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AFR

Court No. - 8

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6762 of 2024

Applicant :- Shashi Bala @ Shashi Bala Singh
Opposite Party :- Directorate Of Enforcement Thru. Assistant Director Lko.
Counsel for Applicant :- Pradeep Kumar Rai,Prakarsh Pandey,Praveen Kumar Shukla
Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Jaspreet Singh,J.

1. This is a pre-trial bail application moved by the applicant who is arraigned in connection with ECIR No. LKZO/05/2021, under Section 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as The PML Act of 2002).

2. The background is, that large number of FIRs were lodged against Shine City Group of Companies and its Directors, Promoters, share holders, authorized representatives and beneficial owners, all across the country. In the same vein, several FIRs were lodged by the Uttar Pradesh Police under various sections of the I.P.C. at P.S. Gomti Nagar at Lucknow and P.S. Civil Lines at Prayagraj. The FIRs lodged at Lucknow and Prayagraj were all later transferred to the Economic Offence Wing at Lucknow.

3. The contents of the Enforcement Case Information Report (hereinafter referred to as “ECIR”), in a gist, reflects that many real estate projects were floated by various companies under the umbrella of Shine City Group of Companies in Uttar Pradesh, Bihar and West Bengal. The said companies is said to have allured the investors to invest in the projects

of the companies which promised handsome returns. The company is said to have issued post-dated cheques to instill confidence in the investors, however, as alleged, as and when the said cheques matured for redemption, they were dishonored.

4. It is further alleged that in order to dupe the investors forged documents were shown to the investors in order to instill confidence that the company had a very healthy land bank, however, neither the investors got the plot as promised nor the amount invested was returned.

5. The company is also alleged to have a scheme for investing in its alleged virtual currency titled as 'Shine Victory Coin' which was floated through Shine City Infrastructure Projects Pvt. Ltd though the Company had no authority or approval from its Board of Directors nor from any Government Authority.

6. All the companies, under the umbrella of Shine Group of Companies, were managed by its main director and supremo namely Sri Rasheed Naseem. He was responsible for luring investors by persuading them to invest in a scheme namely 'Bid and Hot Deal'. In the instant ‘bid and hot deal’, the company promised to provide vehicles (two wheeler and four wheelers) to its investors at discounted price, however, despite deposit of money in the said scheme, neither the vehicles were delivered nor the money was returned to the innocent investors and moreover few cheques which were issued towards refund were also dishonored.

7. In the aforesaid fashion, several other schemes were floated inter-alia known as "Project Investment Plan" which was the brain child of one Sri

Abhishek Thakur who is alleged to be the President of Garud Team of Shine City Group of Companies. In the aforesaid scheme, the amount invested was to be returned in 12/15 months by giving a plot and needless to say these promises were also not honored. Another scheme known as 'Principal Cash Back' wherein the persons investing the amount was assured of fantastic returns. It is in this light that a huge corpus was collected and siphoned by the Shine City Group of Companies while large number of investors were duped and cheated.

8. The record would reflect that the investigation in the aforesaid scam relating to investments in Shine City Group of Companies is being monitored by a Division Bench of this Court in Criminal Misc. Writ Petition No. 1834 of 2021 (Sri Ram Ram Vs. State of U.P. and Others) along with several other connected writ petitions.

9. It is in this context that the Enforcement Directorate, Government of India filed a complaint under Section 44 and 45 of the The PML Act of 2002 for commission of offence of money laundering as defined under Section 3 read with Section 17 of The PML Act of 2002 which is punishable under Section 4 of The PML Act of 2002.

10. The ECIR is on record as Annexure No. 2 with the bail application and it reveals that upon investigation made under The PML Act of 2002 by the prosecuting agency, various premises were searched inter-alia including that of the present applicant. The present applicant was apprehended on 25.11.2023 and has been in Jail since then.

11. As per the ECIR, the role of the present applicant reveals that the

applicant is said to be the main confidant of Sri Rasheed Naseem who is said to be the Director and master-mind of the companies under the umbrella of Shine City Group of Companies. The role of the applicant is summarized as under:-

(i) It is alleged that the applicant had created a social media group under the name and style of 'Customer ka Haq'; It is also alleged that she had been acting on behalf of Sri Rasheed Naseem and Shine City Group of Companies trying to give possession, illegally, of the land to their own persons which was already provisionally attached by the Enforcement Directorate. This led to frustrating the final confiscation of the attached property which had been confirmed by the Adjudicating Authority;

(ii) Several incriminating information and data in digital form was available on the applicant’s mobile phone which established her role in assisting Sri Rasheed Naseem and Shine City Group of Companies to conceal the proceeds of crime and also siphoning the said proceeds;

(iii) The applicant is said to be the single point of contact between Rasheed Naseem and Shine City Group of Companies;

(iv) The account statement of the applicant indicated that the applicant had deposited cash in bank accounts maintained with the Aryavart Bank and during her interrogation she was confronted with the said statements, however, she could not explain the source of cash amounts;

(v) The applicant is a Government School Teacher by profession and apart from her salary, she does not have any other known source of income and

thus the deposits apparently links her to the Shine City Group of Companies;

(vi) That the mobile records of the applicant reflects her being in touch with another co-accused namely Abhishek Thakur who is also one of the alleged confidant of the Shine City Group of Companies and was responsible for handling the affairs of the Shine City Group of Companies in Uttar Pradesh and Kolkata in the State of West Bengal;

(vii) The said data indicates sending of photos of the properties belonging to the Shine City Group of Companies situate in West Bengal by Sri Abhishek Thakur to the present applicant. The Google locations of the said properties was also shared by Sri Abhishek Thakur with the present applicant to facilitate the illegal handing over of possession of the said properties to the persons who were closely associated with the offending Companies and its management.

12. Thus, in view thereof, it was deduced that the present applicant being a close confidant and closely associated with the illegal activities of the offending company and its management, was instrumental in assisting the main master-mind and Director Sri Rasheed Naseem and the Shine City Group of Companies, to conceal and siphon the proceeds of crime.

13. As per the ECIR, the evidence collected during investigation linking the present applicant to the alleged offence of money laundering has been indicated as under:-

(i) As per the search conducted at the residential premises of the present

applicant, bank account statement and digital devices recovered indicated that considerable quantum of proceeds of crime were received in the bank accounts of the present applicant which was received from the various Shine City Group of Companies which was later withdrawn in cash and utilized by the present applicant for her personal expenses and other investment best known to her;

(ii) The applicant being a School Teacher and apart from her monthly salary, she had received a total sum of Rs. 16,82,331/- in her bank account in cash which is alleged to be the proceeds of crime generated by the criminal activities of the Shine City Group of Companies and being a close confidant of Sri Rasheed Naseem, she was controlling the affairs and was the face of the company vis.a.vis its investors.

(iii) Mobile device recovered from her residence pointed towards the conversation between the applicant and Sri Rasheed Naseem which also indicated that she was in constant touch and was acting at his behest including her involvement in giving possession of the properties provisionally attached by the Enforcement Directorate to persons being loyal to the offending group of companies.

14. The specific role of the applicant as indicated in para 6.1 of the ECIR, is being reproduced hereinafter for ease of reference:-

> *" ROLE OF SHASHI BALA (ACCUSED 1)*
>
> *6.1 She is a teacher in a government school and confidant of Rashid Naseem, head of operations of Shine City Group. She created a social media group and channel namely 'Customer ka Haq' and acting on the directions of Rashid Naseem. Further evidence from the WhatsApp group chat clearly shows that she is in possession of important information regarding the assets/properties of shine city which establishes her role in*

the concealment and laundering of the proceeds of crime. She is involved in dissipation of proceeds of crime by giving possession of the land/plots belong to Shine City companies which were earlier attached by this office. She has been assisting Rashid Naseem in acquisition, possession, concealment and use of the Proceeds of Crime and has indulged in offence of continuous money laundering by continuing to cheat innocent public investors even till date, despite knowing about various FIRs registered against Rashid Naseem & Shine City. She had received funds majorly in the form of cash directly from the customers however she also received funds to the tune of Rs. 16.82 lakh against Cash Credit which was nothing but the proceeds of crime generated out of the criminal activities being done by Shine City Group of Companies and its operators. Thus, she knowingly assisted and involved in the process and activity connected with generation of Proceeds of Crime and actually in possession and use of proceeds of crime."

15. Sri Pradeep Rai, the learned counsel for the applicant submits that the applicant has no concern with Sri Rasheed Naseem or the management of Shine City Group of Companies. It is stated that the applicant herself was duped by the company as she herself had invested money and the same was not returned as per the promise made by the company and its management.

16. It is further urged that in the ECIR, it is alleged that a sum of Rs. 16,82,331/- is the estimated quantum of proceeds of crime found in the account of the applicant, however, the same has been explained to state that the amount shown in her account dated 23rd August, 2013 relating to an entry of Rs. 2,02,000/- was the maturity amount which she received as part of her matured deposit.

17. Similarly, a sum of Rs. 5,05,331/- which was received in her account on 29th June, 2019 is also the maturity amount relating to her deposits made over a period of 9 years. It has also been urged that the applicant had taken loan from the HDFC Bank and Aryavat Bank between the year 2010-2020 for a total sum of Rs. 28,60,000/- (loan taken in parts have been explained in paragraph 14 of the affidavit in support of the bail

application).

18. The applicant has also stated that she has been in Government Service since 2005 and has been receiving salary and as such over a period of one decade i.e. for the period 2009-10 till 2019-20, she had received salary of Rs. 46 lakhs and odd as per her salary account statement.

19. It has further been urged that the applicant being a School Teacher had her own independent source of income and she also earned additional income from agriculture and sale and purchase of land and sale of milk and dairy products.

20. It is submitted that the applicant was not named in the ECIR but came to be arrested on 25.11.2023. Significantly, the applicant has not been named in any FIRs which was lodged against Rasheed Naseem and his group of companies and associates. The applicant is neither a Director nor Officer or employee or associated with Rasheed Naseem or any companies of the Shine City Group of Companies.

21. It is also urged by the learned counsel for the applicant that the applicant has been falsely implicated for the reason that a Division Bench of this Court at Allahabad is seized of a bunch of writ petitions, leading petition being Criminal Misc. Writ Petition No. 1834 of 2021 (Sri Ram Ram Vs. State of U.P. and Others) wherein on 31st January, 2023 during the course of hearing, it was informed to the Court that the present applicant had filed her impleadment application in the said bunch of writ petitions and was present in the Court and it was further alleged that she was in regular touch with Rasheed Naseem who is allegedly in Dubai.

22. The said Court had made strong negative observations against the Enforcement Directorate and in view thereof the ED falsely implicated the applicant and apprehended her on 25.11.2023. A copy of the said order passed by the Division Bench of this Court at Allahabad has been brought on record as Annexure-7 with the affidavit in support of the bail application.

23. It is urged that no offence of money laundering is made out against the applicant nor the applicant is involved in either of the predicate offence, accordingly, the applicant is a school teacher and has been in judicial custody since 25.11.2023.

24. The learned counsel for the applicant has also relied upon his supplementary affidavit dated 27.08.2024 to impress that on the basis of the present ECIR, 3 separate complaints have been filed by the ED. In the present complaint, there are four accused namely, the applicant, Abhishek Kumar Singh, Udhav Singh and Durga Prasad. A list of 67 prosecution witnesses and 272 documents will be relied by the Prosecution in the present complaint alone. In all there are about 226 FIRs lodged in the predicate offences and needless to say that the trial of the predicate would go along simultaneously with the trial of the complaints made under the PML Act, 2002.

25. It is also urged that the complaint was filed on 23rd January, 2024 of which cognizance was taken by the Court concerned on 17.05.2024 and till date of filing of the supplementary affidavit, the charges have yet not been framed.

26. In the aforesaid circumstances, there is no likelihood of the trial being concluded in the near future. Hence, the bail application be allowed.

27. The learned counsel for the applicant in support of his submissions has relied upon the following decisions of the Apex Court:- ***(i) Arvind Kejriwal v. Directorate Enforcement, 2024 SCC OnLine SC 1703***. However, the said decision may not help the applicants since in the case before the Apex Court, the issue therein was in respect of legality of arrest. Moreover, the Apex Court thereafter referred the matter to a Larger Bench for resolving the issue referred and then interim bail was granted considering that Sri Kejriwal, the accused was an elected leader and the Chief Minister of Delhi and further leaving it open for the Larger Bench to either extend or recall the interim bail. Thus, the case in hand is quite different where there is no challenge to the legality of arrest.

(ii) The learned counsel further relied upon the decision of the Apex Court in **Kalvakuntla Kavitha v. Enforcement Directorate, 2024 SCC OnLine SC 2269** wherein the Apex Court has held as under:-

> *"26. This Court in the case of Saumya Chaurasia (supra) 2023 SCC OnLine SC 1674, while paraphrasing proviso to Section 45(1) of the PML stated in paragraph 23 as follows:*
> *"23. ..... No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements ....."*
> *27. This Court, in the carefully couched paragraph extracted above used the phrase "persons of tender age and woman who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements". This is vastly different from saying that the proviso to Section 45(1) of the PML applies only to "vulnerable woman". Further, this Court in the case of Saumya Chaurasia (supra) does not say that merely because a woman is highly educated or sophisticated or a Member of Parliament or a Member of Legislative Assembly, she is not entitled to the benefit of the proviso to Section 45(1) of the PML.*

28. We, therefore, find that the learned Single Judge of the High Court has totally misdirected herself while denying the benefit of the proviso to Section 45(1) of the PML.

In the aforesaid case, the question whether the word 'vulnerable women' applies only to women who are vulnerable or the word vulnerable will be taken in context to all women being vulnerable per-se being a woman. Hence, the facts of this case is quite different to the case at hand, accordingly, it may have a limited impact in the case as the applicant claims benefit merely on the basis of gender without pleading or bringing on record any material to connect her vulnerability.

(iii) The learned counsel for the applicant has relied upon another decision of the Apex Court in **Prem Prakash Vs. Union of India through Directorate of Enforcement; 2024 SCC Online SC 2270** and the relevant portion thereof read as under:-

"Scope of Inquiry under Section 45 of PML

***13**. Coming back to the scope of inquiry under Section 45, Vijay Madanlal Choudhary (Supra), while reiterating and agreeing with the holding in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra, (2005) 5 SCC 294, held that the Court while dealing with the application for grant of bail in PML need not delve deep into the merits of the case and only a view of the Court based on the available material available on record is required. It held that the Court is only required to place its view based on probability on the basis of reasonable material collected during investigation. The words used in Section 45 are "reasonable grounds for believing" which means that the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt. We deem it fit to extract the relevant portion (Para 131) from Vijay Madanlal Choudhary (supra):*

"*131. It is important to note that the twin conditions provided under section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under section 45 impose absolute restraint on the grant of bail. The discretion vests in the court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this court in Ranjitsing Brahmajeetsing Sharma (supra), held as under:*

"*44. The wording of section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction*

is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of the MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby".

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

(emphasis supplied)

Importance of the foundational facts-under Section 24 PML

14. In Vijay Madanlal Choudhary (supra) dealing with Section 24 of the PML, the three-Judge Bench held as under:—

"*97. Be that as it may, we may now proceed to decipher the purport of section 24 of the 2002 Act. In the first place, it must be noticed that the legal presumption in either case is about the involvement of proceeds of crime in money-laundering. This fact becomes relevant, only if, the prosecution or the authorities have succeeded in establishing at least three*

basic or foundational facts. First, that the criminal activity relating to a scheduled offence has been committed. Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime. On establishing the fact that there existed proceeds of crime and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money-laundering. The nature of process or activity has now been elaborated in the form of Explanation inserted vide Finance (No. 2) Act, 2019. On establishing these foundational facts in terms of section 24 of the 2002 Act, a legal presumption would arise that such proceeds of crime are involved in money-laundering. The fact that the person concerned had no causal connection with such proceeds of crime and he is able to disprove the fact about his involvement in any process or activity connected therewith, by producing evidence in that regard, the legal presumption would stand rebutted.

99. Be it noted that the legal presumption under section 24(a) of the 2002 Act, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money-laundering-to rebut the legal presumption that the proceeds of crime are not involved in money-laundering, by producing evidence which is within his personal knowledge. In other words, the expression "presume" is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the Authority or the court, without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge.

100. Such onus also flows from the purport of section 106 of the Evidence Act. Whereby, he must rebut the legal presumption in the manner he chooses to do and as is permissible in law, including by replying under section 313 of the 1973 Code or even by cross-examining prosecution witnesses. The person would get enough opportunity in the proceeding before the Authority or the court, as the case may be. He may be able to discharge his burden by showing that he is not involved in any process or activity connected with the proceeds of crime. In any case, in terms of section 114 of the Evidence Act, it is open to the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case. Considering the above, the provision under consideration [section 24(a)] by no standards can be said to be unreasonable much less manifestly arbitrary and unconstitutional."

(Emphasis supplied)"

The proposition in the aforesaid case cannot be disputed and this Court while considering the case of the applicant shall also notice the applicability of the said decision.

(iv) Learned counsel for the applicant next relied upon the decision of the Apex Court in **Manish Sisodia v. Enforcement Directorate, 2024 SCC OnLine SC 1920,** wherein the Apex Court has held as under:-

> ***"49.*** *We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.*
> ***50.*** *As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.*
> ***51.*** *Recently, this Court had an occasion to consider an application for bail in the case of Javed Gulam Nabi Shaikh v. State of Maharashtra 2024 SCC OnLine SC 1693 wherein the accused was prosecuted under the provisions of the Unlawful Activities (Prevention) Act, 1967. This Court surveyed the entire law right from the judgment of this Court in the cases of Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh (1978) 1 SCC 240 , Shri Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565, Hussainara Khatoon (I) v. Home Secretary, State of Bihar (1980) 1 SCC 81, Union of India v. K.A. Najeeb (2021) 3 SCC 713 and Satender Kumar Antil v. Central Bureau of Investigation (2022) 10 SCC 51. The Court observed thus:*
> *"19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime."*
> ***52****. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:*
> *"10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:*
> *"What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:*
> *"I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial.""*
> ***53****. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well-settled principle of law that bail is not to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".*
> *54. In the present case, in the ED matter as well as the CBI matter, 493 witnesses have been named. The case involves thousands of pages of*

> *documents and over a lakh pages of digitized documents. It is thus clear that there is not even the remotest possibility of the trial being concluded in the near future. In our view, keeping the appellant behind the bars for an unlimited period of time in the hope of speedy completion of trial would deprive his fundamental right to liberty under Article 21 of the Constitution. As observed time and again, the prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial.*
> ***55**. As observed by this Court in the case of Gudikanti Narasimhulu (supra), the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.*
> ***56**. In the present case, the appellant is having deep roots in the society. There is no possibility of him fleeing away from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.*
> ***57**. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant."*

The proposition in the aforesaid case cannot be disputed and this Court while considering the case of the applicant shall also notice the applicability of the said decision.

28. Sri Rohit Tripathi, learned counsel for the Prosecuting Agency has submitted that during investigation and seizure of the records found from the residence of the applicant as has been disclosed in the ECIR, categorically links the applicant with the operations of the Shine City Group of Companies.

29. It is further urged that even though the applicant has stated in her affidavit regarding her source of income derived from the salary, being a School Teacher, however, it has not been indicated what was her quantum of investments in the Shine City Group of Companies.

30. As per the admission of the applicant, she is alleged to have invested a sum of Rs. 11,00,000/- between the year 2013 to 2019 and she has further

indicated that Shine City Group of Companies had registered 11 properties in her name but she was not able to indicate that under what circumstances, the said 11 properties were parked in her name.

31. It is further urged that her own admission which was even recorded before a Division Bench of this Court while hearing was in progress of a bunch of writ petitions at Prayagraj clearly indicates that she was in constant touch with Rasheed Naseem and the applicant's daughter and her son-in-law had even met Rasheed Naseem in Dubai. This clearly linked the applicant to the Director as well as the master-mind of the Shine City Group of Companies.

32. The conversation and exchange of photos between the applicant and another close confidant of Rasheed Naseem namely Abhishek Thakur also fortifies the strong links between the applicant and the Shine City Group of Companies and her assistance in siphoning of the proceeds of crime.

33. In view of the aforesaid, it is urged that there is ample material available on record which clearly incriminates the applicant and for the aforesaid reasons the bail application of the applicant deserves to be rejected.

34. Before dealing with the respective submissions of the learned counsel for the parties, it will be appropriate to take a glance at the certain relevant provisions relating to The PML Act of 2002:-

> Proceeds of crime has been defined in Section 2(u) which reads as under:-
> *2 (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such*

property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad].
[Explanation- For the removal of doubts, it is hereby clarified that 'proceeds of crime' including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence]"

35. Scheduled offence has been defined in Section 2(y) which reads as under:-

" (y) "scheduled offence" means
(i) the offences specified under Part A of the Schedule; or
(ii) the offences specified under Part-B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or
(iii) the offences specified under Part C of the Schedule;]"

36. The offence of money laundering has been defined in Section 3 while the punishment for money laundering has been provided in Section 4 and they read as under:-

*"3. **Offence of money-laundering**- 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.*
Explanation- For the removal of doubts, it is hereby clarified that -
1. (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-
(a) concealment, or
(b) possession; or
(c) acquisition; or
(d) use; or
(e) projecting as untainted property; or
(f) claiming as untainted property
in any manner whatsoever;
(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever]
*4. **Punishment for money-laundering:**- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a terms which shall not be less than three years but which may extend to seven years and shall also be liable to fine*

> *Provided that where the proceeds of crime inolve in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."*

37. In so far as the issue regarding consideration of an application for bail is concerned, the same is provided under Section 45 which reads as under:-

> *"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 office of the Central Government or State Government authorised in writing in this behlaf by the Central Government by a general or a special order made in this behalf by that Government.*
> *[(1A) 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 limitation 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 fulfillment of conditions under Section 19 and subject to the conditions enshrined under this section.]"*

38. Having taken a glance at the aforesaid statutory provisions it now will be worthwhile to notice certain decisions of the Apex Court on the issue of the offence of money laundering and the approach of courts while

dealing with an application for bail.

39. The Apex Court in ***Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46*** has held as under**:-**

> *"19. The sweep of Section 45 of the 2002 Act is no more res intergra. In a recent decision of this Court in Gautam Kundu v. Directorate of Enforcement (2015) 16 SCC 1, this Court has had an occasion to examine it in paras 28-30. It will be useful to advert to paras 28 to 30 of this decision which read thus : (SCC pp. 14-15)*
> *"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PML are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PML deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PML is a special statute enacted by Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.*
> *29. Section 45 of PML starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PML will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PML imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of PML:*
> *(i) That the prosecutor must be given an opportunity to oppose the application for bail; and*
> *(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.*
> *30. The conditions specified under Section 45 of PML are mandatory and needs to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PML. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PML shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PML has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PML will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."*
> *(emphasis supplied)*
> *20. In para 34, this Court reiterated as follows : (Gautam Kundu case, SCC p. 16)*
> *"34. ... We have noted that Section 45 of PML will have overriding effect*

on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of PML imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of PML, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of PML, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."

The decisions of this Court in Subrata Chattoraj v. Union of India (2014) 8 SCC 768, Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439 and Union of India v. Hassan Ali Khan (2011) 10 SCC 235 have been noticed in the aforesaid decision.

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.

22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294 and State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 , dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

31. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetised currency and also new currency has been acquired by him. The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the 2002 Act. The same makes out a formidable case about the involvement of the appellant in

commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence. Further, the courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the 2002 Act while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other words, the fact that the investigation in the predicate offence instituted in terms of FIR No. 205/2016 or that the investigation qua the appellant in the complaint CC No. 700 of 2017 is completed; and that the proceeds of crime are already in possession of the investigating agency and provisional attachment order in relation thereto passed on 13-2-2017 has been confirmed; or that charge-sheet has been filed in FIR No. 205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2-1-2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence."

40. Similarly, the Apex Court in ***Nikesh Tarachand Shah v. Union of India, (2018) 11 SCC 1*** has held as under:-

***"11**. Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whosever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property."*

41. In ***Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929*** the Apex Court has held as under**:-**

***"269**. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime*

which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

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***295**. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.*

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***387**. Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of 2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering*

activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.

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***400**. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in **Ranjitsing Brahmajeetsing Sharma(2005) 5 SCC 294**, held as under:*

"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.

45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.

46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby"

(emphasis supplied)

***401**. We are in agreement with the observation made by the Court in*

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

42. Similarly, the Apex Court in ***Tarun Kumar v. Enforcement Directorate, 2023 SCC OnLine SC 1486*** has held as under:-

> ***"15***. *In our opinion, there is hardly any merit in the said submission of Mr. Luthra. In* ***Rohit Tandon v. Directorate of Enforcement (2018) 11 SCC 46****, a three Judge Bench has categorically observed that the statements of witnesses/accused are admissible in evidence in view of Section 50 of the said Act and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering. Further, as held in* ***Vijay Madanlal*** *(supra), the offence of money laundering under Section 3 of the Act is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The offence of money laundering is not dependent or linked to the date on which the scheduled offence or predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with the proceeds of crime. Thus, the involvement of the person in any of the criminal activities like concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so, would constitute the offence of money laundering under Section 3 of the Act.*
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> ***17***. *As well settled by now, the conditions specified under Section 45 are mandatory. They need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail. It is needless to say that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act."*

43. Again, the Apex Court in ***Pavana Dibbur v. Enforcement Directorate, 2023 SCC OnLine SC 1586*** has held as under:-

> ***"15.*** *The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of* ***Vijay Madanlal Choudhary****. In paragraph 253 of the said decision, this Court held thus:*
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> *"**253.** Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."*
>
> *(underline supplied)*
>
> ***16.*** *In paragraphs 269 and 270, this Court held thus:*
>
> *"**269.** From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.*
>
> *270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or*

indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

(underline supplied)

***17**. Coming back to Section 3 of the PML, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PML. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PML. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PML is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of **Vijay Madanlal Choudhary** supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PML are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PML.*

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***31.** While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:*

a. It is not necessary that a person against whom the offence under Section 3 of the PML is alleged, must have been shown as the accused in the scheduled offence;

b. Even if an accused shown in the complaint under the PML is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

c. The first property cannot be said to have any connection with the

proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;

d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and

e. The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule."

44. The Court has heard the learned counsel for the parties at length and also perused the material on record.

45. As far as the alleged involvement of the present applicant is concerned if the documents on record are perused, it indicates that the applicant was appointed as an Assistant Teacher in the year 2009 and was promoted later and for her service she received a sum of Rs. 46,81,538/- as salary for the period 2009 to 2020.

46. An attempt has been made to indicate that the amount as shown by the prosecution as received by the applicant as proceeds of crime is nothing but hard earned money of the applicant. The said amount is said to be her saving from her part of salary which she invested as well as money she earned from the sale and purchase of agricultural and commercial land and also part of her income she derived from sale and purchase of cow milk and other dairy products and from agricultural income apart from the monetary help extended to her by her husband and children.

47. The record would further indicate that large number of documents were recovered from the premises/house of the applicant. The details of which have been mentioned in ECIR, Clause 3.4. The nature of the documents so recovered are certain FIRs lodged against the applicant

relating to the year 2016. Documents indicating investments made in PIP Plan of Shine City Infra Project relating to Ajay Pal, Kuldeep Singh, Ram Awadh Yadav and the applicant herself.

48. Further, the documents recovered reveal the liabilities of Kuldeep Singh. Various cheques paid by Shine City Infra Projects Ltd. to Kuldeep Singh. Copy of investment made by Sri Ajay Pal, Kuldeep Singh, Ram Awadh Yadav, details of land holdings of Kuldeep Singh.

49. Several original sale deeds in the name of Kuldeep Singh, Santram son of Banwari, Nitish Singh Son of Virendra Singh and Kishor Kumar were recovered. About 12 original sale deeds in the name of Kuldeep Singh, 3 original sale deeds in the name of Santram, 4 original sale deeds relating to Kishore Kumar and 3 original sale deeds relating to Nitish Kumar (son of the present applicant) along with 2 sale deeds in favour of the present applicant were also recovered.

50. It could not be explained by the applicant as to why there large number of original sale deeds belonging to third parties were present at the residence of the applicant. Thus, in absence of any plausible reason, either the properties have been parked in names of third parties to cerate a smokescreen to evade it being traced to the applicant or the applicant has deep rooted connections to hold on to said documents for third parties for some ulterior gains.

51. The record further reflects that Kuldeep Singh in whose name, there were 12 sale deeds is none other than the Manager of Aryavrat Bank where the applicant has her account and is also the bank from where the applicant

has taken loan. There are certain other documents indicating that Kuldeep Singh had paid some money to Richa Singh, the daughter of the applicant and he also transferred some money to the son of the applicant. Then there is transfer of a sum of Rs. 6,70,000/- from the account of Richa Singh, the daughter of the applicant. There are certain other payment receipts indicating that the applicant had some stake in project 'Royal Residency'. Certain E-payment receipts were also recovered indicating movements of fund from the applicant in respect of certain plots of Shine City Infra Project.

52. In this manner, it would be seen that there are several transactions between the applicant and Kuldeep Singh and the son and daughter of the applicant. There is no explanation regarding the aforesaid transactions as to why the Bank Manager of Aryavrat Bank would give money to the son and daughter of the applicant and why would he keep 12 original sale deeds relating to properties in his name at the residence of the applicant.

53. Merely to suggest that a sum of Rs. 16,00,000/- and odd has been shown as proceeds of crime and the applicant being a school teacher and later promoted to the post of Headmaster between the year 2009 to 2020 had the means to garner such amount which was in her account and it cannot be treated as an alarming figure.

54. However, at this stage, it will be relevant to notice that the prosecution has stated that the amount of 16 lakhs and odd as shown in the ECIR is a clerical error rather the sum total of the said amount in the ECIR comes to Rs. 36,93, 831/- and this assumes significance for the reason that

as per the applicant her total salary received by her is about Rs. 46 lakhs and out of which she has Rs. 36,93, 831/- in her account in liquid cash and also 11 properties are alleged to be parked in her name and large number of sale deeds relating to various immovable properties in name of third parties were found from her custody, sharing of data including GPS locations of various other properties in control of the Companies of Shine City and chats with Rasheed Naseem and co-accused Abhishek Thakur prima facie indicates the involvement of the applicant.

55. The applicant could have easily indicated her source of income from agricultural activities if she could give details of the extent of her landholding but it has not been done. No details were given to show how much live stock she had from where she could substantially earn by the sale of milk and dairy products. She has not indicated what her husband, son and daughter were doing that their source of earnings to justify that they could offer funds to the applicant to be utilized by her for investments nor the details of investments has been given by her to prima facie ascertain the quantum of funds available and how and when such investments were made that it have grown into a handsome amount and that they were duly reflected in her income tax returns.

56. In absence of such material or explanation to justify the documents, data and amount found with the applicant such as third party sale deeds, plot buyer agreements, e-payment receipts which if seen in juxtaposition to the language of Section 3 of The PML Act of 2002 which provides that any act of a person engaged directly or indirectly being connected or associated

with proceeds of crime or even being involved in concealing, possessing, acquisition or use or projecting as untainted property, all such acts falls within Section 3 of The PML Act of 2002.

57. Though, this Court is aware that at this stage, a mini trial is not to be held nor the Court is required to delve deep into the evidence to return a finding of guilt but what is required of the Court is to consider the matter before it and it must enable the Court to prima facie satisfy itself and form an opinion that the applicant is not guilty and that the applicant is not likely to commit any offence on bail and while forming such satisfaction, the Court is required to consider the nature and gravity of accusations, severity of punishment in the event of conviction, danger of the accused absconding or fleeing also the character, behaviour, means, position and standing of the accused and the likelihood of the offence being repeated, coupled with the reasonable apprehensions of the witnesses being influenced and danger of justice being defeated by grant of bail.

58. Thus, keeping the aforesaid in mind and considering the material before this Court, including the fact that Rasheed Naseem is absconding but the applicant has been in touch with him and also being in touch with other co-accused and this was while prosecution was searching for the Directors and the applicant was knowing their whereabouts but she never came forward to assist the prosecution and this also casts a doubt on the plea of the applicant that she too was a genuine investor and the alleged explanation on her part, rather absence of any cogent explanation of recovery of huge data, documents from her residence and money in her

account which leads this Court at this stage to be unable to form a prima facie satisfaction as required in terms of Section 45 of The PML Act of 2002.

59. The plea that the applicant is a woman and she has been in custody since November, 2023 and the trial is not likely to conclude soon pales into insignificance at this stage since the main director with whom the applicant was in touch this fact does not bring her in the category of a vulnerable woman, coupled with the proportion of fraud committed as the number of FIR's spread across various States duping very large number of persons does not permit this Court to extend the benefit of the decision of the Apex Court in ***Kalvakuntla Kavitha (supra)*** and ***Manish Sisodia (supra)*** to the applicant at this stage.

60. Section 3 of The PML Act of 2002 not only takes into account a role of a person actively engaged in any process connected with the proceeds of crime but even if such person directly or indirectly is associated in the concealment, possession, acquisition or use or projecting as untainted property or claiming as untainted property, all such acts are covered under the offence of money laundering.

61. Thus taking an overall view including the gravity of offence including the fact that the witnesses of fact are yet to be examined also keeping in mind the dictum of the Apex Court in ***Pavana Dibbur (supra)*** and for all the reasons aforesaid, this Court is unable to persuade itself to form a, prima facie, satisfaction in terms of Section 45 of The PML Act of 2002, at this stage, that the applicant is not guilty or that she may not

commit an offence on bail. Thus, for all the aforesaid reasons, the bail application is ***rejected***.

43. However, it is also clarified that any observations made by this Court may not be taken as an expression of opinion on merits. The trial court is directed to expedite the trial to complete it as swiftly as possible and the prosecuting agency shall not seek any unnecessary adjournments on the ground of examination of witnesses.

Order Date :- 10th September, 2024
Asheesh

(Jaspreet Singh, J.)