IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15740 of 2024

Arising Out of PS. Case No.-14 Year-2023 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

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Radha Charan Sah son of Late Haribans Sah Resident Of Anaith, Mathiya, Ara Sasaram Road, P.S-. Nawada, District- Bhojpur

... ... Petitioner/s

Versus

The Union Of India Through The Assistant Director, Patna Zonal Office, Enforcement, Directorate, The Union Of India Through The Assistant Director, Patna Zonal Office, Enforcement, Directorate, Bank Road, Patna

... ... Opposite Party/s

Appearance :
For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.
Mr. Vishal Kumar, Adv.
For the Opposite Party/s : Mr. Dr. K.N. Singh, Sr. Adv. (ASG)
Mr. Manoj Kumar Singh, Spl. PP, E.D
Mr. Shivaditya Dhari Sinha, (AC to ASG)

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

8 03-07-2024 Heard learned senior counsel Mr. S.D. Sanjay for the petitioner and learned senior counsel Mr. Dr. K.N. Singh for the Union of India. Present order is being passed in continuation of order no.6 dated 21.06.2024 and order no.7 dated 28.06.2024.

2. The petitioner seeks regular bail in connection with Special Trial (PMLA) Case No.8 of 2023 arising out of ECIR No. PTZO/14/2023 dated 15.03.2023 lodged under section 4 of the Prevention of Money Laundering Act, 2002.

3. Learned senior counsel Mr. Dr. K.N. Singh in continuation of his argument dated 28.06.2024 place before this Court different judgments, he relied on a judgment of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.*** reported in ***2022 SCC Online SC 929*** and place before this Court the ratios laid down in paragraph nos. 371, 387, 389, 400,

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402, 406, 411 and 467(xiii (c) and (d)). Senior Counsel further submits that in the conclusion, Hon'ble Supreme Court has pleased to hold that the provision in the form of section 45 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') as applicable post amendment of 2018 is reasonable and has direct nexus with the purposes and objects shouted to be achieved by the PMLA and does not suffer from vice of arbitrariness or unreasonableness. Counsel submits that as per the conclusion, prayer for grant of bail irrespective of the proceedings including those sections 438 of the 1973 Code or even upon invoking the jurisdiction of the Constitutional Court, the underlined principles and section 45 may apply. Counsel further relied on a judgment of this Court dated 09.02.2024 passed in Criminal Writ Jurisdiction Case No. 299 of 2022 (***M/s Aditya Multicom Pvt. Ltd through its authorized signatory and Ors. Vs. The State of Bihar & Ors.***) with analogous cases in which matter was considered before Hon'ble Division Bench of this Court where Hon'ble Single Bench has referred the question for considerations of Division Bench. He submits that those questions have been answered by the Division Bench that in the matter of excavation of sand from river from an area beyond or contrary to the mining plant and in violation of the

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government clearance, FIR alleging commission of offence theft etc. under the provisions of Indian Penal Code can be filed against a licensee and bar under section 22 of the Mines and Minerals (Development & Regulation) Act of 1957 (hereinafter referred to as 'MMDR Act') read with Rule 56 of the Rule 2019 would not be attracted.

4. Learned senior counsel for the Union of India submits that in the said criminal writ, the next question was answered by the Division Bench of this Hon'ble Court that for the alleged sale of sand from the stock license points without issuing prepaid e-challan and for cause of huge revenue loss to the exchequer and unlawful gain to the petitioner, FIR can be lodged for the offences punishable under sections 379, 411, 406 and 420 of the IPC and it is open for the Investigating Officer to investigate the same. Counsel further submits that in the light of the decision made in the Cr. Writ, the plea taken by the petitioner is not sustainable that offence has been committed under MMDR Act which is a special Act and therefore, the general law (IPC) may not be attracted and the trial ought to be taken place according to the Special law. Counsel further submits that though the petitioner is aged about 70 years, but there is already doctors available in the jail for the treatment of

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old and ailing patients. Therefore, on this plea, bail to the petitioner may not be granted. At the time of conclusion of his argument, senior counsel submits that the petitioner is an influential person being a politician/MLC having two criminal antecedents being accused of offence amongst others sections 147, 148, 149, 223 & 307 of the IPC read with section 27 of the Arms Act as well as sections 323, 341, 386, 406, 420, 120(B) & 34 of the IPC. It may be said that he is not a person who should be lose on society by grant of privilege of bail. He also submits that in case of ***Tarun Kumar Vs. The Assistant Director, Directorate of Enforcement*** reported in ***AIR 2024 SC 169***, it has been held that parity is not law, the role of specific accused need to be looked into for the purpose of addressing the ground of parity.

5. In response there of, learned senior counsel for the petitioner submits that he had already relied on the judgment of ***Avtar Singh Vs. State of Punjab*** reported in ***AIR 1965 SC 666*** in which it has been held that when offence has been constituted under section 39 of the Electricity Act where allegation of theft of electricity is there, then in that case, theft of electricity may not be considered as offence under IPC because section 39 has itself created an offence under special law then offence under

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general law under section 378 may not be taken into account. Counsel further submits that the view of Avtar Singh (supra) case has been duly approved by recent judgment in case of ***Sharat Babu Digumarti Vs. Government (NCT of Delhi)*** reported in ***(2017) 2 SCC 18*** where an offence which has been committed under the provisions of IT Act which is special act under the special provision then, it may not be considered under section 292 of the IPC. Counsel submits that in the said judgment, it has been held by Hon'ble Supreme Court of India that the settled position of law is that a special law shall always prevail upon the general and prior law when the act in various provisions deals with obscenity in electronic form. It covers the offence under section 292 of the IPC. Counsel further submits that at the time of deciding the criminal writ by the Division Bench of this Hon'ble Court, these two judgments i.e. Avtar Singh (supra) and Sharat Babu Digumarti (supra) has not been taken into consideration. Counsel also submits that the decision of Hon'ble Division Bench and the decision of the Hon'ble Supreme Court of India has been made in different frame of reference and in the present case, the judgment quoted by senior counsel for the Union of India in the criminal writ has no application at all.

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6. Learned senior counsel for the petitioner submits that the Hon'ble Division Bench of Hon'ble Supreme Court of India in case of ***Tarsem Lal Vs. Directorate of Enforcement*** reported in ***2024 SCC Online SC 971*** decided on 16.05.2024 relied in paragraph no.20 to 25 and submits that the operative conclusion has been summarized in para no.23 that once a complaint under section 44(1)(b) of the PMLA is filed, it will be governed by section 200 to 205 of the Cr.P.C. as none of the said provisions are inconsistent with any of the provisions of the PMLA in which counsel further submits that accused was not arrested by the E.D. till filing of the complaint then, as a normal rule, the Court should issue a summon to the accused and not a warrant, after issuance of summon, the accused may appear before Special Court in pursuant of the summon. It is not necessary for him to apply for bail and the Special Court can direct the accused to furnish bonds in terms of section 88 of the Cr.P.C. It has also been mentioned that the Special Court can grant exemption from personal appearance to the accused by exercising power under section 205 of Cr.P.C. Counsel submits that after cognizance is taken of the offence punishable under section 4 of the PMLA based on a complaint under section 44(1)(b), the E.D and its officers are powerless to exercise power

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under section 19 to arrest a person shown as an accused in the complaint. But if, the E.D. wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as accused in the complaint already filed under section 44(1)(b) provided the requirement of section 19 are fulfilled. Counsel submits conclusively that in the present case, the petitioner has appeared on the basis of summon called to him by the E.D. officials, he appeared, supported in the investigation, investigation completed, entire material has been collected, complaint filed, cognizance taken and thereafter, nothing is left so far as the material has to be collected against the present petitioner.

7. Learned senior counsel for the petitioner further submits that now only trial has to be commenced and it has to be taken place by the Special Court. There are in total 56 witnesses in this case and there is no likelyhood to end the trial in near future. Counsel submits that here in the present case, the petitioner is in custody since 14.09.2023 and is aged about more than 70 years. Therefore, in the light of the principles laid down in the case of Tarsem Lal (supra) when a non arrested accused has been granted permission by this Hon’ble Court about securing his appearance through section 205 of the Cr.P.C., but

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here in the present case, the case of the petitioner is on better footing as the investigation completed, complaint filed, cognizance taken and only trial has to take place and the petitioner is in judicial custody since last 10 months and only trial has to be commenced having 70 years and due to old age having series of medical problems. Senior counsel further relied on other judgment namely ***Kusha Duruka Vs. State of Odisha*** reported in ***(2024) 4 SCC 432*** and submits that in paragraph no.19 and 22.2.2, it has been held that when the bail application has been decided by a Judge, then subsequent bail application ought to be listed before the same Judge and decided by him. Counsel relied on other judgment namely ***Ajmer Singh Vs. State of Haryana*** reported in ***(2010) 3 SCC 746*** where a parity principle has been decided by the Hon'ble Supreme Court and submits that the parity principle has to be applied with a view to maintain the equal justice and it is basically like should be treated alike. Counsel submits that in the present FIR, bail has been granted to one of the accused person, and therefore, maintaining the parity, the petitioner may also be granted bail. Counsel relied on another judgment which is of Hon'ble Delhi High Court in case of ***Sanjay Pandey Vs. Directorate of Enforcement*** reported in ***2022 SCC Online Delhi 4279***

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specially on paragraph nos. 75, 76, 77, 78 and 79 of the judgment in which Hon'ble Delhi High Court relying on the judgment of Vijay Madanlal Choudhary (supra) has pleased to held that no schedule offence is prima-facie made out, concomitantly there cannot be proceeds of crime having been generated as there is no criminal activity relating to a schedule offence and considering the ratio laid down in Vijay Madanlal Choudhary (supra) has pleased to grant bail to the accused in E.D. case.

8. Learned senior counsel for the petitioner submits that here in the present case, the present petitioner is not accused in scheduled offence. He submits that offence is alleged to be committed under MMDR Act and not under Indian Penal Code and this MMDR Act is not a scheduled offence. Therefore, allegation made in the complaint that the amount is the proceeds of crime is not correct and there is no ingredient of the offence under PMLA. He further submits that there are 19 FIR's instituted in which offences have been alleged to have been made by the accused persons, but whether those offences has to be made out or not, it is within the domain of the Court and subject to proof, whereas, the complaint case has been filed by the E.D only by virtue of the assumption and till date, there is

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no development took place in the said F.I.R. Counsel submits that therefore, only by virtue of allegations made that crime under scheduled offence has taken place may not be accepted at the level of the bail. Counsel concluded his argument relying on the judgments on the point of bail in case of ***Sanjay Chandra Vs. C.B.I.,*** reported in ***(2012) 1 SCC 40, Satendra Kumar Antil Vs. C.B.I.*** reported in ***(2022) 10 SCC 51, P. Chidambaram Vs. Directorate of Enforcement*** reported in ***(2020) 13 SCC 791, Anil Vasantrao Deshmukh Vs. Directorate of Enforcement*** reported in ***2021 SCC OnLine Mumbai 3641*** which was subsequently approved by the Hon'ble Supreme Court of India and challenged by the E.D. in case of ***Directorate of Enforcement Vs. Anil Vasantrao Deshmukh*** reported in ***2022 SCC Online SC 2281*** *vide* order dated 11.10.2022 where it has been held that at the time of consideration of bail, the Court can only go into question if prima-facie case is established for the grant of bail or not. He also submits that in those cases, a clear cut discussion took place at the time of granting bail about the age and sickness factor. Counsel further concludes his argument that the allegation of PMLA against the petitioner is based on assumptions. The first assumption has been made that petitioner is involved in commission of the offense being a syndicate

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member, but not made accused to the petitioner in any one of the 19 FIR's. The further assumption has been casted that crime took place under the schedule offences and the proceed of the crime collected has been laundered by the petitioner. He submits that very recently, the Hon'ble High Court of Jharkhand at Ranchi has pleased to grant bail to Hemant Soren *vide* order dated 28.06.2024 in which, both cases i.e. Tarun Kumar Vs. Assistant Directorate of Enforcement (supra) as well as Vijay MadanLal Choudhary (supra), both have been discussed and then bail has been granted to the accused Hemant Soren. He submits that the case of the petitioner is on better footing than the case of said accused. And therefore, counsel submits that the present petitioner deserves bail.

9. Upon hearing the parties and after perusal of their affidavits and documents attached, it transpires to this Court that allegation has been made against the petitioner about violation of Section 3 of the PMLA for which punishment has been prescribed under Section 4 of the PMLA. In the complaint, there are in total seven persons who have been made accused on the basis of the 19 FIRs which are treated to be predicate offence, the petitioner has not been accused in any one of the F.I.R. According to the F.I.R. as well as according to the allegation

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made in the complaint which starts from Page No. 50 of the bail petition, it is clear that accused no. 1 which is Private Limited Company has been granted license of land mining from the State Government through its Mining Department. But the said company and its directors started illegal Mining and have done the work of selling and purchase of sand without issuance and obtaining E-challan. In this way, theft of Government Property took place which is a punishable offence and in result, huge loss of exchequer of the Government at the tune of Rs. 77,63,16,095/- (Rupees Seventy Seven Crores Sixty Three Lakh Sixteen Thousand Ninety Five) took place.

10. It transpires to this Court that illegal mining is basically an offence under Bihar Minerals (Concession, prevention of illegal mining, transportation and storage) Rules, 2019 which is not a schedule offence. It is true that offences have been lodged under the provisions of other Sections of Indian Penal Code in which section 411 and 420 of the Indian Penal Code are the scheduled offences under the PMLA. But, it is very interesting that filing F.I.R. is mere allegation and till date, no development in the investigation took place. This Court is convinced on this point that for the purpose of constitution of offence under PMLA, there is no need that the person against

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whom there is an allegation of money laundering be necessarily been accused in scheduled offence. But definitely the essential of Section 3 of the PMLA as well as Section 2(1)(u) i.e ingredient of the proceed of crime is necessary to be attracted. Here in the present case, there is lacking of ingredient of Section 2(1)(u) which is a necessary ingredient of Section 3 of the PMLA. And therefore, it transpires to this Court that prima-facie, he is not guilty of such offence because all the 19 FIRs where scheduled offences are added is completely at present at elementary stage.

11. This Court after going through the complaint and pleadings, this Court finds that investigation has already been completed, cognizance has been taken in this case and only trial has to be commenced. There is a provision to file subsequent complaint and provision of further investigation is also there, but in view of the Court, it shall only be against other accused persons as all material has already come against the present petitioner. This Court also finds that the age of the petitioner is 70 years and is in custody since 14.09.2023 i.e. about last ten months and also having medical ailments as mentioned in the bail petition and in the opinion of this Court, no purpose shall be solved to continue the petitioner into custody.

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12. In the light of findings of the Hon'ble Supreme Court in the case of Tarsem Lal (supra) where the Hon'ble Supreme Court of India has pleased to held the operative conclusion which states as follows:

> *"**23.** Now, we summarise our conclusions as under:*
>
> ***a)** Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;*
>
> ***b)** If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;*
>
> ***c)** After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the*

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CrPC;

d) *In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;*

e) *If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;*

f) *A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds under Section 88 from the accused does not amount to a grant of bail;*

g) *In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to*

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issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;

h) *When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been*

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issued on account of non-appearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;

i) *After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1) (b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and*

j) *If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a*

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person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."

13. It would be apposite to quote the relevant paragraph nos.44 to 48 of the recent judgment rendered in the case of ***Sri Hemant Soren Vs. Directorate of Enforcement in B.A. No.4892 of 2024*** decided on 28.06.2024 which states as under:-

"44. Since Section 50 PMLA, 2002 assumes considerable influence in the case of the Enforcement Directorate the same is quoted hereinunder:

"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1) The Director shall, for the purposes of Section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a [reporting entity], and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of

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witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a

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Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director].”

45. In “Vijay Madan Lal Choudhary versus Union of India” (supra), the validity of Section 50 PMLA, 2002 was under consideration and it has been held as follows:

“449. In other words, there is stark distinction between the scheme of the NDPS Act dealt with by this court in Tofan Singh (supra) and that in the provisions of the 2002 Act under consideration. Thus, it must follow that the authorities under the 2002 Act are not police officers. Ex-consequenti, the statements recorded by the authorities under the 2002 Act, of persons involved in the commission of the offence of money-laundering or the witnesses for the purposes of inquiry/investigation, cannot be hit by the vice of article 20(3) of the Constitution or for that matter, article 21 being procedure established by law. In a given case, whether the protection given to the accused who is being prosecuted for the offence of money-laundering, of section 25 of the Evidence Act is available or not, may have to be considered on case-to-case basis being rule

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of evidence."

46. In "Satyendra Kumar Jain versus Directorate of Enforcement" (supra), in Bail Application No. 3590/2022, CRL.M.A. 25088/2022, the Delhi High Court has held as follows:

> *"67. The statements made under Section 50 of the PMLA have been held to be an admissible piece of evidence. The term "admissible evidence" means that such evidence can be considered by the court at the time of appreciation of evidence. A statement recorded under Section 161CrPC is not an admissible piece of evidence and can be used only for the limited purpose as provided under Section 162CrPC. But even in general crime cases, mostly at the stage of the bail during the stage of investigation, the court looks into the statements of the witnesses under Section 161CrPC to appreciate the case of the prosecution. However, statements under Section 161CrPC are not signed statements and there is no provision in the CrPC akin to Section 50 or Section 63 of the PMLA. To some extent the statement recorded under Section 50 is akin to a statement recorded under Section 164CrPC as a statement under Section 50 of the PMLA is recorded in judicial proceeding and is a duly-signed statement. Thus statements under Section 50 of the PMLA*

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carry much more weight than a statement recorded under Section 161CrPC. These are specific legislations enacted to handle specific crimes."

47. In "Sanjay Jain versus Enforcement Directorate" reported in 2024 SCC Online Del 1656 the extent of reliance to be placed in a statement recorded u/s 50 PMLA, 2002 was considered and it was held as follows:

"55. In Manish Sisodia v. Directorate of Enforcement, (2023) 4 HCC (Del) 66 this Court held that though the statements recorded under Section 50 of the PMLA are admissible in evidence but their evidentiary value has to be weighed at the time of trial. The Court did not look into the contradictions in the testimony of the witnesses observing that the Court cannot appreciate the evidence meticulously but at the same time observed that the Court cannot take the statements under Section 50 of the PMLA as gospel truth and only broad probabilities have to be seen. Accordingly, the Court did not make any comment on such contradictions observing that the trial is yet to take place. The relevant part of the decision reads thus:

"55. This Court is fully conscious of the fact that personal liberty is a sacrosanct right and pre-trial detention cannot be taken as a punitive measure. However, the court has to

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strike a balance between the interest of an individual and the interest of the society at large. This Court is also conscious of the fact that though the statements recorded under Section 50 of the PMLA are admissible in evidence but their evidentiary value has to be weighed at the time of trial.

57. Learned Senior Counsels have invited the attention of this Court towards the contradictions in the testimony of the witnesses. However, this Court is fully conscious of the fact that at the stage of bail, the court cannot appreciate the evidence meticulously. This Court at this stage, would restrain itself to make any comment further on this as the trial is yet to take place. The option before this Court is either to go into the meticulous examinations of the witnesses as being argued by the learned defence counsels or to take into account the statements recorded under Section 50 of the PMLA by the ED. It is correct that the case of ED is based on the statements under Section 50 of the PMLA cannot be taken as gospel truth but at the same, the court has to take into account the probabilities and the legislative intent behind enacting Section 50 of the PMLA. The statements under Section 50 of the PMLA are not akin to Section 161CrPC. The bare perusal of Section 50

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makes it clear that these are deemed to be judicial proceedings. There are consequences for making a false statement or not complying to the summons under Section 50 of the PMLA as provided under Section 63 of the PMLA.

58. This Court at this stage cannot go into the probative value of the witnesses nor can it meticulously examine those facts. The involvement of the third parties in the formulating and drafting of the policy certainly points at mens rea. The jurisdiction of bail is a discretionary jurisdiction. But this discretion has to be exercised on the settled principles in a judicial manner. The court has to bring in its judicial experience to arrive at a conclusion, which should be rational and logical. It is pertinent to mention that the accused and complainant/prosecution are entitled to know the reasons on the basis of which their bail application has been decided, but at the same time such reason should not be detailed in such a manner that it may prejudice the trial."

(emphasis supplied)

56. The principle that emerges from Vijay Madanlal Choudhary (supra), as well as the above decisions as regards the statement recorded under Section 50 of the Act is that

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such statements are recorded in a proceeding which is deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Penal Code, 1860 and is admissible in evidence. The said statements are to be meticulously appreciated only by the Trial Court during the course of the trial and there cannot be a mini-trial at the stage of bail. However, when the statements recorded under Section 50 of PMLA are part of the material collected during investigation, such statements can certainly be looked into at the stage of considering bail application albeit for the limited purpose of ascertaining whether there are broad probabilities, or reasons to believe, that the bail applicant is not guilty. Meaning thereby, the statements under Section 50 of the PMLA have to be taken at their face value, but in case any such statement is patently self-contradictory or two separate statements of the same witness are inconsistent with each other on material aspects, then such contradictions and inconsistencies will be one of the factors that will enure to the benefit of the bail applicant whilst ascertaining the broad probabilities, though undoubtedly the probative value of the statement(s) of the witnesses and their credibility or reliability,

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will be analyzed by the trial court only at the stage of trial for arriving at a conclusive finding apropos the guilt of the applicant."

48. The statement u/s 50 PMLA, 2002 is admissible in evidence as such statement is deemed to be recorded in a judicial proceeding as envisaged in sub-Section 4 of Section 50 PMLA, 2002. This Court is aware of the fact that meticulously delving into such evidence is the domain of the learned trial court and, therefore, only a fleeting reference has been made of the statements recorded u/s 50 PMLA, 2002 of the relevant persons. However, the same does not put an embargo upon the Court to disregard such statements in its totality particularly in a situation when the plea of bail of an accused is being considered. However, the contours of such statements can be taken into consideration in order to ascertain as to whether "reason to believe" that the petitioner is not guilty is fulfilled as enshrined in Section 45 PMLA, 2002 and which reads thus:

"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

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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.]

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(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 (2 of 1974), 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.]"

14. In the light of the decision rendered by the Hon'ble Supreme Court of India in case of P. Chidambaram Vs. Directorate of Enforcement (supra), paragraph no.23 is relevant which is quoted 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

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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 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

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gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. f 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."

15. In the light of the decision rendered by the Hon'ble Supreme Court of India in case of Satendra Kumar Antil Vs. C.B.I. (supra), paragraph no.26 is relevant which is quoted as under:-

"What is left for us now to discuss are the economic offences. The question for

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> *consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field"*

16. This Court is of the view that on the one hand, those accused persons against whom complaint filed, cognizance taken but not arrested, has to be granted privilege of securing appearance under Section 205 of the IPC, but on the other hand, those accused persons who have been arrested for last ten months, investigation completed, cognizance taken having 70 years of age and medical ailments shall still continue in custody is basically an injustice. At the time of argument, senior counsel for the petitioner submits that the petitioner has only passport of India. He undertakes that, he will fulfill both

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the conditions, neither there is any chance of fleeing away from the country nor any chance of damage any evidence. The petitioner is an old aged person of more than 70 years and in judicial custody since last ten months.

17. This Court is conscious that accused is charged in case of PMLA of high magnitude and his act if proved may jeopardize the economy of the country, but at the same time, protection of article 21 of the Constitution of India has to be made and every person detained or arrest is entitled to speedy trial, the question is that whether the same is possible in the present case, E.D. has cited in total 56 named witnesses in the complaint case for moving the case. Further, defence witnesses will be required to be deposed. The petitioner is in custody since 14.09.2023 having age of 70 years and suffering from medical ailments.

18. This Court is also conscious of the fact that the accused is charged in case of PMLA of high magnitude, but at the same time, this is also going on in the mind of this Court that the Investigating agency has already completed the investigation and charge-sheet has been filed in the form of complaint before Special Judge, E.D., Patna on which the Special Judge, E.D., Patna has already taken cognizance. It is

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due to this reason, the presence of the petitioner in judicial custody may not be necessary for further investigation and therefore, considering the old age of the petitioner, this Court is of the opinion that there is no chance of commission of crime by the petitioner while on bail and hence, in view of the Court, petitioner is entitled to grant bail pending trial on stringent conditions in order to alike the apprehension expressed by the E.D..

19. In view of the discussions above, this Court is of the considered opinion that the petitioner is entitled for grant of bail on merit.

20. Hence, the petitioner is directed to be released on bail on furnishing bail bonds of Rs.10,00,000/- (Rupees Ten Lacs) with two sureties of the like amount each to the satisfaction of learned Special Judge, PMLA-cum-District & Sessions Judge, Patna in connection with Special Trial (PMLA) Case No.8 of 2023 arising out of ECIR No. PTZO/14/2023, subject to the following conditions:-

a) The petitioner shall not leave the country during the bail period and surrender his passport at the time of release before the Trial Court;

b) The petitioner shall appear before the Court as and

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when the matter shall be taken up i.e. to say on each and every date.

c) The petitioner shall provide his mobile number to the ED authority concerned at the time of release, which shall be kept in working condition at all times and he shall not switch off or change the same without prior intimation to the ED authority concerned, during the period of bail.

d) In case, he changes his address, he will inform the ED as well as to the concerned Court.

e) The petitioner shall not indulge in any criminal activity during the bail period.

f) The petitioner shall not influence the prosecution witness directly or remotely. The prosecuting agency will be at liberty to file an appropriate application for modification/for calling the order passed by this Court for any reason or the petitioner violates any of the conditions imposed by this Court.

21. Accordingly, the present bail application is hereby allowed with the aforesaid conditions.

(Dr. Anshuman, J)

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