$~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 08.11.2019
Pronounced on: 15.11.2019

\+ BAIL APPLN. 2718/2019

P. CHIDAMBARAM ..... Petitioner

Through Mr.Kapil Sibal, Dr.Abhishek Manu Singhvi, Mr.Hari Haran, Mr.Dayan Krishnan, Sr. Advs. with Mr.Arshdeep Singh Khurana, Mr.Amit Bhandari Mr.Hitesh Rai, Mr.Akshat Gupta, Mr.Ayush Agarwal & Mr.Sanjeevi Sheshadari, Advs.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through Mr.Tushar Mehta, Solicitor General with Mrs.Sonia Mathur, Sr. Adv. with Mr.Vikramjeet Banerjee, ASG, Mr.Amit Mahajan, CGSC, Mr.Rajat Nair, SPP, Mr.Kanu Agrawal, SPP with Mr.Shantanu Sharma, Ms.Mallika Hiremath, Mr.Bhuvan Kapoor and Mr.Varun Chugh, Advs. for ED.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. The present bail application is filed under section 439 of Code of

Criminal Procedure (hereinafter referred to as Cr.P.C.) on behalf of the accused/P. Chidambaram whereby seeking grant of bail in the ECIR bearing F.No. ECIR/7/HIU/2017 dated 18.05.2017 under the Prevention of Money Laundering Act, 2005 (hereinafter referred to as "*PMLA*") who is presently in judicial custody.

2. The brief facts of the case are as made out in the present petition that on 15.05.2017, the Central Bureau of Investigation (hereinafter referred to as the "*CBI*") registered the First Information Report (hereinafter referred to as the "*FIR*") bearing no. RC-2202017-E-0011 (hereinafter referred to as the "*subject FIR*"), under Sections 120-B read with 420 of the Indian Penal Code, 1860 (hereinafter referred to as the "*IPC*") and Section 8 and Section 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "*PC Act*"). The allegations in the subject FIR pertain to the grant of an FIPB approval in 2007-08, for which the subject FIR came to be registered after a period of almost 10 years based on alleged *'oral source'* information. M/s INX Media, the Petitioner's son Sh. Karti P.Chidambaram, *"unknown officials of the Ministry of Finance, Government of India"* and others were named as accused persons in the subject FIR, whereas, Petitioner is neither named as an accused nor as a suspect. On

18.05.2017, solely based on the subject FIR registered by the CBI, Respondent ED registered the captioned ECIR under Section 3 of the PMLA punishable under Section 4 of PMLA. The said ECIR is production of the subject FIR and the Petitioner is neither named as an accused nor as a suspect therein. On 23.07.2018, apprehending his arrest by the Respondent ED, the Petitioner was constrained to prefer a petition (being BAIL APPLN. No. 1713/2018) before this Court under Section 438 Cr.P.C. seeking grant of anticipatory bail. Vide order dated 25.07.2018, this Court was pleased to issue notice and directed that no coercive steps shall be taken against the Petitioner till the next date of hearing and the said interim order continued for a period of over 15 months. During the pendency of the abovementioned anticipatory bail application, the Respondent ED summoned the Petitioner on 4 (Four) occasions viz. 19.12.2018, 07.01.2019, 21.01.2019 and 08.02.2019 and the Petitioner duly appeared on each such date and answered all questions to the best of his ability, knowledge and recollection. Pertinently, the Petitioner was not summoned thereafter. However, on 20.08.2019, this Court dismissed the Petitioner's abovementioned anticipatory bail Application. On 21.08.2019, the Petitioner approached the Hon'ble Supreme Court vide SLP (Crl.) No. 7523/2019 impugning the

common Order dated 20.08.2019. Despite the pendency of the abovementioned SLP, the CBI, arrested the Petitioner on 21.08.2019. The Petitioner was in CBI custody till 05.09.2019 and is currently in judicial custody. However, on 05.09.2019, the Hon'ble Supreme Court dismissed the SLP (Crl.) No. 7523/2019 and on the same day, the Trial Court remanded the Petitioner to judicial custody until19.09.2019 which was extended from time to time and is continuing till date.

3. Mr.Kapil Sibal and Mr.Abhishek Manu Singhvi, learned senior advocate appeared on behalf of the petitioner and submitted that on 05.09.2019 itself, the Petitioner who was physically present before the Trial Court preferred an Application (hereinafter referred to as the "*Surrender Application*") praying to surrender before the Trial Court in the captioned ECIR. The Trial Court issued notice on the said application and directed the Respondent ED to file its reply. Accordingly, Respondent ED filed reply to the Surrender Application. In the said Reply, it was inter alia stated that while the Respondent ED does have reasons to believe to arrest the Petitioner under section 19 PMLA, it wishes to conduct certain background investigation and only thereafter, would wish to custodial interrogate the Petitioner so as to make the maximum permissible period of15 days of

police custody remand more effective and meaningful. Vide Order dated 13.09.2019, the Trial Court dismissed the Petitioner's Surrender Application. Thereafter, the Petitioner was not even once interrogated by the ED while he continued to be in judicial custody in the FIR registered by CBI.

4. It is further submitted in the present petition that on 11.10.2019, the Respondent ED preferred an application dated 09.10.2019 under Section 267 Cr.P.C.(hereinafter referred to as the "*Production Warrants Application*") before the Trial Court seeking issuance of production warrants against the Petitioner for the purpose of "*arrest and remand*" in relation to the investigation in the captioned ECIR. On the same day i.e. 11.10.2019, even without issuing any notice to the Petitioner or his counsels, the Trial Court, in ignorance of the well settled law in the case of ***Harshad S. Mehta vs. CBI: ILR 1993 1 Delhi***, allowed the Respondent ED's Application dated 11.10.2019and directed issuance of production warrants against the Petitioner for production on 14.10.2019 at 3 PM. Accordingly, on 14.10.2019, the Petitioner was produced before the Trial Court from judicial custody and the Respondent ED filed two applications - first, seeking permission of the Trial Court to formally arrest the Petitioner in the

captioned ECIR; and second, seeking remand of the Petitioner to the custody of the Respondent ED for a period of 14 days. At this stage, an Application was preferred on behalf of the Petitioner seeking recall/ cancellation of the production warrants issued vide Order dated 11.10.2019. After hearing arguments on 14.10.2019, the Trial Court on 15.10.2019 was pleased to treat the Application dated 14.10.2019 seeking permission to arrest as an Application for interrogation of the Petitioner and allowed the same with liberty to arrest the Petitioner if the grounds specified in Section 19 PMLA are made out. Further, the Trial Court was pleased not to consider the Application dated 14.10.2019 filed by the Respondent ED seeking remand of the Petitioner to the custody of the Respondent ED as being premature. The Trial Court dismissed the Petitioner's Application dated 14.10.2019 vide Order dated 11.10.2019. However, on 16.10.2019, the Respondent ED interrogated the Petitioner in Tihar Jail while he was lodged in judicial custody in the subject FIR and thereafter, formally arrested the Petitioner for the specious reason of being evasive during the aforesaid interrogation. On 17.10.2019, the Petitioner produced before the Trial Court and the Respondent ED preferred an Application seeking remand of the Petitioner to the custodyof the Respondent ED for a period of 14 days and the same was

allowed vide Order dated 17.10.2019 for a period of 7 (Seven) days until 24.10.2019. On 18.10.2019, the CBI completed its investigation in thesubject FIR and filed a charge sheet u/s 173(2) Cr.P.C. before the Trial Court naming the Petitioner as an accused alleging commission of offences u/s 120-B r/w 420/468/471 of IPC and Section 9 and 13(2) r/w 13(l)(d) of the PC Act. On 21.10.2019, the Trial Court took cognizance of the offences alleged in the said charge sheet. Vide Order dated 22.10.2019 in SLP (Crl.) No.9269/2019, the Hon'ble Supreme Court granted regular bail to the Petitioner in the subject FIR.

5. Mr. Kapil Sibal and Mr.Abhishek Manu Singhvi, learned senior counsels submitted that the Petitioner is a law-abiding citizen having deep roots in the society and the Petitioner is not a flight risk and is willing to abide by all such conditions as may be imposed by this Court while granting bail to the Petitioner. The instant case is a documentary case and the Petitioner is a respectable citizen and former Union Minister of Finance and Union Minister of Home Affairs and he cannot and will not tamper with the documentary record, which is currently in the safe and secure possession of the incumbent Government or the Trial Court. The Petitioner merely accorded approval to the unanimous recommendation made by the FIPB

who chaired by the Secretary, Economic Affairs and included four other secretaries (Industry, Commerce, External Affairs and overseas Indian affairs) and the Secretary of the Administrative Ministry concerned. Five of them were among the senior most IAS officers and the sixth was a senior IFS officer of the Ministry of External Affairs. Each one of them had a long and distinguished record of service. The Secretary, Economic Affairs at the relevant time was Dr. D. Subba Rao, who later became the Governor of the Reserve Bank of India. As per the normal procedure, several officers in FIPB unit processed the file and thereafter, put it up to the FIPB For consideration and in turn, the FIPB submitted its recommendations to the Ministry of Finance. The case was once again examined by the Under Secretary, OSD, Director, Joint Secretary and Additional Secretary of the Department of Economic Affairs, Ministry of Finance and was put up to the Secretary, Department of Economic Affairs. Hence, the question of any irregularity or illegality in the approval granted to the proposal of M/s. IN Media is a far-fetched and absurd allegation and does not arise at all.

6. Learned senior counsels further submitted that the 4 (Four) alleged invoices that were raised on INX Media have been referred in the attachment proceedings as well and in the complaint (being O.C.

No.1045/2018) preferred by the Respondent ED under Section 5(5) of the PMLA before the Adjudicating Authority, New Delhi and it has been stated by the Respondent ED itself that:

> *"9.6 [...] However, the company has clarified from their records that the payments have not been made against these invoices."*

7. Learned counsels argued that in the subject FIR and the captioned ECIR, other accused persons have already been enlarged on regular bail or anticipatory bail or statutory bail. Therefore, there is no reason to deny bail to the Petitioner in terms of the parameters laid down by the Hon'ble Supreme Court of India as well as the Hon'ble High Courts in a catena of judgments.

8. Accordingly, submitted that captioned ECIR, which is registered within 3days of the FIR, is a verbatim copy of the FIR and the allegations therein are also identical, therefore, granting remand of the Petitioner by the Trial Court is illegal since the offences allegedly committed as per the CBI FIR dated15.05.2017 (i.e. the subject FIR) and the captioned ECIR arises out of the same occurrence and have been committed in the course of the same transaction. In ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi vs. Anupam J. Kulkarni: (1993)3 see 141*** it has been

held that if a person has been arrested in respect of an offence alleged to have been committed by him during an occurrence, he cannot be detained in the police custody in respect of another offence committed by him in the same case or for offences committed in course of the same transaction, and that the total permissible police custody is only for 15 days and no further police Custody can be granted. Therefore, the Trial Court erred in rejecting the argument of the Petitioner that the offences alleged by the CBI and the ED are part of the same transaction and therefore, there cannot be a separate remand. While rejecting this argument, the Trial Court has proceeded on the basis that the offence under the PMLA is a distinct and altogether different offence.

9. Learned senior counsels argued that upon dismissal of SLP (Crl.) No. 7523/2019 by the Hon'ble Supreme Court (i.e. the Petitioner's challenge to the Judgment dated 20.08.2019 of this Court whereby the Petitioner's anticipatory bail application was rejected), the Petitioner had preferred an Application dated 05.09.2019 praying to surrender before the Trial Court in the captioned ECIR. However, the Respondent ED opposed the prayer on the specious and mala fide ground that in order to effectively utilize the maximum permissible period of 15 days, the Respondent ED wishes to first

interrogate certain other persons and shall seek the custody of the Petitioner only thereafter. The captioned ECIR had been registered on 18.05.2019 (i.e. almost 2 years ago) and while the Respondent ED had been vehemently opposing the grant of anticipatory bail to the Petitioner on the ground that it required the Petitioner's custodial interrogation, when the Petitioner sought to surrender himself, the Respondent ED opposed such request. The respondent ED before the Hon'ble Supreme Court in SLP(Crl.) No. 7523/2019 vehemently opposed the grant of anticipatory bail in its Counter Affidavit dated 25.08.2019 by stating that the custodial interrogation of the Petitioner was required and that the ED had formed its reasons to believe to arrest the Petitioner under Section 19 of the PMLA. Despite the above, when the Petitioner sought to surrender on 05.09.2019, the ED not only objected to the surrender, but also did not seek to arrest the Petitioner till 11.10.2019. The Trial Court, while passing the Order dated 13.09.2019 and dismissing the Petitioner's Application dated 05.09.2019 praying for surrender in the captioned ECIR, has erred in law and proceeded on the erroneous basis that the Petitioner's Application was for directing the Respondent ED to arrest the Petitioner and not for surrendering before the Trial Court. In doing so, the Trial Court has erroneously held that when the Respondent ED is not

willing to arrest the Petitioner at that stage, the Application of surrender cannot be entertained. Thus, the Trial Court failed to appreciate the law laid down in ***Sandeep Kumar Bafna vs. State of Maharashtra & Anr.: 2014 (16) SCC 623*** wherein the Court followed the dictum in Niranjan Singh's case by observing as under:

> *"He can be stated to be in judicial custody when he surrenders before the court and submits to its directions."*

10. It is strongly argued by learned senior counsels named above appearing on behalf of the petitioner that the petitioner is not a flight risk and has fully cooperated with the investigation. During investigation of the captioned ECIR, the Petitioner was summoned by the Investigating Officer on 4 occasions (i.e. on 19.12.2018, 07.01.2019, 21.01.2019 and08.02.2019), on each of which occasion the petitioner duly appeared and answered all questions to the best of his ability, knowledge and recollection.

11. While concluding arguments, it is submitted that the petitioner is a Senior Advocate practicing in the Hon'ble Supreme Court of India with 49 years of standing at the Bar, of which 35 years as a Senior Advocate. Currently, he is Member of Parliament (RS). He was formerly Union Minister of Finance (1996-1998, 2004-2008 and 2012-2014) and Union

Minister of Home Affairs (2008-2012). He is a member of the Indian National Congress, which is the principal Opposition Party in Parliament, and has been in public life for over 40 years. The Petitioner is also a senior Spokesperson of the Congress Party as well as a prominent and widely-read columnist. As such, the petitioner has deep roots in the society. Moreover, from the information available in the public domain, it appears that the Investigating Agencies, including the Respondent ED, have already issued a Look Out Circular (LOC) against the Petitioner and in view of the same, it is preposterous to even allege that the Petitioner can evade the further process of law. The Hon'ble Supreme Court, in its Order dated 22.10.2019 in SLP (Crl.) No. 9269/2019, while granting regular bail to the Petitioner in the subject FIR, has already held that the Petitioner is not a flight risk. It is already submitted that there is not even an allegation that the petitioner has or will tamper with evidence or influence witnesses.

12. In ***State of Maharashtra vs. Animal Punjaji Shah: (1969) 3 SCC 904***, it has been held that in matters of allegations of tampering with evidence or absconding, there must be *'absolute certainty'* an accused can be incarcerated on that ground. It is submitted that mere ipsi-dixit of the Investigating Agency cannot be permitted to prejudice the liberty of a citizen

of this country. The Petitioner has made no attempt to suborn witnesses, tamper with documentary evidence, or in any other manner pollute or obstruct the judicial process and further, the Petitioner undertakes that he shall not, tamper with evidence or influence witnesses, nor is there any reasonable or justifiable apprehension thereof.

13. Moreover, Karti P.Chidambaram was granted regular bail by this court vide order dated 23.03.2018 and the same was confirmed in SLP(Crl.) 5449/2018 vide order dated 03.08.2018. The interim protection so raised by this court vide order dated 09.03.2018 has been extended by the Hon'ble Supreme Court from time to times and continued till date. Mr.S.Bhaskararaman, co-accused was granted anticipatory bail by the Trial Court vide order dated 04.04.2018 and which has not been challenged by respondent ED. The statutory bail has been granted by the Trial Court vide order dated 13.04.2018 to co-accused Ms.Indrani Mukherjea. So was done in case of Mr.Peter Mukherjea vide order dated 28.05.2018 by the Trial Court. Thus, the allegations of illegal gratification of Rs.10 lacs received by co-accused Karti P. Chidambaram and allegation regarding "*Foreign Accounts*" or the alleged "*properties owned by the Petitioner abroad*" or the alleged "*Shell Companies*" are false and concocted on the ground that the

petitioner has disclosed all the assets in his tax returns and have been informed to the Rajya Sabha, as Petitioner is a sitting Member of Parliament from the Rajya Sabha.

14. An amount of ₹403.07 Crores has come into INX Media (i.e. the investee company) as FDI, well within the approval percentage of 46.216% of equity. Out of this ₹403.07 Crores, ₹46.41 Crores was allegedly invested in an Indian Subsidiary Company (namely INX News). As such, no public funds were involved in this case and it also not a case of *'Bank Fraud'* of taking money out of the country or defrauding depositors or stealing money from a company. The instant case is not even an economic offence so far as the Respondent ED is concerned.

15. In addition to above, the petitioner being lodged in judicial custody in the CBI FIR, the Petitioner has already suffered 2 [two] bouts of illness and was put on antibiotics for 5 [five] days and 7 [seven] days respectively. The onset of cold weather and the incidents of dengue etc., the petitioner's health is likely to become more vulnerable. The Petitioner has lost weight from73.5 Kgs. to 68.5 Kgs. Even during remand of the Petitioner in the custody of the Respondent ED, the Petitioner's health has continued to deteriorate. The petitioner has been advised to take steroids for a maximum quantity which is

above the danger, therefore, on merit as well as on medical grounds, the petitioner deserves bail in the present petition.

16. On the other hand, Mr. Tushar Mehta, learned Solicitor General of India submits that the investigation conducted so far revealed a strong prima facie case to reach to "*reasons to believe*" as contemplated under section 19 of the Prevention of Money Laundering Act [hereinafter referred to as "*PMLA*"] to arrest the petitioner and also his custodial investigation will be discussed interalia, th**e** complaint in the present case is yet to be filed and, therefore, as an investigating agency, it is neither proper, possible nor desirable to place the evidence regarding serious offences of money laundering, which has clearly emerged so far, in public domain by way of the present affidavit and / or to share the same with the accused. Keeping in view the aforesaid limitations in mind, the respondent is placing the following facts to satisfy this Court that the petitioner requires to be arrested and interrogated thereafter is based upon cogent evidence, both documentary and oral and a serious miscarriage of justice will be caused if investigated agency is not permitted to unearth a well crafted scheme of money laundering devised by the petitioner/accused along with his close confidants and co-conspirators.

17. Further submitted, the fact of the person/s incorporating shell companies in India and abroad being close to the petitioner-accused and being in touch with the petitioner-accused is also not based on surmises and conjectures, however, the Investigating Agency has evidence to substantiate the same. As a step in the offence of money laundering, two individuals are found to have acted as agents of the petitioner-accused and interacted/liasoned with the parties applying for FIPB approval including INX-Media as well as collected the proceeds of crime on behalf of/at the behest of the petitioner accused. The next step found so far during investigation is layering of proceeds of crime by use of web of shell companies most of which are in abroad, which companies are only on paper, having no business and used only for laundering of proceeds of crime. There is a cogent evidence collected so for that these shell companies are incorporated by persons who can be shown to be closed and connected with the petitioner and his co-conspirators/co-accused all of whom are acting in tandem with each other. The proceeds of crime are thereafter routed through the web of shell companies so incorporated for the purpose of laundering of proceeds of crime and the movement of such proceeds of crime from one company to another company [all of which are not doing any business and

exists only on paper] just to make tracing of money trail difficult. The said companies are incorporated and located in different countries so that it become difficult for the law enforcing agencies to follow the trail of money laundering. Though the Enforcement Directorate has collected substantial material to satisfy this Court about existence of the evidence to show the facts narrated in detail hereinabove, to justify the arrest of the petitioner and his interrogation, it is only after the custodial interrogation of the petitioner that the investigation was capable of being fully complete and the truth being unravelled. This exercise is not only the duty of the Enforcement Directorate towards the nation but considering the menace of black money and its laundering by / on behalf of persons in public life, it is in national interest to do so.

18. Mr.Mehta submitted, Investigating Agency has found out several such shell companies, 17 benami foreign bank accounts [directly referable to the petitioner and his co-conspirators] through which money is laundered and are invested in several properties out of which 10 expensive properties situated outside India have been identified so far. Several other shell companies, many more bank accounts and properties abroad have been identified on the basis of intelligence inputs which are received by the

investigators working abroad under the PMLA and the investigation is still continuing which can be completed only after the arrest and interrogation of the petitioner and others. Having received such material and having found of the accused to be completely evasive and non cooperative during the dates on which he came for being questioned viz. on 19.12,2018, 07.01.2019 and 21.01.2019, the Investigating Agency has formed an opinion that the arrest and custodial interrogation of the petitioner-accused was absolutely essential as the Investigating Agencies has strong reasons based upon cogent evidence in its possession, to believe that the accused has directly as well as indirectly indulged in and / or knowingly assisted and became a party in the process / activity connected with the proceeds of crime and is guilty of a very serious offence of money laundering.

19. Also submitted, as a part of its international obligation, India also has a robust statutory mechanism for detection, investigation, prosecution and prevention of money laundering and connected offences. Such mechanism also provides creation of Financial Intelligence Unit [FIU] in other countries by the Indian investigation agencies from which help / information / assistance / inputs is regularly received by the investigating agency in cases under its investigation. When the international community is taking the

offence of money laundering seriously and India is a Member of international Forum viz. "*Financial Action Task Force*" and has committed itself to the global resolve of being firm with money laundering offence, irrespective whether petitioner-accused is the former Finance Minister and former Home Minister or a**n** ordinary citizen of India, it will be travesty of justice if this Court considers the prayer made by the petitioner and grant him protection of pre-arrest bail, without examining the case records, investigation material maintained in regular course of the present statutory investigation conducted and which contains the evidence which is incapable of being fabricated as loosely alleged on behalf of the accused.

20. It is further submitted that it is well settled in catena of judgments that economic offences in itself are considered to be gravest offence against the society at large and hence are required to be treated differently in the matter of bail. The courts have successively held that *"the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book as such offences affects the very fabric of democratic governance and probity in public life. 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. See State of Gujarat y. Mohanlal Jitamalji Porwal (1987) 2 see 364]"

21. Learned Solicitor has relied upon the judgments in the case of ***P. Chidambaram Vs. Enforcement of Directorate*** passed in ***Criminal Appeal No. 1340 of 2019 dated 05.09.2019, Y. S. Jagan Mohan Reddy Vs. Central: (2013) 7 SCC 439, State of Gujarat Vs. Mohanlal Jitamalji Porwal: (1987) 2 SCC 364, State of Bihar & Anr. Vs Amit Kumar alias Bacccha Rai: (2017) 13 SCC 751, Gautam Kundu Vs. Directorate of Enforcement: (2015) 16 SCC 1.***

22. He submits that in view of the fact and circumstances stated above, more particularly considering the evidence available on record with the investigating agency on the apprehension relating to influencing of witnesses / co-accused which is manifested by records during the

investigation of the case, it is prayed that this court may be pleased to dismiss the bail petition of the petitioner, in the interest of justice.

23. On tampering of evidence, destruction of material evidence, influencing of witness by the petitioner and his co-conspirators, learned Solicitor General of India submits that the said material is completely distinct, different and independent from the material which was collected by the CBI in the predicate offence. Even the witnesses which have been approached and influenced in the PMLA investigation are different from the investigations conducted by CBI.

24. During the course of search on scrutiny of the digital data, it is revealed that directors and share holders of Advantage Strategic Consulting Private Limited [a benami company of the petitioner and his son], India (which is holding company of Advantage Strategic Consulting Singapore Pvt. Ltd., Singapore) later on in the year 2013 transferred their entire shareholding of M/s Advantage Strategic Consulting Pvt. Ltd. to the granddaughter of petitioner by way of a Will. During the course of investigation when one of the co-conspirator was asked to produce original copy of the Will, he stated in his statement dated 23.02.2018 that original copy of the Will was destroyed at the instance of the son of petitioner (Karti

P. Chidambaram, another conspirator). This fact clearly manifest that the petitioner who is the beneficial owner of the entire proceeds of crime has been indulging in destruction of evidence directly or indirectly and for this reason also he does not deserves bail from this court.

25. The investigations have revealed that Advantage Strategic Consulting Singapore Pvt. Limited, Singapore which is a subsidiary of Advantage Strategic Consulting Pvt. Ltd., India [a company beneficially owned by the petitioner's son Karti P. Chidambaram, another co-accused, on behalf of the petitioner] received several payments without rendering any services. During the search, several invoices were recovered from the seized digital data which were claimed to have been raised by Director of Advantage Strategic Consulting Singapore Pvt. Ltd. However, when statement of Director of Advantage Strategic Consulting Singapore Pvt. Ltd. was recorded he clarified that he had not signed any invoice as authorized signatory of said company and the said invoice bore his fabricated signature. Thus, from his statement it is evident that not only the company had not rendered any services but had created fake invoices to camouflage proceeds of crime as receipt of payment in lieu of services.

26. On creation of false evidence Mr. Tushar Mehta, learned Solicitor General of India submitted that in order to justify that Advantage Strategic Consulting Pvt. Ltd. is not a shell company but a professional organization run by management professional, certain mails were generated and exchanged by the co-conspirators. During the investigation it has been revealed that the purpose, as per content of the email was to create evidence behind transfer of equity of Vasan to Advantage. The said mails and the statement of the generator of the mail forms part of the investigation papers of the present case are placed before this Court in a sealed cover to demonstrate and satisfy the conscience of this Court that petitioner and his co-conspirators have been creating false evidence to layer and camouflage the proceeds of crime so as to project it as untainted money.

27. Regarding influencing of witnesses, it is argued that inasmuch as three (3) witnesses have stated in their statements under section 50, recorded by the investigating agency, that the petitioner and his family members have pressurised them and have asked them not to appear before the Enforcement Directorate. As advised the respondent / Enforcement Directorate is not disclosing the names of the said witnesses in the present affidavit, however

their statements are available in the case file of the present case which has been placed in sealed cover.

28. Further argued that from a bare perusal of the said statements, the conscience of this court would be satisfied that the petitioner and his co-conspirators have tried to influence and pressurise the witnesses, firstly not to cooperate with the investigations and secondly not to disclose/divulge any incriminating fact [which is in their personal knowledge] to the Investigating Agency. Furthermore, as stated above the said witnesses are completely different from the witnesses, which were sought to be influenced in the CBI Case. Thus, systematically, the petitioner and his co-conspirators have been trying to influence the witnesses.

29. Mr.Mehta submitted that the offence under Section 3 of the PMLA is a standalone offence and therefore the contention of the petitioner that he could not have been detained in respect of another offence committed him [PMLA offence] in the same case and /or offence committed in course of same transaction is completely untenable in law. The offence of PMLA is independent of offence under PC Act and IPC Act as investigated by CBI. As such the PMLA offence do not part of the same transaction of IPC and

PC offence. Also PMLA offence is not addition of another offence in the investigation conducted under IPC and PC Act by CBI.

30. In the case of ***Rakesh Manekchand Kothari V. Union of India: 2015 SCC Online Guj 3507,*** *whereby held that:-*

> *"two fold dragnet is laid down by the Legislature by providing mechanism of punishment as defined under Section 4 for such offender under Section 3 read with Sections 44 and 45 of PML Act and to take care of attachment, confiscation of such tainted property under sections 5, 8, etc. subject to outcome at the end of trial before the special court. In the above context, section 24 of PML Act cast burden of proof upon an accused person to prove that proceeds of crime are untainted property."*

31. The same conclusion has been arrived by the Division Bench of the High Court of Karnataka at Bangalore in ***Smt. K. Sowbaghya v. Union of India: 2016 SCC OnLine Kar 282***, *"wherein the case of the petitioners was that Section 8 (5) as it stood under the Amended Act of 2009, contemplated that if a person was acquitted of the scheduled offence, the attachment of the property ceased to have effect. The same was in consonance with the logic that if no crime under the scheduled offence could be established there could be no 'proceeds of crime'. But under the Amendment Act 2013, it is now contemplated that if the case instituted in respect of a scheduled offence*

results in acquittal of the accused, a person could still be prosecuted under Sections 3 & 4 of the PML Act. If the genesis of the proceedings relatable only to the scheduled offence as no action and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money-laundering, could be initiated under the PML Act unless there was a report under Section 173 Cr.P.C. in relation to a Scheduled offence, therefore, on acquittal in respect of such offence, should ipso facto, result in the proceedings under the PML Act coming to a close. In other words, without the guilty of the accused in the scheduled offence being proved there could be no proceedings under Sections 3 and 4 of the PML Act. However, it is to be seen that proceeds of crime is "property" of all kinds as defined under clause (v) of Section 2(1").

32. I have heard learned counsel for the parties and perused the material available on record and the material in '*Sealed Cover'* as well.

33. The endeavour under the Amendment Act, 2013, vis-a-vis Sections 5 & 8 is to enable attachment proceedings against the persons who are accused of a scheduled offence; persons who have been accused of money laundering alone; persons who have come in possession of the proceeds of crime. It is evident that in view of the 2013 Amendment to the PML Act, a

person can be tried for an offence of money laundering alone without restricting the meaning attributable to it as being with reference to a scheduled offence alone. Hence, section 8, as amended by the Amendment Act of 2013, cannot be said to be arbitrary and violative of the fundamental right of a person if the proceedings are continued under the PML Act, even if the trial of a scheduled offence results in an acquittal and the alleged proceeds of crime pertained to that scheduled crime.

34. Similarly this Court in the case of ***Rohit Tandon V. Enforcement Directorate, bail Appl. No. 119 of 2017***, whereby observed that *"there is a provision of trial by a special courts in case of 'schedule offences' under PMLA. Possibility of joint trial would arise under Section 44 of PMLA only when charge-sheet is filed upon completion of investigation and the case is committed to the Special Court. Section 44 does not talk of Joint investigation or joint trial. It makes it mandatory that the offence punishable under Section 4 of the Act and any scheduled offence connected to the offence under that section shall be triable only by Special Court constituted for the area in which the offence has been committed."*

35. It is alleged that during the period from 15.11.2016 to 19.11.2016 huge cash to the tune of Rs. 31.75 crores was deposited in eight bank

accounts in Kotak Mahindra Bank in the accounts of '*group of companies'*. It gives details of demand draft issued from 15.11.2016 to 19.11.2016 from eight bank accounts in the name of Sunil Kumar, Dinesh Kumar, Abhilasha Dubey, Madan Kumar, Madan Saini, Satya Narain Dagdi and Seema Bai on various dates. Most of the Demand Drafts issued have since been recovered.

36. The statements recorded during investigation have evidentiary value under Section 50 PMLA. Prima facie, the version given by them is in consonance with the prosecution case. The prosecution has further relied upon call data records, CCTV footage. Account Trend Analysis.

37. Under Section 2(1)(v) "*property*" 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.

38. The expression *'scheduled offence'* has been defined in Section 2(l)(y) of the Act of 2002.

39. Undisputedly, the predicate offence is included in Part A in paragraph 1 of the Schedule in the Act of 2002 in particular Sections 420, 471 and 120B of IPC. Indeed, the expression "*criminal activity*" has not been

defined. By its very nature the alleged activities of the accused referred to in the predicate offence are criminal activities.

40. The stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens rea. In that, the concealment, possession, acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a scheduled offence. That would come within the meaning of Section 3 and punishable under Section 4 of the Act.

41. Section 3 of the PMLA defines the offence of money laundering as, *"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 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."*

42. The expression "*proceeds of crime*" is defined in Section 2(u) of the PMLA to mean "any property derived or obtained, directly or indirectly, by any person as result of criminal activity relating to a scheduled offence.

Thus, Section 3 shows that the person who commits the offence of money laundering need not necessarily be a one who may have been involved in the acquisition of the proceeds of crime. Thus, even if the accused is assumed to be not guilty of the offence under Section 13(2) read with Section 13(l](e] of the PC Act, nevertheless, he is a person charged with abetting the said offence and with the laundering of the proceeds of the crime. The proceeds of crime may be acquired by another person who commits one of the scheduled offences, and the person charged with money laundering may have only, directly or indirectly, assisted or knowingly become a party, or may be actually involved in the process or activity of, inter alia., concealing, possessing, acquiring or using and projecting or claiming the said proceeds of crime as untainted property. The purpose of scheduling the offences under the PMLA appears to be to enlist the various crimes through which the proceeds of crime may be generated.

43. It is pertinent to mention here that the said contentions were verbatim taken by the petitioner before the Hon'ble Supreme Court, which came to be rejected vide judgement dated 05.09.2019 passed in Criminal Appeal No 1340 of 2019 in the case of anticipatory bail of the petitioner in Directorate of Enforcement case.

44. The Respondent ED is not investigating the Scheduled offences but the offence of Money Laundering which is a distinct/separate offence committed after the commission of scheduled offence and is continuing to be committed even now. FIR registered by the CBI (predicate offence), inter-alia, is also under Section 8 of the PC Act, which had always been scheduled offence i.e. even prior to 01.06.2009. The actions of money laundering as a matter of fact have occurred after 2009 and, therefore, also the question of retrospectively is academic in the present facts and circumstances.

45. The offence of money laundering is a continuing offence, inasmuch as, by its very definition, the offence continues as long as accused is in possession, acquisition of the ill gotten wealth since the projection is not one time offence and continues till such time person is in possession of ill gotten wealth. Thus the time of its generation is of no consequence but the possession, acquisition and its projection as untainted is as long as the projection as untainted continues, the offence will continue and cannot be said to have been applied retrospectively. The investigation under PMLA after the year 2009 would not be treated as applying the Act retrospectively for the reason of ill gotten wealth being generated prior to the amendment

coming into force because accused at the time of investigation under PMLA was in possession, acquisition and projecting such proceeds of crime as untainted.

46. The above interpretation is also supported by the judgement delivered by the High Court of Jharkhand in the case of ***Hari Narayan Rai vs. The Union of India (UOI) through Directorate of Enforcement: 2010 SCC ONLINE (JHAR) 1066.***

47. In ***Sajjan Singh v. State of Punjab: (1964) 4 SCR 630 AIR 1964 SC 464*** wherein the petitioner was put to trial for the charges under Section 5 of the Prevention of Corruption Act, when the assets acquired by the petitioner therein was found to be disproportionate to his known sources of income, the stand, which had been taken is that the property, which was taken to be disproportionate to his known source of income, had been acquired before Section 5(3) of the Prevention of Corruption Act, was incorporated in Section 5 and, thereby, he is not liable to be prosecuted under Section 5 of the Prevention of Corruption Act. However, it is held that if pecuniary resources or property acquired before the date of commencement of the Act were to be left out of account in applying sub-section (3) of Section 5 it

would be proper and reasonable to limit the receipt of income against which the proportion is to be considered also to the period after the Act.

48. For the income received during the years previous to the commencement of the Act may have helped and in the acquisition of property after the commencement of the Act. From whatever point it is clear that the pecuniary resources and property in possession of the accused persons or any other person on his behalf have to be taken into consideration for the purpose of Sub Section 3 of Section 5, whatever these were acquired before or after the Act came into force.

49. It is argued by Mr. Kapil Sabil and Mr. Abhishek Manu Singhvi, learned senior counsels appeared on behalf of petitioner that only his son (Karti P. Chidambara) who can be at the best be alleged to have committed the offence. However, the contention of learned solicitor general of India is that proceeds of crime were generated due to the act of petitioner in granting permissions illegally for gratification collected by Karti P. Chidambaram at the behest of the petitioner (P. Chidambaram).

50. While considering grant of regular bail under Section 439 Cr.P.C. the relevant three (3) factors have been considered by this Court (i) flight risk;

(ii) tampering of evidence and (iii) influencing of witnesses in D. K. Shivakumar Vs. Directorate of Enforcement 2019 SCC online Del. 1096 decided on 23.10.2019 and in C.B.I. case registered against the petitioner herein.

51. It has not even been alleged by the respondent/ED in counter affidavit that the petitioner is a flight right. The investigation agencies including respondent/ED have already issued a Look Out Circular (LOC) against the petitioner. In view of the same, it is preposterous to even allege that the petitioner can evade the further process of law.

52. Regarding tampering with the evidence, neither it is argued nor any material available on record, moreover, there is no chance to tamper the material on record since the same is before the Investigating Agencies, Central Government or the Courts.

53. Regarding influencing of witnesses, it is argued that inasmuch as three witnesses have stated in their statements under Section 50 PMLA recorded by the Investigating Agency that the petitioner and his family members have pressurized them and have asked them not to appear before the Enforcement Directorate. On perusing the material produced in a sealed cover, it is revealed that one witness, when called for confrontation to the

petitioner, he wrote a letter that the petitioner and his family is having strong holding in Tamil Nadu and he being native of the said State, does not want to be confronted in the presence of petitioner. The other two witnesses were also called for confrontation, however, they did not turn up. Fact remains that their statements in detail have already been recorded. Thus, I am of the considered view, at this stage, when complaint is almost ready to be filed, there is no chance to influence any witnesses.

54. I am conscious that Karti P. Chidambaram, (co-accused) has been granted regular bail by this Court vide order dated 23.3.2018 and the same was confirmed in SLP (Crl.) 5449/2018 vide order dated 3.8.2018. S. Bhaskararaman, co-accused has been granted anticipatory bail by the trial Court vide order dated 4.4.2018 and which has not been challenged by the Respondent-Enforcement Directorate. The statutory bail has been granted by the Trial Court vide order dated 13.4.2018 to co-accused Ms. Indrani Mukherjea and Peter Mukherjea vide order dated 28.5.2018.

55. I am also conscious that the petitioner has already suffered two bouts of illness and was put on antibiotics for 5 days and 7 days respectively. The petitioner has been advised to take steroids for a maximum quantity which is above the danger, however, the fact of illness has already been considered

by this Court and issued directions to the Jail Superintendent in this regard. Therefore, this ground is not available to the petitioner, at this stage.

56. As argued by Mr. Tushar Mehta that in addition to above factors, it is very important to take into consideration the role of petitioner and gravity of offence(s).

57. As alleged, during investigation, it is revealed that layering of proceeds of crime by use of web of shell companies most of which are in abroad, which companies are only on paper, having no business and used only for laundering of proceeds of crime. There is cogent evidence collected so far that these shell companies are incorporated by persons who can be shown to be closed and connected with the petitioner and his co-conspirators/co-accused all of whom are acting in tandem with each other. The proceeds of crime are thereafter routed through the web of shell companies so incorporated for the purpose of laundering of proceeds of crime and the movement of such proceeds of crime from one company to another company (all of which are not doing any business and exist only on paper), just to make tracing of money trail difficult. The said companies are incorporated and located in different countries so that it become difficult for the law enforcing agencies to follow the trail of money laundering.

58. The investing agency has found out several such shell companies, 17 benami foreign bank accounts through which money is laundered and are invested in several properties out of which, 10 expensive properties situated outside India have been identified so far. Several other shell companies, many more bank accounts and properties abroad have been identified on the basis of intelligence inputs which are received by the investigators working abroad under the PMLA and the investigation is still continuing.

59. The Economic offences in itself are considered to be the gravest offence against the society at large and hence are required to be treated differently in the matter of bail. The courts have successively held that 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 profits 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.

60. The material in the present case is completely distinct, different and independent from the material which was collected by the CBI in the predicate offence. Even the witnesses in the PMLA investigation are different from the investigation conducted by the CBI.

61. As alleged, during the course of search on scrutiny of the digital data, it is revealed that directors and share holders of Advantage Strategic Consulting Private Limited [a benami company of the petitioner and his son], in India (which is holding company of Advantage Strategic Consulting Singapore Pvt. Ltd., Singapore) later on in the year 2013 transferred their entire shareholding of M/s Advantage Strategic Consulting Pvt. Ltd. in favour of the granddaughter of petitioner by way of a Will. During the course of investigation when one of the co-conspirator was asked to produce original copy of the Will, he stated in his statement dated 23.02.2018 that original copy of the Will was destroyed at the instance of the son of petitioner (Karti P. Chidambaram, another conspirator).

62. Investigation further revealed that Advantage Strategic Consulting Pvt. Limited, Singapore which is a subsidiary of Advantage Strategic Consulting Pvt. Ltd., India [a company beneficially owned by the petitioner's son Karti P. Chidambaram, another co-accused, on behalf of the

petitioner] received several payments without rendering any services. During the search, several invoices were recovered from the seized digital data which were claimed to have been raised by Director of Advantage Strategic Consulting Singapore Pvt. Ltd. However, when statement of Director of said company was recorded, he clarified that he had not signed any invoice as authorized signatory of said company and the said invoice bore his fabricated signature. Thus, it is evident that not only the company had not rendered any services but had created fake invoices to camouflage proceeds of crime as receipt of payment in lieu of services.

63. Keeping in view the discussion above, prima facie, allegations are serious in nature and the petitioner has played active and key role in the present case. It cannot be disputed that entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book, as such offences affects the very fabric of democratic governance and probity in public life. No doubt, bail is right and Jail is exception, but, if bail is granted in such case, a wrong message goes to the public at large.

64. Therefore, in view of above facts and circumstances, I am not inclined to grant bail to the petitioner.

65. I hereby make it clear that the observations made in this order are only in dealing the bail application, but not conclusive. Therefore, the observations shall not prejudice the case of the petitioner in any manner.

66. The Bail Application is accordingly dismissed.

67. Pending application, if any, also stands disposed of.

68. *Dasti*.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 15, 2019
ab/ms/p