accused could not be arrested on the basis of mere suspicion or for further investigation and under Section 19 of PMLA, the accused could be arrested only if the ED had sufficient material in possession which was already in existence on the basis of which reasons were to be recorded in writing and there had to be reason to believe that the accused was guilty of the offence and as such there had to be evidence of unimpeachable quality and only then the accused could be arrested. It was submitted that till 12.01.2021 the ED did not have justifiable material to arrest. Moreover the grounds of arrest were required to be supplied to the accused and Section 41 Cr.P.C. was squarely applicable. It was pointed out that the applicant/ accused was not a flight risk and in fact the ED had not arrested him for more than two years. Reference was made to various provisions including Section 65 PMLA and to Chapter XII of Cr.P.C. to argue that the ECIR ought to be registered as an FIR and be uploaded within 24 hours and a copy should be sent to the court

within 24 hours which was a public document. As per Section 172 Cr.P.C. it was mandatory to maintain Case Diary by ED and there was an obligation on the investigating agency to produce the case diary before the Court and the Court to initial it. Reliance was placed on the judgment in **Rajbhushan Omprakash Dixit** ***(supra)*** case and it was submitted that it was the last final judgment on the subject matter. It was submitted that the said judgment had not been overruled so the judgment still had binding effect.

31. The Ld. Senior Counsel had argued that the applicant/ accused could not be arrested on the basis of arbitrary conclusion of the Director but it had to be based on prudence. Moreover, under Section 19 (2) PMLA, there was an obligation on ED to forward a copy of order of arrest and material in its possession to the Adjudicating Authority which was not done in the instant case and the same had also to be informed to the Court. Reference was made to the Rules of 2005. It was also submitted that there was an obligation on the Court to consider why the accused was required for investigation and the Court could not mechanically remand the accused and reference was made to the judgment of the Hon'ble Supreme Court in **Arnesh's** case to submit that as the offence under Section 3 and 4 of PMLA was punishable only upto seven years, the applicant/ accused was entitled to bail in view of the guidelines laid down by the Hon'ble

Supreme Court in **Arnesh's case**. It was submitted that the liberty of the accused could not be taken away except by procedure established by law. It was contended that under Section 439 Cr.P.C. there were no restrictions on the power of the court to grant bail.

32. The Ld. Senior Counsel for the applicant/accused had further submitted that the matter was already pending in three fora and the offence under PMLA was only punishable upto 7 years. It was submitted that in their reply, the ED had referred to certain judgments and contended that the present was a serious case of economic offence but the cases referred were those cases where offences such as under Section 409 IPC, 467 IPC were attracted which were punishable with life, which was not so in the present case and here the punishment was confined to 7 years. It was submitted that it was the admitted case of ED that the applicant/ accused had joined investigation. As per ED the applicant/ accused had joined investigation only after search was carried out and that the applicant/ accused had not co-operated during investigation but Section 63 PMLA provided that in the eventuality that a person did not co-operate, a penalty could be imposed on the said person after giving an opportunity of hearing to the said person. However, till date no such penalty had been imposed on the applicant / accused. It was submitted that at no point of time in any of the three companies

the applicant/ accused was either the Director or shareholder or any officer bearer. There was no denial of the fact by the ED that the applicant/ accused had nothing to do with the companies but in some Group Companies, he was stated to be a Director.

33. It was further submitted that the first ECIR was registered on 18.03.2016 and the second ECIR on 11.03.2018 and search was conducted on 19.09.2019. The applicant/ accused was called for investigation after that and on 12.01.2021, he was arrested and till then there was no statement against him. All the material against him had come after that so the question was whether the applicant/ accused had influenced the witnesses earlier or the applicant/ accused was threatened later. It was submitted that various courts were already seized of the matter so there was no question of arrest. The applicant/ accused was not a flight risk and he had been taking recourse to constitutional remedies available to him. It was also argued that the ECIR should have been registered like an FIR and uploaded on the internet.

34. The Ld. Senior Counsel for the applicant/ accused submitted that the twin conditions of Section 45(1) of PMLA were not applicable in view of the judgment passed by the Hon'ble Supreme Court in **Nikesh Tarachand Shah's**

case (2018) 11 SCC 1 wherein the Hon'ble Supreme Court had held that the twin conditions of Section 45(1) PMLA were violative of the constitutional provisions and ultra vires and the two conditions were struck down so the effect was that the provision never existed on the statute book. By the amendment the words 'under this Act' were substituted and it had been held in a catena of judgments that there was no resurrection of the twin conditions. The Ld. Senior Counsel for the applicant/ accused had relied upon the judgments in **Nikesh Tarachand Shah** v. **Union of India & Anr.** (2018) 11 SCC 1; **Sameer M. Bhujbal** v. **Assistant Director, ED & Anr.** order dated 06.06.2018 in Bail Application No.286 of 2018 (Hon'ble Bombay High Court); order dated 18.02.2019 passed by the Hon'ble Supreme Court in **Assistant Director, ED** v. **Sameer M. Bhujbal**; **Chandan Kumar @ Tinku Kumar** v. **UOI** Criminal Appeal No.970/2018 dated 07.08.2018; **Dr. Vinod Bhandari** v. **Asst. Director** 2018 SCC OnLine MP 1559 (Order dated 29.08.2018 by of Hon'ble High Court of Madhya Pradesh); **Ram Kumar Shakya** v. **Central Bureau of Investigation** SLP (Crl.) No.5177/2019 dated 12.07.2019 along with Case Status of **Assistant Director, Directorate of Enforcement** v. **Dr. Vinod Bhandari**, Diary No.20644/2019; **Kiran Prakash Kulkarni** v. **The Enforcement Directorate & Anr.** SLP (Crl.) 1698/19 dated 11.04.2019, (Hon'ble Supreme Court); **Most. Ahilya Devi @ Ahilya Devi** v. **State of Bihar & Ors.** Criminal Miscellaneous No.41413 of 2019 (order dated 28.05.2020 by Hon'ble Patna High Court); **D.K.**

Shivakumar v. **Directorate of Enforcement** 2019 SCC OnLine Del 10691 (order dated 17.10.2019); **Directorate of Enforcement** v. **D.K. Shivakumar** SLP (Crl) No.10164/2019 (order dated 15.11.2019); **P. Chidambram** v. **Directorate of Enforcement**, (2020) 13 SCC 791 (Hon'ble Supreme Court); **Anil Tuteja** v. **Director, Directorate of Enforcement** M.Cr.C.(A) 469 of 2020 decided on 14.08.2020, (Hon'ble Chhattisgarh High Court); **Mohit Sharma** v. **Directorate of Enforcement** CRLMB-14691-2020 (order dated 05.02.2021 of Hon'ble Rajasthan High Court) and **Shree Chamundi Mopeds Ltd.** v. **Church of South India Trust Association** (1992) 3 SCC 2 (Hon'ble Supreme Court); **Babu Lal Aggarwal** v. **Enforcement Directorate** 2021 SCC OnLine Chh 269 and **Okram Ibobi Singh** v. **Directorate of Enforcement** 2020 SCC OnLine Mani 365.

35. Reference was also made to the orders of Hon'ble High Court of Delhi in **Shivender Mohan Singh** 2020 SCC Online Delhi 766 where it was held that the twin conditions were not applicable and the said order had been stayed by the Hon'ble Supreme Court in the SLP filed by **Union of India;** order in **Upender Rai** SCC 2019 Online Delhi 9086 wherein also the Hon'ble High Court of Delhi had held that the twin conditions did not apply and the order was stayed by the Hon'ble Supreme Court. It was submitted that both the cases turned on their own

facts. It was submitted that the latest judgment on the point was of the Hon'ble High Court of Delhi in **Sai Chandrasekhar** v. **Directorate of Enforcement** 2021 SCC OnLine Del 1081 wherein it was observed that twin conditions mentioned in Section 45 of PMLA continued to be struck down as being unconstitutional and the amendment did not revive the twin conditions. It was argued that Section 45 PMLA carved out certain exceptions when bail could be considered such as when the accused was below age of 16 years or a woman or an infirm person and it was submitted that the applicant/ accused was unwell. It was submitted that the litmus test of Section 439 Cr.P.C. had to be applied while considering the application for bail and the applicant/ accused satisfied the triple test for bail and deserved to be granted bail in the present matter. There was no apprehension of the applicant/ accused influencing the witnesses as the complaint had already been filed and there was even no apprehension of tampering of evidence/ documents as the documents had already been collected.

36. The Ld. CGSC for ED had submitted that the ECIR had originated from certain FIRs and a case of money laundering starts when information is received of a case under scheduled offence. There were multiple FIRs in 2017-18 and lacs of people had complained about huge amount of money being collected by three companies namely Alchemist Holding, Alchemist Township and Alchemist

Realty. Thousands of crores were collected out of which Alchemist Holding collected money from investors from 2005 onwards and Alchemist Township collected money from 2012 onwards. The said money was directed to the Group Companies. In 2015 investigation was taken up. It was submitted that Alchemist Infra Realty was not an accused in the present ECIR. The first ECIR was based on the action of SEBI against Alchemist Infra Realty and further action by ED was stayed by the Division Bench of the Hon'ble High Court of Delhi only in relation the properties of Alchemist Infra Realty, which was not an accused in the present case. It was submitted that the interim order had to be interpreted in terms of the prayer made. Moreover, the statement in the affidavits of ED in respect of FIR No.84/2017 that they would not register a separate ECIR was in relation to Alchemist Infra Realty and not in relation to other companies. Moreover, the applicant/ accused himself had filed a separate writ petition in relation to the present ECIR and not a separate application in the pending matter before the Hon'ble High Court which showed that the applicant/ accused had also accepted that these were separate proceedings.

37. It was argued that separate amount was raised by Alchemist Infra Realty which had nothing to do with the present case against Alchemist Holdings and Alchemist Township. Moreover the proceedings before NCLT did not bar any

action by ED under law unless the same were specifically barred. It was also submitted that the grounds taken by the applicant/ accused that the grounds of arrest were not supplied at the time of arrest had been gone into length at the time of remand in the order dated 16.01.2021 and the said arguments were rejected. Reference was made to the judgment in **Moin Qureshi's** case that oral information of the grounds was sufficient and written information was not necessary to be provided. It was submitted that the judgment in **Rajbhushan's** case did not consider **Moin Qureshi** and reference to a larger bench did not take away the earlier judgment. It was argued that it was the applicant/ accused who was calling the shots in relation to the companies. A number of investors had given their statements which were part of the relied on documents that they would not have invested if the applicant/ accused was not there and the applicant/ accused was the sole controller of the companies. The investors were told that it was the applicant/ accused who was holding the companies. The argument that the applicant/ accused had tried to distance himself from the companies was of no consequence as the money was collected in his name. Statements of Auditors of the companies were also there that the company was controlled by the applicant/ accused and even the Directors had stated that he controlled the companies and as such to say that the applicant/ accused had resigned was of no consequence.

38. The Ld. Counsel had further argued that if the shareholding pattern of the companies was seen, it would be clear that it was not a simple case of cheating but layering had been done. The people who had been cheated could not run after different companies. Under Section 8 of the Act, the properties could be released to the beneficiaries of the properties and the purpose of investigation and proceedings under PMLA was to save the property from being frittered away further and the endeavour was to reach the money for the benefit of the public who had been cheated. In the present case there were lacs of investors so it was the duty to stop large scale cheating so that whatever was available could be distributed to the public. It was submitted that the present was a case of an economic offence of serious magnitude and reliance was placed on various authorities. It was submitted that the amount collected in the present case was in thousands of crores. It was reiterated that the hyper technical argument that the applicant/ accused had resigned in 2018 would be of no help and it was for the Court to see if there was a prima facie case as 1000s of crores had not been refunded. It was submitted that the case could not be based on the whims and fancies of the officers of ED but was based on documents, statements of employees, Auditors, Directors, Investors who had all stated how cheating had taken place. It was also stated that when contacted for return of money the

money was not returned to them and there were also whatsapp messages.

39. It was also submitted that if the applicant/ accused was not kept in custody, there were chances that a large amount of money would be frittered away and the applicant/ accused had already told his employees not to join investigation and he would influence them. It was contended that the investigation would go on till the entire money which was laundered was attached or could not be found to derive the end use and last mile connectivity of the money trail. It was submitted that grant of bail to the applicant/ accused would hamper the investigation and it was the applicant/ accused who was calling the shots since the beginning. He was the Incharge when money was collected and scheduled offence was committed. The crime had been committed earlier and investigation was started when the matter came to the notice of the investigating agency. Money had been collected from 2005 and 2012 onwards. The documents revealed that the applicant/ accused had extended threat and coercion to the employees not to give statement to the ED and there was likelihood that the applicant/ accused may influence the witnesses, tamper the evidence and hamper the investigation. It was submitted that the applicant/ accused had been evasive and non-cooperative during investigation. The file would also show the kind of complaints that were being received. It was also

submitted that in many cases if large number of people were cheated, the Court asked for deposit of amounts. It was submitted that the applicant/ accused was an influential person and his release would adversely impact further investigation in the case.

40. The Ld. Counsel had also submitted that the legislature by way of Section 45 PMLA had placed stringent twin conditions on the grant of bail in offences concerning money laundering. The said twin conditions only highlighted the gravity of the offence keeping in mind the object of PMLA. The Explanation to Section 45 made it clear that the amendment had retrospective effect and that all offences were cognizable and non-bailable and in view of the amendment to Section 45 PMLA w.e.f. 19.04.2018, the twin conditions of bail had again come into existence. It was submitted that the two conditions were required to be met and reliance was placed on various judgments and that the latest judgment was of Hon'ble High Court of Patna in **Vidyut Kumar Sarkar** v. **The State of Bihar and Ors.** MANU/BH/0297/2020. It was submitted that orders passed by Hon'ble High Court of Delhi in two matters had been stayed by the Hon'ble Supreme Court so the two conditions were required to be met for grant of bail. Moreover the conditions were mandatory and reliance was placed on the judgment of the Hon'ble Supreme Court in **Serious Fraud Investigation Office**

v. **Nittin Johari and Another** (2019) 9 SCC 165.

41. Reference was also made to the order of Hon'ble Supreme Court in **Unitech case** (**Bhupinder Singh** v. **Unitech Ltd.** Civil Appeal No.10856/2016 order dated 18.03.2021) and it was submitted that economic offences are to be considered as serious in nature. It was submitted that there was sufficient incriminating material on record against the applicant/ accused and the case involved commission of serious economic offences having public ramifications which needed to be considered seriously while granting bail. Reliance was placed on **Gautam Kundu** v. **Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India** (2015) 16 SCC 1 in this regard. It was submitted that the two rigors of Section 45 had to be looked into in addition to the provisions of bail under Section 439 Cr.PC. Reliance was also placed on the judgment in **Rohit Tandon** v. **Directorate of Enforcement** (2018) 11 SCC 46 to argue that the statements under Section 50 PMLA could be looked into.

42. A perusal of the record shows that the applicant/ accused was arrested on 12.01.2021, thereafter he was produced before the Court on 13.01.2021 and he was remanded to custody of ED till 16.01.2021. Thereafter the applicant/

accused was further remanded to the custody of ED till 25.01.2021. On 25.01.2021, he was further remanded to the custody of ED for 2 days and on 27.01.2021, he was remanded to judicial custody. The present ECIR is based on Scheduled Offences under Sections 406, 420, 120-B IPC in FIR No.82/2017, 83/2017 and 84/2017 dated 01.04.2017 and FIR No.84/2017 dated 16.03.2017 in Kolkata. As per the case of ED, the applicant/ accused along with others had entered into criminal conspiracy and in pursuance to that conspiracy he cheated investors/ victims and fraudulently collected money and induced the complainants to invest in MIS scheme but after maturity of the scheme they did not return the amount. Investigation into the said scheduled offences was initiated vide ECIR No. ECIR/09/DALZO-I/2018 dated 11.07.2018. As per the allegations, Rs. 444.67 crores were raised from investors by Alchemist Holdings Ltd. from 2005 onwards but the funds were not used for intended purposes and were diverted/ siphoned off into Group Companies of Alchemist Group and the investors did not get there matured amounts back. Further, Rs.1403.51 crores were raised from investors in the garb of giving plots etc. by Alchemist Township India Ltd. from 2012 onwards and the funds so raised from the investors were not used for the intended purposes and were diverted/ siphoned off into the group companies of the Alchemist Group and the investors did not get the matured amounts back. As such the said funds which were proceeds of crime were still outstanding to be paid and were utilized by the applicant/

accused and his family members.

43. In the instant case it is not in dispute that based on the proceedings initiated by Securities & Exchange Board of India as a Scheduled Offence, the ED registered ECIR/05/DLZO/2016 and the said proceedings were challenged by AIRL before the Hon'ble High Court of Delhi vide W.P. (C) No.4974 of 2018 (**Alchemist Infra Realty Ltd. & Anr.** v. **Directorate of Enforcement & Ors.**) wherein an interim order dated 16.05.2018 was passed to the effect that in case further coercive measures were intended to be taken by the ED, it would in the first instance approach the Hon'ble High Court. Subsequently, vide order dated 22.01.2019 the said Writ Petition (C) No.4974 of 2018 was disposed of. It was the contention of the Ld. Senior Advocate for the applicant/ accused that the entire proceedings under the present ECIR were vitiated as the ED itself had given affidavits on 07.09.2018 and 11.10.2018 stating that it was not necessary to register a separate ECIR in respect of the alleged scheduled offence as per the FIRs registered against AHL, AIRL, ATIL etc. and that the investigations into the alleged offence of money laundering arising therefrom could be carried out in the same ECIR. It was submitted that on 24.01.2019, the ED issued Provisional Attachment Order (PAO) in ECIR/05/DLZO/2016 wherein it was disclosed for the first time, contrary to the stand taken in the affidavits that a separate ECIR bearing No.ECIR/09/DLZO-I/2018 had been registered in New

Delhi on the basis of FIR No.84/2017 dated 16.03.2017 registered under Sections 406, 408, 420 and 120-B IPC at P.S. Bowbazar, District Kolkata as a scheduled offence. It was also submitted that against the order dated 22.01.2019, AIRL preferred L.P.A. No.104/2019 and vide order dated 13.02.2019, a Division Bench of the Hon'ble High Court of Delhi stayed the order dated 22.01.2019 and also stayed all further proceedings under PMLA during the pendency of the appeal and directed to maintain status quo in respect of the properties forming subject matter of the provisional attachment order. As such it was submitted that the proceedings under the present ECIR could not have been initiated or carried out.

44. The Ld. CGSC on behalf of ED on the other hand had submitted that the ECIR of 2016 pertained only to Alchemist Infra Realty Ltd. whereas the present ECIR related to Alchemist Holdings and Alchemist Township India Ltd. and the stay was only in respect of Alchemist Infra Realty Ltd. which was not joined as an accused in the present case. It may be mentioned that the present ECIR was registered on 11.07.2018 and at that time there was no stay on further proceedings under PMLA and the interim order dated 16.05.2018 of the Hon'ble High Court in respect of the ECIR of 2016 was only to the extent that "in case any further coercive measures are intended to be taken by respondent No.1, it will, in the first instance, approach the Court." Further the said case pertained to

M/s Alchemist Infra Reality Limited whereas it is the contention of ED that the present ECIR is not against AIRL. The Ld. Senior Counsel for the applicant/ accused had referred to the arrest order dated 12.01.2021 to contend that the present ECIR also related to AIRL though there was a specific stay granted by the Hon'ble High Court. It is true that the arrest order dated 12.01.2021 mentions M/s Alchemist Infra Reality Limited but it was submitted by the Ld. Counsel for ED that the same was only on account of the fact that it referred to those against whom the FIRs were registered and there was no investigation qua AIRL in the present proceedings and in fact nothing has been brought on record to show that any proceedings were being carried out in respect of AIRL in the present ECIR. It is significant that the applicant/ accused himself has not challenged the registration of the present ECIR and had in fact joined the investigation and by his own admission had appeared before the officials of ED several times. There is no interim order in respect of the present ECIR except for that the seizure of electronic devices and investigation in their respect would be subject to the outcome of the Writ Petition. In fact the said contention was duly considered by my Ld. Predecessor in the order dated 16.01.2021 remanding the applicant/ accused to the custody of ED wherein it was observed as under:

> *"It is admitted case of the parties that there are more than one ECIRs precisely three in number, the present case being one of them. It is also admitted that no interim protection in form of 'no coercive order' has been provided in the present*

case by any of the benches of the Hon'ble Delhi High Court. It is also clear that the accused has not challenged registration of the present ECIR, which is of 2018 before the Hon'ble High Court; on the contrary he has been joining the investigation. Therefore, there is nothing wrong with the registration of the present ECIR in which there is admittedly no interim order. The only order of the Hon'ble High Court is about the consequence of the investigating being the subject to outcome of the said Writ Petition. In the said order the Hon'ble High Court in fact gave liberty to the investigating agency to carry on its investigation."

45. It was then the contention of the Ld. Senior Advocate for the applicant/ accused that under Section 19 of PMLA, it was mandatory that grounds of arrest ought to have been supplied to the applicant/ accused at the time of his arrest which was not done so in the present case. It was submitted that the arrest itself was illegal and therefore the applicant/ accused ought to be granted bail. Reliance was also placed on the judgment of the Hon'ble High of Delhi in **Rajbhushan Omprakash Dixit (supra).** The Ld. SPP for the ED on the other hand submitted that in **Rajbhushan Omprakash Dixit (supra)** the Hon'ble High Court of Delhi had referred the issue to larger Bench as the bench was not in agreement with the pronouncements in the earlier judgments by the Benches of the same strength and as such the earlier judgments as per law of precedent had to be read as law pending the reference. The Ld. Counsel had relied upon the judgement in **Moin Khan Qureshi** v. **Union of India** WP (Crl.) 2456/2017 decided on 01.12.2017 and **Vakamulla Chandrashekhar** v. **ED** Criminal M.A

No.7706/2017 dated 08.05.2017. It may be mentioned that the said issue had been considered by my Ld. Predecessor at length at the time of remanding the applicant/ accused to custody of ED and had observed in the order dated 16.01.2021 as under:

> *"There is no denying that the issue as to whether the grounds of arrest are to be supplied to the accused physically or the same are merely to be informed to the accused is pending consideration before the Hon'ble Supreme Court, as also are other issues related to various sections of PMLA viz. registration of ECIR and not FIR and maintaining of case diary in a particular way. Even if it is considered at this stage that grounds of arrest ought to have been supplied to the accused and were not supplied, the arrest and the consequential need of remand for the purpose of interrogation do not per se become illegal. This is an irregularity which should not have happened that too if we hold at this stage that there was a mandatory requirement to do so. Though the judgment in* ***Moin Akhtar Qureshi and Vakamula Chandrashekhar*** *say otherwise and are older in time to the judgement in* ***Rajbushan (supra)****."*

Thus there is no reason to go into this issue again at this stage.

46. The Ld. Senior Advocate for the applicant/ accused had also raised the question of applicability of Chapter 12 of Cr.PC relating to investigation and submitted that registration of ECIR was against the provisions of Cr.P.C. which mandated registration of FIR under Section 154 of Cr.PC and that it had to be subsequently uploaded. Further the case diary was required to be maintained by

the Officers of ED, which were to be produced before the Court and signed by the Magistrate at the time of considering grant of remand and as there was no such case diary maintained by the Officers of ED so the investigation itself became faulty. However, the said issue was also adverted to in the order of remand dated 16.01.2021 and this Court need not go into the issue whether the ECIR is akin to FIR or not or that ED should maintain case diary, as these issues are pending before the higher courts and would have no bearing for deciding the bail application for which the considerations are entirely different.

47. The Ld. Senior Counsel for the applicant/ accused had further submitted that there was apparent grave violation of the postulates contemplated in Section 19 of PMLA and at the time of remand, nothing had been brought to the notice of the Court that the postulates contained in Section 19(2) PMLA had been complied with by the arresting officer and there was an obligation on ED to forward a copy of order of arrest and material in its possession to the Adjudicating Authority which was not done in the instant case and the same had also to be informed to the Court. The reply of ED on this aspect was silent as to the compliance of Section 19(2) PMLA but the said issue also need not be gone into while considering the present bail application. Similarly the contention regarding Section 19(1) of PMLA that the applicant/ accused could not have

been arrested on the basis of mere suspicion or for further investigation and he could be arrested only if the ED had sufficient material in its possession which was already in existence on the basis of which reasons were to be recorded in writing and there had to be reason to believe that the applicant/ accused was guilty of the offence and there had to be evidence of unimpeachable quality to arrest the accused were also duly referred to at the time of remanding the applicant/ accused to the custody of ED and need not be gone into at this stage.

48. The Ld. CGSC for ED had submitted that the twin conditions stipulated in Section 45 PMLA had to be satisfied for grant of bail to the applicant/ accused. On the other hand, the Ld. Senior Counsel for the applicant/ accused had submitted that the twin conditions were struck down by the Hon'ble Supreme Court in **Nikesh Tarachand Shah** v. **Union of India & Anr. (supra)** and thereafter the consistent view of the courts had been that the same had not been resurrected. In the said case, the Hon'ble Supreme Court had observed that the twin conditions under Section 45(1) of PMLA are unconstitutional as they violate Article 14 and Article 21 of the Constitution of India. The Hon'ble Supreme Court had observed as under:

"54. Regard being had to the above, we declare Section

45(1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision. The writ petitions and the appeals are disposed of accordingly."

As such the Hon'ble Supreme Court had declared the twin conditions laid down in Section 45 PMLA to be *ultra vires* and violative of Articles 14 and 21 of the Constitution. It was then contended on behalf of ED that the Explanation to Section 45 made it clear that the amendment had retrospective effect and that all offences were cognizable and non-bailable and in view of the amendment to Section 45 PMLA w.e.f. 19.04.2018, the twin conditions of bail had again come into existence. However, in the judgment in **Sameer M. Bhujbal** v. **Enforcement Directorate & Anrs. (supra)** the Hon'ble Bombay High Court while discussing the effect of amendment in Prevention of Money Laundering Act, 2002 observed as under:

"7. At the outset, it is to be noted here that the Supreme

Court in the case of Nikesh Shah (supra) has in unequivocal terms held in para 44 that 'we have struck down Section 45 of the Act as a whole'. It is further held by the Supreme Court in Para 45 that, we declare Section 45(1) of the Prevention of Money Laundering Act, 2002 in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Articles 14 and Article 21 of the Constitution of India.

8. The Supreme Court in the case of ***Brshiu Municipal Council, Barshi, District Solapur*** *v.* ***The Lokmanya Mills Limited, Barshi and another*** *reported in 1972 (2) SCC 857 has held that, when the Rule was struck down by this Court, the effect was Rule could never be deemed to have been passed. The Validating Act has also not revived or resurrected the Rule (2(c) therein) and therefore, the position was that there was no charging provision for imposition of house tax on the Mills, Factories or Buildings connected therein.*

9. It is to be noted here that, after effecting amendment to Section 45(1) of the PMLA Act the words "under this Act" are added to Sub Section (1) of Section 45 of the PMLA Act. However, the original Section 45(1) (ii) has not been revived or resurrected by the said Amending Act. The Ld. Counsel appearing for the accused and the learned Additional Solicitor General of India are not disputing about the said fact situation and in fact have conceded to the same. It is further to be noted here that, even Notification dated 29.03.2018 thereby amending Section 45(1) of the PMLA Act which came into effect from 19.04.2018, is silent about its retrospective applicability.

In view thereof, the contention advanced by the Ld. ASG cannot be accepted. It is to be further noted here that the original Sub-Section 45(1) (ii) has therefore neither revived nor resurrected by the Amending Act and therefore neither revived not resurrected by the Amending Act and therefore, as of today there is no rigor of said two further conditions under original Section 45(1) (ii) of PMLA Act for releasing the accused on bail under the said Act."

49. In **Dr. Vinod Bhandari** v. **Enforcement Directorate (supra),** the Hon'ble High Court of Madhya Pradesh had made the same observations as made in the case of **Sameer M Bhujwal (supra).** It was submitted by the Ld. Senior Advocate for the applicant/ accused that the SLP filed against the said order had been dismissed. In **Kiran Prakash Kulkarni** v. **The Enforcement Directorate & Anr.** which was decided on 11.4.2019 nearly after one year of the amendment of 2018, the Hon'ble Supreme Court had observed that the Hon'ble High Court had not taken into account the law laid down on the constitutional validity of Section 45(1) of PMLA in **Nikesh Tarachand Shah** v. **Union of India (supra).** In **Most. Ahilya Devi @ Ahilya Devi** v. **State of Bihar & Ors.** the Hon'ble Patna High Court had referred to the various judgments including the decision of the Hon'ble Supreme Court in **P. Chidambaram** v. **Directorate of Enforcement** (2019) 9 SCC24 on which reliance was sought to be placed by ED and held that the amendment in sub-Section (1) of Section 45 of the Act introduced after the decision in **Nikesh Tarachand Shah (supra)** did not have the effect of reviving the twin conditions for grant of bail, which had been declared *ultra vires* Articles 14 and 21 of the Constitution of India. Similar view was taken by Hon'ble High Court of Delhi in **D.K. Shivakumar** v. **Directorate of Enforcement (supra)** as also in **Mohit Sharma** v. **Directorate of Enforcement** order dated 05.02.2021; **Babu Lal Aggarwal** v. **Enforcement Directorate (supra)** order dated 10.02.2021 and **Okram Ibobi Singh** v.

Directorate of Enforcement (supra).

50. The Ld. SPP for ED had contended that the said conditions were mandatory and reliance was placed on the judgments of the Hon'ble Supreme Court in **Serious Fraud Investigation Office** v. **Nittin Johari and Another** (2019) 9 SCC 165; **Gautam Kundu** v. **Directorate of Enforcement** (2015) 16 SCC 1 and **Rohit Tandon** v. **Directorate of Enforcement (supra)**. However the latter two judgments were duly considered by the Hon'ble Supreme Court in **Nikesh Tarachand Shah** v. **Union of India (supra).** It was also submitted that the order of the Hon'ble High Court in **Upendra Rai** v. **Directorate of Enforcement** dated 09.07.2019 (2019 SCC Online Del 9086) and in **Dr. Shivender Mohan Singh** v. **Directorate of Enforcement** 2020 SCC OnLine Del 766 stood stayed by the Hon'ble Supreme Court (of the former in **Directorate of Enforcement** v. **Upendra Rai** SLP Crl. 2598/2020 and of latter by order dated 31.07.2020 in SLP (Crl.) No.3474/2020 titled **Directorate of Enforcement** v. **Shivender Mohan Singh).** It was submitted that the two conditions stipulated in Section 45(1) PMLA are required to be met in the present case and reliance was placed on the judgment of Hon'ble High Court of Patna in **Vidyut Kumar Sarkar** v. **The State of Bihar and Ors. (supra)** wherein the Hon'ble High Court had referred to the judgments and held that the

twin conditions would apply. The Ld. Senior Counsel for the applicant/ accused had then relied upon the judgment of the Hon'ble High Court of Delhi in **Sai Chandrasekhar** v. **Directorate of Enforcement (supra)** which is dated 05.03.2021 wherein the judgments relied upon by the Ld. SPP for ED were noted and it was held as under:

> *"17. Twin conditions mentioned in Section 45 of the PML Act continue to be struck down as being unconstitutional in view of the judgment of the Apex Court in the case of Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1. The amendment in Section 45 by the Finance Act 2018 is only with respect to substituting the term 'offence punishable for 3 years' with 'offence under this Act'. The said amendment does not revive the twin conditions already struck down by the aforesaid judgment.*
>
> *18. Since the twin conditions of bail in section 45 of the PML Act have been struck down by the Hon'ble Supreme Court and the same are neither revived nor resurrected by the Amending Act therefore, as of today there is no rigor of said two conditions under original Section 45(1)(ii) of the PML Act for releasing the Petitioner on bail. The provisions of section 439 of Cr.P.C. and the conditions therein will only apply in the case of the Petitioner for grant of bail."*

Thus, in view of the fact that the Hon'ble Supreme Court had struck down the twin conditions in **Nikesh Tarachand Shah** v. **Union of India (supra)** and it has been repeatedly held that the said twin conditions do not stand resurrected by the amendments to PMLA and lastly by the Hon'ble High Court of Delhi in **Sai Chandrasekhar** v. **Directorate of Enforcement (supra),** the rigors of the said two conditions would not apply while considering the application for bail and

the present application has to be decided on the touchstone of Section 439 Cr.P.C.

51. In **Sai Chandrasekhar** v. **Directorate of Enforcement (supra)**, the Hon'ble High Court had further culled out the conditions to be considered for grant of bail and it was laid down as under:

> *"19. At the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided, so that no party should have the impression that his case has been prejudiced. (Niranjan Singh v. Prabhakar Rajaram Kharote (1980) 2 SCC 559.)*
>
> *20. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail: - (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character, behavior and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280). There is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits."*

52. Coming to the facts of the case, as noted above, the present ECIR emanates out of FIR No.84 dated 16.03.2017 registered by Bowbazar Police Station, Kolkata-12; FIR No.82, 83 and 84 all dated 01.04.2017 registered by Chitpore Police Station, Kolkata-2 under Sections 120-B, 406, 409 and 420 IPC which are scheduled offences under PMLA. It is alleged that Rs.444.67 crores approximately were raised from investors from different States in India by issuing redeemable preference shares by Alchemist Holdings Limited from 2005 onwards and Rs.1403 crores approximately were raised from investors from different States in India by Alchemist Township India Limited from the year 2012 onwards. It is further alleged that the funds so raised from the investors were not used for the intended purposes and were diverted/siphoned off into the Group companies of Alchemist Group and were still outstanding to be paid back to the said two companies and had been used for the benefit of promoters/ Chairman/ Chairman Emeritus i.e. Kanwar Deep Singh and his family members. It was submitted that the applicant/ accused had cheated lacs of investors of their hard-earned money and laundered the proceeds of crime in multiple companies, of which he was the beneficial owner.

53. It was the contention of the Ld. Senior Advocate for the applicant/ accused that the applicant/ accused had nothing to do with the said companies

and he had been neither the Chairman nor the Director nor the office-bearer nor the shareholder of the said companies. ED in its reply had admitted that as of today the applicant/ accused was not the Director or any office bearer in the Alchemist Group of Companies but it is the contention of ED that he was the Director in various companies of Alchemist Group at the time when proceeds of crime were generated by the said companies and diverted to the group companies. It was also their contention that the documents and electronic evidence recovered during searches and the statements recorded under Section 50 of the PMLA of the employees, auditors and Directors of the Group companies of Alchemist Group along with the statements of the victims clearly revealed that the applicant/ accused was the Chairman Emeritus and beneficial owner of the Alchemist Group and the day to day affairs of the said companies were conducted on the instructions of the applicant/ accused and he was the sole controller of the Alchemist Group and took all decisions. The Ld. Senior Advocate for the applicant/ accused had argued that the statements under Section 50 PMLA could not be looked into. However, in the instant case, ED has relied upon not only the statements of the applicant/ accused that were recorded but also of others as well as documentary evidence which has been placed on record in form of relied upon documents.

54. The Ld. Senior Counsel for the applicant/ accused had then submitted that the matter was already pending in three fora. There is no dispute to the fact that the cases in the State of West Bengal are sub-judice before the Hon'ble High Court of Calcutta and orders have been passed by the Hon'ble High Court appointing a One-Man Committee to supervise the process of repayment to the companies; the cases in the State of Uttar Pradesh are sub-judice before the Hon'ble High Court of Judicature at Allahabad and interim order was passed directing no coercive action and the matter was also pending before NCLT wherein orders had been passed declaring moratorium and for appointment of resolution professional. It was then the contention of ED that the applicant/ accused had committed an offence which had economically affected the public at large and lakhs of investors had been cheated and large amount was involved and the gravity of the offence needed to be analyzed; that economic offences constituted a class apart and needed to be visited with a different approach and reliance was placed on the judgments of Hon'ble Supreme Court in **State of Gujarat** v. **Mohanlal Jitamalji Porwal (supra)**, **Y.S. Jagan Mohan Reddy** v. **CBI (supra)**, **Anil Kumar Yadav** v. **State (NCT of Delhi) (supra)** and **Sunil Dahiya** v. **State (Govt. of NCT of Delhi) (supra)**; **Bhupinder Singh** v. **Unitech Ltd.** dated 18.03.2021 and also in **Rohit Tandon** v. **Directorate of Enforcement (supra).** However, in this regard, reference may be made to the judgment of the Hon'ble Supreme Court in **P. Chidambaram** v. **Directorate of**

Enforcement (2020) 13 SCC 791 wherein it was observed as under:

> *"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of the allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied.* ***In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.****"(emphasis supplied)*

Thus it was held that even if the allegation was one of grave economic offence, it was not a rule that bail should be denied in every case.

55. In the instant case, the applicant/ accused is in custody since 12.01.2021. Nothing has been placed on record to show that the applicant/ accused is a flight risk nor it was so specifically argued on behalf of ED. The applicant/ accused is a former Parliamentarian. An apprehension was expressed that the applicant/ accused may tamper with the evidence. It is seen that the present ECIR was registered in 2018 and the applicant/ accused was arrested only on 12.01.2021. It is not the case that the applicant/ accused had not joined investigation. It was argued on behalf of ED that the applicant/ accused had not cooperated during investigation. It cannot however be denied that the applicant/ accused had appeared before ED several times and his statement was also recorded. He was arrested only on 12.01.2021 and has remained in custody of ED and joined investigation even before his arrest and during custody of ED and whatever custodial interrogation was to be done from him has already been done. The complaint has also been filed in the present case and statements of witnesses have been filed with the same. As per the averments of ED itself, digital devices etc. and documents had already been seized from the office and residential premises of the applicant/ accused and are in the custody of the prosecuting

agency. In the case of **Sukhram** v. **State (CBI)** Crl. M. Appeal No.2407/1996 decided on 14.10.1996, similar apprehension expressed by the counsel for CBI that the accused could tamper with evidence was negatived by the Hon'ble High Court of Delhi. As such, the question of tampering with evidence would not arise, moreso as the FIRs were registered way back in 2017 and even the present ECIR is of 2018. Moreover, if the applicant/ accused is at any stage required for investigation, he can be called to join investigation. The correctness or otherwise of the allegations as to whether the applicant/ accused had received and laundered proceeds of crimes can only be looked into during the course of trial which is likely to take time.

56. As far as the question of influencing the witnesses is concerned, it was argued by the Ld. CGSC for ED that the applicant/ accused exercised sufficient clout and he had told the employees not to give statement to ED. However, the complaint has already been filed and the statement of the witnesses under Section 50 PMLA has already been recorded. Further necessary conditions can be put in this regard and any such effort by the applicant/ accused may lead to cancellation of bail. The applicant/ accused is aged about 61 years and has deep roots in the society.

57. In view of the above discussion and considering the facts and circumstances of the case, the applicant/ accused Kanwar Deep Singh is admitted to bail on furnishing personal bond in the sum of Rs.5 lakhs with two sureties of the like amount with further conditions as under:

i) He shall not tamper with the evidence.

ii) He shall not try to contact or influence the witnesses.

iii) He shall join further investigation, if any, as and when called upon to do so by the prosecuting agency.

iv) He shall not leave the country without the permission of the Court and shall deposit his passport with the Court if not already deposited.

v) He shall furnish his mobile numbers and e-mail IDs used by him to the prosecuting agency and shall also inform the change in mobile numbers and e-mail IDs, if any, to the IO.

Accordingly the bail application is allowed. Copy of the order be given dasti to the Ld. Counsel for the applicant/ accused and also to the Ld. SPP for Enforcement Directorate. Copy of the order be also sent to the Jail Superintendent.

Announced in the Open Court
On this 6th day of April, 2021

(Geetanjli Goel)
ASJ/Spl. Judge (PC Act) (CBI)-24
(MPs/MLAs Cases),
Rouse Avenue District Court, New Delhi