IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73325 of 2019

Arising Out of PS. Case No.-4 Year-2013 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

==========

Vidyut Kumar Sarkar @ Ashok Das, aged about 60 years, (Male), son of late Vibhuti Bhusan Sarkar, resident at Bharat Nagar, P.S.- Madhyamgram, District-24 Parganas, North Kolkata (West Bengal).

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Sri U.K. Gautam, Assistant Director, Directorate of Enforcement (Prevention of Money Laundering Act, 2002), Govt. of India, 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, P.S.- Gandhi Maidan, Dist- Patna-800001.
3. The Union of India.

... ... Opposite Party/s

==========

Appearance:

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Union of India : Mr. S D Sanjay, ASG (Senior Advocate)
Mr. Kumar Priya Ranjan, CGC (Advocate)
For the State : Mr. Ashok Kumar, APP (Advocate)

==========

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 18-06-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard, *in extenso*, Mr. Sanjay Kumar, learned counsel for the petitioner; Mr. S D Sanjay, learned Additional Solicitor General of India (hereinafter referred to as the 'ASG') along with Mr. Kumar Priya Ranjan, learned Central Government Counsel for the Union of India and Mr. Ashok

Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP'), for the State.

3. The petitioner is in custody in connection with Special Trial No. (PMLA) 4 of 2016 arising out of Complaint No. 01 of 2015 dated 24.03.2015/Supplementary Complaint Case No. 04 of 2016 in ECIR No. PTZO/04/2013 dated 16.05.2013 instituted under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'Act'), for commission of offence under Section 3 which is punishable under Section 4 of the Act.

4. The allegation against the petitioner is of opening 22 bank accounts in his name using forged identification documents.

5. Mr. Sanjay Kumar, learned counsel for the petitioner, submitted that though the present case under the Act is an offshoot of EOU Case No.13 of 2013, which was instituted by the State police in which the allegation is that almost rupees five crores were transferred into various fake accounts from government funds by cloning cheques issued by the State authorities, but against the petitioner, the allegation is limited only to about rupees nine lakhs. Learned counsel submitted that even if it is accepted, for the sake of argument, that the

petitioner is involved in such fraudulent act, taking into consideration his period of incarceration, which is from 03.03.2017, he may be released on bail. It was submitted that even if convicted, his sentence would range between three to seven years and since the petitioner has not yet been convicted in any other offence, it may be presumed that such sentence would be on lighter side and the petitioner, in fact, has completed the said tenure as the period is more than three years and three months. Learned counsel for the petitioner submitted that the allegation is limited to opening of accounts, though it was in the name of the petitioner himself, may be on the basis of forged documents, but beyond that there is no other direct role assigned to the petitioner of being involved in the business of money laundering. It was further submitted that besides the present and the original EOU case, there is one other case against the petitioner which was instituted in Assam by the Central Bureau of Investigation (hereinafter referred to as the 'CBI') in which he is currently on bail.

6. *Per contra*, Mr. S D Sanjay, learned ASG, submitted that the Court may not view the present matter as a simple crime for the reason that the offence is under a Special Act which also has national importance as its purpose is to

safeguard the economic fabric of the country where proceeds of illegal activities are brought into the mainstream of the country's financial activities. He submitted that government cheques were cloned by a group of which the petitioner was a member and even if only rupees nine lakhs was deposited in the accounts opened by the petitioner, he is party to such *modus operandi* in connivance with the Bank officials and other co-accused and getting such government money fraudulently transferred into various accounts, which gave a colour of legitimacy to such money, which clearly amounts to money laundering, as defined under Section 3 of the Act. Mr. S D Sanjay, learned ASG submitted that the petitioner has also given his statement under Section 50 of the Act, which is admissible as evidence in law, accepting his involvement and also describing his role in such activity, which clearly shows that he is an active member of the gang which indulges in such crime. He further submitted that the petitioner is involved in cases of similar nature in other states also, as has been stated in the counter affidavit filed on behalf of the Union of India in the present matter. It was submitted that the Act contemplates satisfaction of twofold conditions for grant of bail, under Section 45 of the Act. Mr. S D Sanjay, learned ASG submitted

that the same envisages that the Court has to be satisfied that on the basis of materials, there are reasonable grounds for believing that the petitioner is not guilty of such offence and also, is not likely to commit any offence while on bail. It was submitted that the petitioner being involved in another case in Assam of similar nature, and thereafter again committing such crime in the State of Bihar and in many other states also there being investigation under progress with regard to involvement of the petitioner in similar types of crimes under the Act, the petitioner cannot be trusted not to commit such offence while on bail. Learned counsel submitted that with regard to reasonable grounds being available before the Court for believing that the petitioner is not guilty of such offence, the same is also not satisfied, as the petitioner himself has given statement under Section 50 of the Act accepting his complicity and providing details of how such crime was perpetrated. As far as the period of incarceration was concerned, learned ASG submitted that in view of the afore-mentioned two conditions for grant of bail not being satisfied, the prayer for bail to the petitioner deserves to be rejected, more so, since it would not override the twin conditions specified in Section 45 of the Act. With regard to the trial, learned ASG submitted that as per the report received from the Court below,

pursuant to the same being called for by the Court *vide* order dated 16.03.2020, the status is that one co-accused is still to appear. It was submitted that this is a common practice by the accused to somehow keep matters pending for long so that one of the co-accused gets advantage and is granted bail on the basis of period of incarceration and thereafter the other accused appear and in a short duration also come out on bail taking advantage of the bail granted by the Court to the other co-accused. Mr S D Sanjay, learned ASG submitted that there cannot be any reason why the prosecution would delay the matter and, thus, it is sometimes beyond the reasonable capacity of the prosecution to ensure that the trial proceeds under such circumstances. However, learned ASG took a categorical stand that the authorities would not be against the trial of the petitioner proceeding even if it requires bifurcation. He submitted that the petitioner having committed such offence, coupled with the evidence against him, it can be reasonably presumed that the trial ultimately would result in his conviction and on this ground also, the present period of incarceration may not be very relevant for considering the prayer for bail. Drawing the attention of the Court to Section 24 of the Act which places the burden of proof, with regard to not being involved in

money-laundering, on the accused i.e., the petitioner in the present case, he submitted that this also goes against him and fortifies the case of the prosecution. Mr S D Sanjay, learned ASG relied on a recent decision in the matter of **Moti Lal @ Moti Lal Patwa v Union of India** in **Criminal Miscellaneous No.73052 of 2019**, since reported as **MANU/BH/0274/2020**, where the prayer for bail of the petitioner therein, who was also accused in a case under the Act, has been rejected by this Court on 11.06.2020**.** Mr S D Sanjay, learned ASG also referred to the judgments of the Hon'ble Supreme Court which have been adverted to in **Moti Lal @ Moti Lal Patwa** (*supra*), *viz*. **Rohit Tandon v Enforcement Directorate,** since reported as **(2018) 11 SCC 46 | AIR 2017 SC 5309**; **Gautam Kundu v Directorate of Enforcement (Prevention of Money-Laundering Act),** since reported as **(2015) 16 SCC 1**; and **Y S Jagan Mohan Reddy v CBI,** since reported as **(2013) 7 SCC 439.** Learned ASG further submitted that recently the Hon'ble Supreme Court in **Directorate of Enforcement, New Delhi v Upendra Rai** being **Special Leave Petition (Criminal) Diary No.5150 of 2020** *vide* order dated 03.06.2020 has issued notice and stayed the operation of the order of the Hon'ble Delhi High Court which granted bail to Upendra Rai in a case under the Act

and directed that if the said Upendra Rai, meaning thereby that if not already been released on bail, he shall not be released.

7. Learned APP adopted the arguments of learned ASG against grant of bail to the petitioner and sought rejection of the present application.

8. At this stage, the Court finds it apposite to consider the relevant aspects relating to the Act in the background of various precedents.

9. The Hon'ble Supreme Court in **Nikesh Tarachand Shah v Union of India and Anr.**, since reported as **(2018) 11 SCC 1**, ruled:

> *'53.…it is unnecessary for us to go into this aspect any further, in view of the fact that* ***we have struck down Section 45 of the 2002 Act as a whole****.*
>
> *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****…*'
>
> (emphasis supplied)

10. While denying anticipatory bail in **P Chidambaram v Directorate of Enforcement**, since reported as **(2019) 9 SCC 24**, the Hon'ble Supreme Court noticed the subsequent amendment:

> *'38.* ***The twin conditions under***

Section 45(1) for the offences classified thereunder in Part A of the Schedule was held arbitrary and discriminatory and invalid in Nikesh Tarachand Shah v. Union of India *[Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] . Insofar as the twin conditions for release of the accused on bail under Section 45 of the Act are concerned, the Supreme Court held (at SCC p. 15, para 3) the same to be* ***unconstitutional as it violates Articles 14 and 21 of the Constitution of India. Subsequently, Section 45 has been amended by Amendment Act 13 of 2018. The words "imprisonment for a term of imprisonment of more than three years under Part A of the Schedule" has been substituted with "accused of an offence under this Act…".*** *Section 45 prior to Nikesh Tarachand [Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] and post Nikesh Tarachand [Nikesh Tarachand Shah v. Union of India*, (2018) 11 SCC 1 : (2018) 2 SCC (Cri) 302] reads as under:

Section 45 — Prior to Nikesh Tarachand Shah	*Section 45 — Post Nikesh Tarachand Shah*
*"**45. Offences to be cognizable and non-bailable**.—(1) Notwithstanding contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—* *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*	*"**45. Offences to be cognizable and non-bailable**.—(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—* *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:	*(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:"	*Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:"'*

(emphasis supplied)

11. Section 45 of the Act in its entirety presently stands as:

> '***45. Offences to be cognizable and non-bailable***.— *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*
>
> *(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> *Provided that a person, who, is under the age of sixteen years, or is a woman*

or is sick or infirm or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or

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

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

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

Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this section.'

12. A learned Single Judge of the Bombay High Court in **Sameer M Bhujbal v Assistant Director, Directorate of Enforcement** in **Bail Application No.286 of 2018** granted bail and held:

> *'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 21 of the Constitution of India.'*

13. In **Dr. Vinod Bhandari v Asst. Director, Directorate of Enforcement**, since reported as **2018 SCC OnLine MP 1559**, a learned Single Judge of the Madhya Pradesh High Court granted bail and opined:

> *'12. The Supreme Court in the case of Nikesh Tarachand 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 PMLA Act in so far 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.*
>
> *13. 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 learned counsel appearing for the applicant and the learned ASG 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 29.3.2018 thereby amending Section 45(1) of PMLA Act which came into effect from 19.4.2018, is silent about its retrospective applicability.'*

14. A learned Single Judge of the Delhi High Court in **Upendra Rai v Directorate of Enforcement**, since reported as **2019 SCC OnLine Del 9086**, while taking note of **Sameer M Bhujbal** (*supra*) and **Dr. Vinod Bhandari** (*supra*), granted bail and observed:

> *'23…This Court finds no reason to disagree with the two views expressed.*'

15. Quite recently, on 28.05.2020, a coordinate Bench of this Court in **Ahilya Devi v State of Bihar**, since reported as **MANU/BH/0245/2020,** granted anticipatory bail and observed:

> '*26. In view of the above discussions, I do not find any reason to take a different view from what has been taken by the High Court of Judicature at Bombay in case of Sameer M. Bhujbal (supra), High Court of Delhi in case of Upendra Rai (supra) and that of the High Court of Madhya Pradesh Bench at Indore in case of Dr. Vinod Bhandari (supra).*'

16. At this juncture, order dated 03.06.2020 passed

by the Hon'ble Supreme Court in **Directorate of Enforcement, New Delhi v Upendra Rai** being **Special Leave Petition (Criminal) Diary No.5150 of 2020**, which arises out of **Upendra Rai v Directorate of Enforcement** (*supra*), assumes relevance, reading:

> '*Delay condoned.*
> *Issue notice.*
> ***Until further orders, there shall be a stay of operation of the impugned order passed by the High Court*** *of Delhi if the respondent has not already been released on bail.*'
>
> (emphasis supplied)

17. In **Shree Chamundi Mopeds Ltd. v Church of South India Trust Association CSI Cinod Secretariat, Madras,** since reported as **(1992) 3 SCC 1**, the Hon'ble Supreme Court held:

> '*10. ...****While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.*** *This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that*

the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. ....'

(emphasis supplied)

18. In **V P Sheth v State of MP**, since reported as **(2004) 13 SCC 767**, the Hon'ble Supreme Court expressed:

'*7. Before us, it has been urged that in the absence of sanction under Section 19 of the Prevention of Corruption Act, 1988, the prosecution could not proceed. It is submitted that on the day prosecution was launched, the order of compulsory retirement had been set aside by CAT.* ***It is submitted that even though this Court had granted an interim stay, the order of CAT had not been quashed. It is submitted that the effect was that the appellant continued to be in service. In support of this submission, reliance is placed upon the case of Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn. [(1992) 3 SCC 1] wherein it has been held that the effect of an interim stay is that the original order does not get quashed but that order would not be operative and may get restored.***

8. We are unable to accept this submission. As has been held in Chamundi Mopeds case the effect of stay is that the order is not operative. As the order of CAT is not operative, the order of compulsory

> ***retirement remains in force.*** *Of course if the appeal was dismissed, the order of CAT would have got restored. But at the time prosecution was launched, it was the order of compulsory retirement which was effective. Therefore no sanction was required under Section 19 of the Prevention of Corruption Act, 1988. In any event this Court finally quashed the order of CAT. This Court held that the appellant had been compulsorily retired with effect from 10-1-1989. As the appellant had retired with effect from 10-1-1989, on the day prosecution was launched, no sanction was required.'*
>
> (emphasis supplied)

19. As the judgement of the Delhi High Court in **Upendra Rai v Directorate of Enforcement** (*supra*) stands stayed by the Hon'ble Supreme Court *vide* order dated 03.06.2020 (*supra*), the views of the Delhi High Court in **Upendra Rai v Directorate of Enforcement** (*supra*) and of the High Courts of Bombay, Madhya Pradesh and this Court in **Sameer M Bhujbal** (*supra*), **Dr. Vinod Bhandari** (*supra*), and **Ahilya Devi** (*supra*) respectively, being essentially to the same effect as **Upendra Rai v Directorate of Enforcement** (*supra*), especially *qua* the twin conditions under Section 45, in the opinion of this Court, are not required to be looked into at the moment, in view of order dated 03.06.2020 (*supra*), considering the law enunciated in **Shree Chamundi Mopeds Ltd.** (*supra*) and **V P Sheth** (*supra*) by the Hon'ble Supreme Court. Even

though the order dated 03.06.2020 (*supra*) concludes with '*if the respondent has not already been released on bail.*', in the opinion of this Court, the effect of the above would be: (a) if the respondent therein was not already released on bail, he would not be so released; and, (b) irrespective of the factum of such release or otherwise, the decision in **Upendra Rai v Directorate of Enforcement** (*supra*) by the Delhi High Court would not be of any help to anyone else, till such time further orders are passed by the Hon'ble Supreme Court in the matter.

20. In any event, the applicability, or lack thereof, of the *ratio* in **Nikesh Tarachand Shah** (*supra*) post the amendment(s) to the Act, as it now stands, has not been, and is not being examined by this Court in the present proceeding, as the said point has neither been raised nor adverted to by any party herein, and is likely to be determined by the Hon'ble Supreme Court in the pending afore-referred *lis*. However, this Court has noticed the above for the sake of completeness.

21. In **Nimmagadda Prasad v Central Bureau of Investigation**, since reported as **(2013) 7 SCC 466**, the Hon'ble Supreme Court, while noticing **State of Gujarat v Mohanlal Jitamalji Porwal** [**(1987) 2 SCC 364**], rejected the prayer for bail made therein and commented thus:

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

"5. ... The ***entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book****. A murder may be committed in the heat of moment upon passions being aroused.* ***An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community****. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."*

24. ***While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind***

> ***that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt***.
>
> *25.* ***Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country***.'
>
> (emphasis supplied)

22. In **Rohit Tandon** (*supra*), the Hon'ble Supreme Court, while upholding the rejection of bail, laid down:

> *'21.* ***The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country***. *Further, when attempt is made to project the proceeds of crime as untainted money and also that* ***the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24*** *of the 2002 Act.*'

(emphasis supplied)

23. In **Central Bureau of Investigation v Ramendu Chattopadhyay**, since reported as **2019 SCC OnLine SC 1491**, whilst setting aside an order granting bail, the Hon'ble Supreme Court cautioned:

> '*9. **This Court is conscious of the need to view such economic offences having a deep-rooted conspiracy and involving a huge loss of investors' money seriously**. Though further investigation is going on, as of now, the investigation discloses that the Respondent played a key role in the promotion of the chit fund scam described supra, thereby cheating a large number of innocent depositors and misappropriating their hard-earned money*.'
>
> (emphasis supplied)

24. In **State of Bihar v Amit Kumar**, since reported as **(2017) 13 SCC 751**, the Hon'ble Supreme Court set aside an order granting bail and observed:

> '*8. ...**In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail** in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.*
>
> *xxx*
>
> *11. Although there is no quarrel with respect to the legal propositions*

> *canvassed by the learned counsel,* ***it should be noted that there is no straitjacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling****. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of the Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged.* ***Although "bail is the rule and jail is an exception" is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail****.*
>
> *xxx*
>
> *13. ...****It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail*** *[Nimmagadda Prasad v. CBI, (2013) 7 SCC 466; Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439].* ***Usually socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously****.'*
>
> (emphasis supplied)

25. In the present case, the petitioner faces serious allegations, *inter alia*, of transferring government funds into various fake accounts by cloning cheques issued by the State authorities. While Mr Sanjay Kumar, learned counsel for petitioner submitted that he has secured bail in the CBI case in Assam, Mr S D Sanjay, learned ASG submitted that the

petitioner is accused of similar offences in other states which are at different stages of investigation, as stated in the counter affidavit filed by the Union of India. The Court notes that the case involves defrauding the public exchequer and the petitioner has admitted his role by the statement under Section 50 of the Act. This Court would refrain from offering any comment as to what would be the likely sentence awarded to the petitioner, if convicted, as at best, today, it would be merely speculative. Since the alleged offence is not a crime *simpliciter*, the period of custody already undergone by the petitioner and comparatively low value of amount involved, at the current stage, would not aid the petitioner's quest for bail.

26. In this scenario, finding force in the submissions of Mr. S D Sanjay, learned ASG, coupled with the judgements of the Hon'ble Supreme Court discussed hereinabove, the Court is not inclined to enlarge the petitioner on bail.

27. Accordingly, the application stands dismissed.

28. However, taking note of the fact that the petitioner is in custody since 03.03.2017, for the ends of justice, let the Court below expedite the trial and conclude it at the earliest, preferably within 12 months.

29. Before parting, it is made clear that any opinion

expressed hereinabove on the merits is only *prima facie* and tentative in nature, for the limited purpose of considering the prayer for bail alone, and would not, in any manner, prejudice the petitioner in the trial.

(Ahsanuddin Amanullah, J)

J. Alam/-

AFR/NAFR	AFR
U	
T	