**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**B.A. No. 4892 of 2024**

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Sri Hemant Soren, S/o Sri Shibu Soren, R/o Kanke Road, P.S. & P.S.- Gonda, Ranchi ... ... **Petitioner**

**Versus**

Directorate of Enforcement, represented through its Assistant Director, Ranchi Zonal Office, Ranchi, Jharkhand ... ... **Opposite Party**

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**CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY**

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| For the Petitioner | **:** | Mr. Kapil Sibal, Sr. Adv.<br>Miss Meenakshi Arora, Sr. Adv.<br>Mr. Anurabh Chodhary, Sr. Adv.<br>Miss Aprajita Jomowal, Adv.<br>Mr. Abhir Datt, Adv.<br>Mr. Piyush Chitresh, Adv.<br>Mr. Shray Mishra, Adv. |
| For the O.P-E.D | **:** | Mr. S.V. Raju, Sr. Adv, ASGI<br>Mr. Zoheb Hossain, Adv.<br>Mr. Amit Kumar Das, Adv.<br>Mr. Saurav Kumar, Adv.<br>Mr. Rishabh Dubey, Adv.<br>Mr. Shivan U. Sahay, Adv.<br>Mr. Sankalp Goswami, Adv. |

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**C.A.V. on 13/06/2024** **Pronounced on 28/06/2024**

Heard Mr. Kapil Sibal and Miss Meenakshi Arora, learned Senior Counsels for the petitioner and Mr. S.V. Raju, learned Additional Solicitor General of India for the Enforcement Directorate.

**2.** The petitioner seeks bail in this application as he is in custody in connection with ECIR Case No. 06/2023, arising out of ECIR/RNZO/25/2023 dated 26.06.2023, registered u/s 3 of the Prevention of Money Laundering Act, 2002 (herein after referred to as PMLA, 2002) punishable u/s 4 of PMLA, 2002 pending before the Court of Sri Rajiv Ranjan, learned Additional Judicial Commissioner-I-cum-Special Judge, PMLA, Ranchi.

**3.** A prosecution complaint under the PMLA, 2002 was instituted being ECIR Case No. 06/2023 against the present petitioner (Hemant Soren), Bhanu Pratap Prasad, Raj Kumar Pahan, Hilariyas Kachhap and Binod Singh and the background for sharing information u/s 66(2) of the PMLA, 2002 reveals that during investigation in another case being ECIR No. RNZO/18/2022 into the matter of fraudulent acquisition of land which was in possession of Ministry of Defence, Government of India, having area 4.45 acres at Morabadi, Ranchi it came to light that a group of private persons in connivance with government officials including the Ex-Deputy Commissioner, Ranchi, Chhavi Ranjan and Bhanu Pratap Prasad (Revenue Sub-Inspector, Circle Office, Baragain, Ranchi) were part of a land grabbing syndicate and was involved in corrupt practices which included acquiring properties on the basis of false deeds, falsification of Government records, tampering with original revenue documents etc. to facilitate private persons to acquire landed properties in a fraudulent manner. During investigation a survey was initially conducted at Circle Office, Baragain, Ranchi on 09.02.2023, in which, few original records kept in custody of Bhanu Pratap Prasad were verified and falsification and tampering in the registers were identified. It has been alleged that Bhanu Pratap Prasad was involved in corrupt practices and had been a party with several persons involved in acquisition of properties and on a raid conducted at several premises including the rented premises of Bhanu Pratap Prasad eleven trunks of voluminous property documents along with seventeen original registers (Register-II) were seized from his possession. Since the matter was related to forgery with the revenue records by a government official the information was shared with the Chief Secretary, Jharkhand and accordingly Sadar P.S. Case No. 272/2023 was registered on a written

complaint of Manoj Kumar, Circle Officer, Baragain Anchal. It has been alleged that the registers contain reference to several properties which have been acquired in an illegal manner including the reference of properties measuring 8.86 acres at Shanti Nagar, Baragain, Bariatu Road (near Lalu Khatal) illegally acquired and possessed by the petitioner.

The prosecution complaint under the PMLA, 2002 further reveals that the seventeen registers seized from Bhanu Pratap Prasad were examined and explanation u/s 50 PLMA, 2002 was sought from Bhanu Pratap Prasad which further led to the identification of tampering in the said original records aimed at extending illegal benefits to other persons and during searches on 13.04.2023 in ECIR/RNZO/18/2022, handwritten diaries were also seized from the possession of other persons namely, Md. Saddam Hussain, Imtiaz Ahmad and others who were his associates. In the diaries cash payment to Bhanu Pratap Prasad was mentioned by his associates and in the cash transaction details in respect of property measuring 4.83 acres situated at Plot Nos. 31, 32, 33, 35, 36, 38, 72 and 73, Khata No. 53, Mouza Gari, Baragain Anchal, Ranchi two false deeds, one of the year 1940 and the other of the year 1974 were prepared by the associates of Bhanu Pratap Prasad. It has been stated that the land measuring 4.83 acres is a portion of 37.10 acres of land which was purchased from Catholic Credit Cooperative Society by Mangal Mahto and Kaila Mahto in the year 1939 executed at the office of the District Sub-Registrar, Ranchi. It was revealed during investigation that the said properties are entered in Register-II at Page No. 53 of Volume-I of Gari Mouza. The land belongs to the Mahtos which cannot be sold or transferred to the persons belonging to the General Category. However, Bhanu Pratap Prasad in connivance with his accomplices entered the property measuring 4.83 acres in

the name of Samrendra Chandra Ghoshal at Page no. 139 of Register-II, Volume-I. This page was earlier opened in the name of a raiyat, namely, Jitya Bhokta, Son of Tetar Bhokta. The name of Jitya Bhokta as well as Tetar Bhokta were encircled in red ink and the name of one Samrendra Chandra Ghoshal and Jitendra Chandra Ghoshal were written in place of Jitya Bhokta and Tetar Bhokta respectively thereby making this property as a general property which became saleable. On being confronted with the said facts Bhanu Pratap Prasad had admitted about his involvement in his statement recorded u/s 50 PMLA, 2002. The Circle Officer, Baragain was requested to provide a fresh certified copy of the concerned page but he, vide letter dated 19.03.2024, informed that the said page was torn and destroyed by someone, hence, the same is not available. It was therefore, implied that the records and evidence associated with the forgery committed by Bhanu Pratap Prasad and others are being destroyed and there are other persons involved who is/are acting on behalf of Bhanu Pratap Prasad and others. It has been alleged that Bhanu Pratap Prasad was a member of a syndicate which was involved in acquiring lands by fraudulent means which included tampering with original government registers, falsification of government records and manufacturing false documents. The accused Bhanu Pratap Prasad was directly involved in hatching conspiracies with other persons to acquire and dispose properties in illegal manner and was an accomplice to several persons including Hemant Soren which is corroborated from the seizure of an image recovered from his mobile phone which contains the details of a cluster of landed properties situated adjacently on twelve plots at Baragain Anchal, the total area of which is around 8.86 acres. The property was acquired in an illegal and unauthorized manner by the accused Hemant Soren and he had been in continuous

possession of the property since 2010-11. In course of investigation, searches were conducted u/s 17 PMLA, 2002 and during search on 29.01.2024 cash amounting to Rs. 36,34,500/-, one BMW Car along with certain documents/records were seized from the premises under the use and occupation of the accused Hemant Soren. It has been alleged that in the first survey conducted on 20.04.2023 u/s 16 of the PMLA, 2002 in respect of 8.86 acres of land which was done in presence of the Circle Officer, Circle Inspector, Circle Aamin, Baijnath Munda, Shyam Lal Pahan, Bhanu Pratap Prasad and the officials of the Directorate of Enforcement, Ranchi Zonal Office, it was seen that there was a big chunk of land bounded by stone walls with a temporary settlement in which a family consisting of five persons were residing and on inquiry about the ownership of the land one lady (name withheld) residing and available there stated that the owner of the said 8.86 acres of the land is the accused Hemant Soren. In course of inquiry one Santosh Munda had stated that the land belongs to Mantri Ji i.e. the accused herein. On further inquiry Santosh Munda had stated that the land is in custody of Hemant Soren, the then Chief Minister of Jharkhand which was noted by all persons present during the survey proceedings by putting their signatures on the paper drawn for that purpose. In the second survey conducted on 10.02.2024, the land measuring 8.86 acres was confirmed by the officials of the Circle Office present there that the said land is situated in the locality of Lalu Khatal. An image of a plan of a Banquet Hall was retrieved from the mobile phone of Binod Singh, a close accomplice of Hemant Soren, in which, the locality of the proposed construction of a Banquet Hall was mentioned as “Lalu Khatal, Bariatu Road, Ranchi”. It was also checked during the survey that no other big parcel of land was vacant in the vicinity where the proposed Banquet Hall could

be constructed. Some people were seen living in a settlement inside the boundary wall who identified themselves as family members of Santosh Munda but they could not identify accused Raj Kumar Pahan who claimed possession and occupation over the said land occupied by Hemant Soren. They had stated that they have been living in the said land for several years but they have never come across anyone called Raj Kumar Pahan. During survey, an "Indotech" made Electric Meter connection was seen in the room situated inside the boundary wall and in the Meter the name of "Hilariyas Kachhap, Diwakar Nagar, Bariatu Sadar" was written. The name of the accused Hilariyas Kachhap also surfaced during investigation where the witnesses have stated under Section 50 PMLA, 2002 that he used to be personally involved in the verification work done by Bhanu Pratap Prasad. Further he was also instructed in construction of boundary wall over the 8.86 acres of land by the accused Hemant Soren. It has also come in course of investigation that after the first summons were issued to the accused Hemant Soren an application was immediately filed by Raj Kumar Pahan, an accomplice of Hemant Soren before the Deputy Commissioner, Ranchi which was registered as SAR Case No. 81/2023-24 and vide order dated 29.01.2024 the SAR Court had cancelled the jamabandis of the earlier occupants thereby enabling the accused Raj Kumar Pahan to acquire the property on paper in order to distance Hemant Soren from the illegal occupation and possession of the subject property. The entire exercise by the SAR Court proves that the accused Hemant Soren misused his position and created parallel false evidence in order to camouflage his possession on the property and to project the said property i.e. the "proceeds of crime" as untainted property.

**4.** It has been submitted by Mr. Kapil Sibal, learned Senior Counsel for the petitioner that the allegation against the petitioner of money laundering is not made out on consideration of the broad probabilities of the case. The possession of the petitioner, either actual or constructive, on the subject property is not made out. It has been submitted that forcible possession of a property is not a scheduled offence. Possession by itself is not a criminal act. The persons who have stated about forcible possession have not disclosed the date and time of such possession. The alleged "proceeds of crime" which is the subject property was said to have been forcibly occupied and possessed by the petitioner since 2009-10 as per the Enforcement Directorate and it is the case of the prosecuting agency that its timely intervention prevented illegal acquisition by forging and fabricating documents. Mr. Sibal has submitted that the Enforcement Directorate cannot investigate a predicate offence and while referring to Section 2 (1)(u) of PMLA, 2002, it has been stressed upon that the said provision is with respect to a criminal activity relating to a schedule offence but in the present case there is no schedule offence and, therefore, no case of money laundering. Similar is the situation and the conclusion with respect to Section 3 of PMLA, 2002 as the same is also connected with the "proceeds of crime'. Even if it is assumed that the land has been in the possession of the petitioner the same would not conclusively prove that it is on account of "proceeds of crime". There is no document which would be indicative of the fact that the property measuring 8.86 acres has been transferred in the name of the petitioner or any of his family members and there is no material, either tangible or intangible, to draw an inference regarding acquisition, possession or ownership of the petitioner over the said property. None of the documents found in the possession of Bhanu Pratap Prasad, Circle Inspector

would be suggestive in any way about the involvement of the petitioner. If the petitioner had resorted to forcible dispossession as alleged the sufferer(s) could have easily preferred a complaint before the Court even if the Police had desisted from entertaining a report. The filing of an application u/s 71 A of the Chotanagpur Tenancy Act by Raj Kumar Pahan for restoration of the land in question in SAR Case No. 81/2023-24 and the same having been allowed establishes the ownership of Raj Kumar Pahan and others over the subject property and this in fact demolishes the case of the Enforcement Directorate against the petitioner. Mr. Sibal, learned Senior Counsel has referred to the supplementary affidavit filed by the petitioner which encloses the proceeding dated 20.04.2023 prepared by the Enforcement Directorate which has termed the claims of Baijnath Munda and Shyam Lal Pahan over the property in question as disputed and the matter appears to be civil in nature since the original owners have several descendants and settlement of such issue is beyond the purview of the PMLA, 2002. Mr. Sibal, in context of the order dated 29.01.2024, passed in SAR Case No. 81/2023-24 has submitted that the said order has attained finality in absence of any challenge mounted to it and the frailties, if any, in the said order could surely have been considered by a higher forum prescribed under the statute and having a doubt over the said order only on account of its being passed expeditiously would not be sufficient to make it redundant. He has in support of such stand referred to the case of "*State of Punjab & Others versus Gurdev Singh*" reported in (1991) 4 SCC 1, which reads thus:

> ***"8.*** *But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In Smith v. East Elloe Rural District Council [1956 AC 736, 769 : (1956) 1*

*All ER 855, 871] Lord Radcliffe observed: (All ER p. 871)*

> *"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."*

***9.*** *Apropos to this principle, Prof. Wade states [ See Wade: Administrative Law, 6th edn., p. 352] : "the principle must be equally true even where the 'brand' of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles: [ Ibid.]*

> *"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."*

***10.*** *It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for.***"**

**5.** The fact that Raj Kumar Pahan is the owner of the land and continues to remain in possession is borne out from the registered lease deed dated 16.12.2015 between Raj

Kumar Pahan and Hilerious Kachhap and the installation of Electric Meter is in the name of Hilerious Kachhap and not the petitioner. Mr. Sibal has also referred to the Lease Agreement dated 21.12.2011 entered into between Chandrika Pahan and others with Ranjit Singh and the same does not identify the petitioner with the property of 8.86 acres. The Lease Agreement dated 16.12.2015 would further amplify the ownership of Raj Kumar Pahan over the land when considered in the backdrop of the order passed by the SAR Court u/s 71 A of the CNT Act which has already attained finality.

**6.** Learned Senior Counsel for the petitioner while taking the Court through the prosecution complaint has pointedly referred to paras 10.34, 10.40 and 10.51, which once again deals extensively with the order passed in SAR Case No. 81/2023-24 u/s 71 A of the CNT Act and the unprecedented haste with which the said case was dealt with in order to shield the petitioner with a conclusion that Raj Kumar Pahan and his family members did not have possession over the 8.86 acres of land and this finding has been countered to the effect that the authority under the PMLA, 2002 is not an adjudicating authority and, therefore, precluded from deciding these issues.

**7.** Mr. Kapil Sibal, learned Senior Counsel has also drawn the attention of the Court to para 10.51 of the prosecution complaint while questioning the finding that 8.86 acres of land is a "proceeds of crime" which has been acquired deceitfully by the petitioner and his family members during the period 2009-10 and is presently in his possession which has not only been illegally acquired and possessed but is also being used by the petitioner. Such finding, according to Mr. Sibal, is not based on any concrete evidence and such ambiguous conclusion would not act as a deterrent in the quest of the petitioner seeking bail. Learned Senior Counsel has refuted the

charge of acquisition of 8.86 acres of land by the petitioner while submitting that the contours of the case do not at all suggest acquisition and at best even if a case of forcible possession is made out the same would not be a scheduled offence thus decimating the charge under the provision of PMLA, 2002. The issue of concealment by the petitioner pales into insignificance when the names of the owners of the land have already been entered into Register-II.

**8.** It has been submitted that in absence of any presumption of guilt for the predicate offence the Court must consider all reasonable grounds to believe that the petitioner is not guilty under the PMLA, 2002 and, in such context; reference has been made to the case of "*Thomas Daniel versus Enforcement Directorate*" reported in 2023 SCC Online Ker. 8214. It has been submitted by Mr. Sibal while referring to the case of "*Sanjay Pandey versus Directorate of Enforcement*" reported in 2022 SCC Online Del 4279 that none of the ingredients of a scheduled offence are prima facie attracted in the case of the petitioner hence the provisions of PMLA, 2002 will not be applicable. The scheduled offences in the instant case are u/s 420, 467 and 471 IPC. The petitioner is not an accused in the predicate offence being Sadar P.S. Case No. 272/2023. It has been submitted that the primary allegations in the scheduled offence are with respect to forging of documents and revenue records and that there is no allegation against the petitioner that he has forged any document and hence no offence u/s 468/471 IPC is made out. It has also nowhere been alleged that the petitioner had fraudulently induced any person to deliver any property and hence prima facie the offence of cheating cannot also be sustained against the petitioner. The ingredients u/s 464 IPC are also not fulfilled as there is no allegation that the petitioner had created any false document. In fact, it is the consistent case of the

Enforcement Directorate that its timely action has prevented tampering and/or manipulations and, consequently transfer of the property to the petitioner. In absence of any predicate offence the property in question cannot be said to be the "proceeds of crime". Mr. Sibal learned Senior Counsel in reference to his aforesaid contention has relied upon the case of "*Vijay Madanlal Choudhary & Others versus Union of India*" reported in 2022 SCC Online SC 929, wherein it has been held that any property can be termed as "proceeds of crime" u/s 2 (1)(u) of PMLA, 2002 only when it can be shown to have been derived from the scheduled offences.

**9.** Reverting back to the nature of the land in question it has been submitted that the same is a "Bhuinhari" land which cannot be sold or transferred u/s 48 of the CNT Act which imposes a complete restriction on transfer of "Bhuinhari Tenure Land". As per the records the land belongs to the "Pahan family" which fact has been reinforced by virtue of the order dated 29.01.2024 passed in SAR Case No. 81/2023-24 in terms of Section 71 A of the CNT Act. Since the possession of Raj Kumar Pahan and Others have been restored which continues to operate and is binding on all authorities the entire case of the Enforcement Directorate of the involvement of the petitioner in a case of money laundering gets obliterated. The statements recorded u/s 50 PMLA, 2002 cannot overwhelm the finding recorded by the quasi judicial authority.

**10.** Mr. Sibal, in course of his submission has pointedly referred to certain paragraphs of the prosecution complaint suggesting that forgery and interpolation of some documents recovered have been activated by the prosecuting agency itself. Certain files were purportedly recovered which contained a sticky note mentioning "CMO Pintu Urgent" and "CM Baragain Bhuinhari" and these were added by the Enforcement Directorate to falsely implicate the petitioner.

Some discrepancies have also been pointed out by Mr. Sibal from the prosecution complaint itself which according to him buttresses his contention regarding manipulation made in the files by the Enforcement Directorate.

**11.** The reliability and probative value of the statements recorded u/s 50 PMLA, 2002 are to be tested during trial and cannot be used to deny bail to an accused and in support of such contention reliance has been placed in the case of "*Chandra Prakash Khandelwal versus Directorate of Enforcement*" reported in 2023 SCC Online Del 1094 and "*Sanjay Jain versus Enforcement Directorate*" reported in 2024 SCC Online Del 1656. Assumptions seem to have, according to the learned Senior Counsel, assumed considerable importance in the prosecution complaint which can easily be deciphered from a perusal of the same.

**12.** With respect to recovery of a BMW Car and cash amounting to Rs. 36,00,000/- approximately from the premises of Shanti Niketan, New Delhi it has been submitted that the same neither has any bearing to the scheduled offence nor the same has any nexus or is a derivative from a scheduled offence.

**13.** The twin conditions laid down u/s 45 PMLA, 2002 in the facts and circumstances of the case are fulfilled by the petitioner. It has been submitted that in the judgment passed in "*Ranjitsing Brahmajeetsing Sharma versus State of Maharashtra & Another*" reported in (2005) 5 SCC 294, in which the subject matter was under MCOCA wherein the provisions similar to Section 45 PMLA, 2002 had been interpreted and it was held that the Court is not required to arrive at a positive finding of not guilty and the accused has to disprove his guilt on the basis of broad probability. This has been followed in the case of "*Vijay Madanlal Choudhary*" (supra) and in "*Anil Vasantrao Deshmukh versus State of*

*Maharashtra*" reported in (2022) SCC Online Bom. 3150. Mr. Sibal has also placed reliance in the case of "*Mohd. Muslim versus State (NCT of Delhi)*", reported in 2023 SCC Online SC 352.

**14.** Mr. S.V. Raju, learned Additional Solicitor General of India has opposed the prayer for bail of the petitioner and has given a brief background with respect to the application given on 04.05.2023 in terms of Section 66(2) of PMLA, 2002 and on receiving such communication the Circle Officer, Baragain, Ranchi had instituted a First Information Report wherein mention has been made of 17 volumes of Register-II having been found tampered. Several victims have come forward to submit their claims with supporting documents. Mr. Raju has brought to the notice of the Court the formal FIR and has submitted that Section 120B IPC was added and subsequently deleted in spite of the fact that conspiracy was mentioned therein. It has been submitted that the contention of the learned Senior Counsel for the petitioner that there is absence of any predicate offence is a misnomer and absurd. In course of investigation, it was detected that in several cases the nature of the land had been changed by manufacturing false and back dated deeds and in course of investigation handwritten notes/diaries and mobile phones containing incriminating evidences relating to properties acquired by highly placed persons have been seized which were kept concealed by them. Mr. Raju has referred to the survey's conducted on 20.04.2023 and 10.02.2024 while submitting that they were not one sided surveys but surveys, in which, the concerned persons including government officials had participated and the land was found bounded which indicated that only one person was the owner i.e. Hemant Soren. Reference has been made to para 3.7 to 3.11 of the prosecution complaint which according to the learned Additional Solicitor

General of India highlights the forgery committed in the government records. Elaborating his submissions, Mr. Raju has pointed out that during searches conducted on 13.04.2023 voluminous property documents and original registers were seized from the possession of Bhanu Pratap Prasad which were concealed and kept in his room. The properties were spread across different khatas and plots nos. and the property acquired and possessed by the petitioner are entered in three volumes i.e. Volume-I, Volume-IV and Volume-V which were kept by Bhanu Pratap Prasad at his premises. The registers themselves are properties as per the definition in Section 2 (1)(v) of the PMLA, 2002 as they were involved in the commission of the scheduled offence and as such any forgery/ criminality/tampering relatable to the said registers was within the ambit of investigation under PMLA, 2002. Bhanu Pratap Prasad was an accomplice of the petitioner and had played a pivotal role in providing assistance to the petitioner in acquiring "proceeds of crime" i.e. 8.86 acres of land. During analysis of the mobile seized from Bhanu Pratap Prasad the image recovered contained the details of the landed property situated adjacently on 12 plots at Baragain Anchal, total area of which was 8.86 acres. It has been submitted that a brown file was seized which had a sticky note, pasted on it, in which, "CM Baragain Bhuinhari" was written further corroborating the link of the property with the petitioner. In fact, Bhanu Pratap Prasad had admitted in his statement that the 8.86 acres of land belong to the petitioner. So far as the statement of the witness Hilariyas Kachhap u/s 50 PMLA, 2002 is concerned, he has stated that he used to be personally involved in the verification work done by Bhanu Pratap Prasad and he was instrumental in construction of boundary wall over the 8.86 acres of property of the petitioner. The statement of Hilariyas Kachhap gets corroborated by the statements of

Manoj Kumar, Circle Officer, Baragain, Uday Shankar, PPS CMO and Abishek Prasad @ Pinto the press advisor of the petitioner and it gets co-related with the statement of Bhanu Pratap Prasad recorded at para 8.1 of the prosecution complaint. As per Manoj Kumar, Circle Officer Baragain, he had received directions from Uday Shankar, PPS CMO to get the property verified and that Hilariyas Kachhap looks after the said land measuring 8.86 acres on behalf of the petitioner. According to Mr. Raju, the link between the petitioner and his accomplices gets strengthened further in the statement of Uday Shankar, PPS, CMO that instruction to Manoj Kumar, Circle Officer, Baragain to verify the land was given by him on the direction of Abishek Kumar @ Pinto whose statement corroborates the said fact. The chain of events clearly categorizes the involvement of the petitioner. He has referred to Section 110 of the Evidence Act in order to contend that the presumption would be drawn that the petitioner is the owner of 8.86 acres of land since the petitioner has failed to discharge his burden that he is not the owner. It has been submitted that the sticky note was already available in the file and was not deliberately put to implicate the petitioner. The witnesses to the seizure are persons of repute and they have also put their signature in the seizure memo. There cannot be any interpretation with respect to the seized documents since while recovering the same the lock on the room of Bhanu Pratap Prasad had to be broken by the Enforcement Directorate officials. The recovery of various documents/official records confers a deep connection of the land with the petitioner.

**15.** Mr. Raju, learned Additional Solicitor General of India has referred to an application submitted by Raj Kumar Pahan dated 16.08.2023 addressed to the Deputy Commissioner, Ranchi wherein he has sought for cancellation of the registered deed and to restore possession to him and the

Plot numbers mentioned in the said letter co-relates with the property measuring 8.86 acres located near Lalu Khatal, Shanti Nagar, Baragain which is in the possession of the petitioner and this application filed by Raj Kumar Pahan was an apparent effort made by him to shield the petitioner. The application preferred by Raj Kumar Pahan was done immediately after the Enforcement Directorate had issued summons to the petitioner. Some related documents were also seized from the cupboard of the room of the petitioner at Delhi. This according to Mr. Raju would amplify the role of the petitioner in using the State machinery for his own benefit and to frustrate the investigation. Additionally, the haste with which SAR Case No. 81/2023-24 was disposed of is a pointer to the role played by the petitioner and the State machinery. Mr. Raju has further highlighted the fact that in the financial year 2023-24, 103 cases were filed before the SAR Court ; 102 cases have been filed online while SAR Case No. 81/2023-24 was filed offline and only 04 cases were disposed of including SAR Case No. 21/2023-24. The alacrity with which the case was disposed of speaks volumes of the undue influence actuated by the petitioner.

**16.** The twin grounds propounded by Mr. Kapil Sibal, learned Senior Counsel for the petitioner seeking grant of bail viz. (a) there is no predicate offence and, (b) forcible occupation is not a predicate offence have been sought to be nullified by Mr. Raju making reference to the order dated 03.05.2024 passed by a Division Bench of this Court in W.P.(Cr) No. 68 of 2024, wherein according to Mr. Raju an identical contention was raised when the arrest of the petitioner was challenged and all such issues were decided against the petitioner. He has extensively referred to the said order to support his submission. He has copiously referred to the petition filed before the Hon'ble Supreme Court by the

petitioner against the order dated 03.05.2024 passed in W.P.(Cr) No. 68 of 2024 specifically with respect to the contents of Ground-D and Ground-K of the said petition. The consistent plea of the petitioner that at best it can be a case of forcible occupation and thus no case is made out under the PMLA, 2002 seems to have been stonewalled by virtue of the averments made in the said ground as "illegal acquisition" is the main contention of the petitioner which also is the case of the Enforcement Directorate. The acceptance of the fact that "Bhuinhari Land" is non-transferable under the CNT Act and that non-tribals had got their names wrongly mutated/entered in the revenue records during the period 1978-1986 is also palpable from the averments made in "Ground-K". It has been submitted that the grounds which have been propounded in the instant application for bail have already been extensively agitated before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 6611/2024 which stood dismissed as withdrawn on 22.05.2024 and, therefore, such issues having been settled cannot be reagitated.

**17.** Mr. Raju, learned Additional Solicitor General of India has once again reverted back to the order dated 03.05.2024 passed by the Division Bench of this Court in W.P.(Cr) No. 68 of 2024 and with respect to the contention of Mr. Sibal in the said case as noted in para 19 that the Enforcement Directorate must show that there was a criminal conspiracy amongst the accused persons to commit one or other offences included in Part A, B, C of the Schedule reference has been made to the case of "*Pavana Dibbur versus The Directorate of Enforcement*" in Criminal Appeal No. 2779/2023. He has also referred to the following observation made in the said order, "*In our opinion, any attempt to commit a schedule offence has to be made in Section 2 (1)(u) of the PMLA, 2002 as the expression 'any criminal activity relating to a*

*schedule offence' shall encompass an attempt to commit a schedule offence*". In continuation to the aforesaid the further finding which has been recorded is as quoted herein, "*it may so happen, as has happened in this case, that the property was first grabbed and then the attempt was made to make it lawfully acquired through illegal acts which shall constitute the schedule offence or an attempt to commit the schedule offence*". Reference has also been made to the finding that the abundance of materials collected by the Enforcement Directorate prima facie shows the involvement of the petitioner with the "proceeds of crime" and "money laundering". In the present case, as per Mr. Raju a schedule offence was already committed by the petitioner. The finding of the Division Bench assumes considerable significance since the same has not been upset by the Hon'ble Supreme Court. Reliance has once again been placed on the findings of the Division Bench, which reads thus, "*there is no goof ups in the EDs case and the statements made in the affidavit in opposition have to be read with reference to the documents appended therewith and the mere use of some inconsistent or contradicting expressions in the affidavit cannot be a ground to hold that the materials in possession of the ED were insufficient or that the Arresting Officer himself was confused*". It has been submitted by Mr. Raju that the Division Bench had categorically held that at this stage it is not possible to hold that the Enforcement Directorate has proceeded against the petitioner for no reasons. While referring to Section 19 PMLA, 2002 submission has been advanced that the Division Bench finding is categorical that sufficient materials are available indicating the guilt of the petitioner and the "reason to believe" in the backdrop of such finding gets substantiated. In fact, once the cognizance has been taken on 04.04.2024 the bar u/s 45 PMLA, 2002 kicks in thus disentitling the plea of the petitioner

for grant of bail. The condition u/s 45 PMLA, 2002 with respect to propensity to commit an offence to dispel the plea of bail sought for is also demonstrated from the fact that the petitioner had instituted a criminal case against the Enforcement Directorate officials being SC/ST P.S. Case No. 06/2024. The conduct of the petitioner has further been highlighted to the effect that 10 opportunities were given to the petitioner to record his statement but he did not comply with 8 such opportunities and finally his statement was recorded initially at his residence on 20.01.2024 and again on 31.01.2024, on which date, he was arrested. The petitioner has misused the State machinery to subvert the investigation as would appear from the chronology of events demarcating the role of the petitioner in such acts. The provisional attachment order in terms of Section 9 PMLA, 2002 further intensifies the case of money laundering against the petitioner as the adjudicating authority has also accepted the said fact in its order dated 30.03.2024.

**18.** Mr. S.V. Raju, learned Additional Solicitor General of India has referred to various judgments in support of his numerous contentions advanced in opposition to the plea of bail of the petitioner. His contention of withdrawal of an application amounts to dismissal is anchored in the withdrawal of Special Leave to Appeal (Crl.) No. 6611/2024 before the Hon'ble Supreme Court which was against the order dated 03.05.2024 passed in W.P.(Cr.) No. 68/2024 and gets support from the case of "*State of Gujarat versus Ashish B. Gandhi*" reported in 1992 SCC Online Guj 152 and "*Rajubhai Pithabhai Vala versus State of Gujarat*" reported in 2011 SCC Online Guj 2872. Submission has been advanced that the provisions of PMLA, 2002 has a wide amplitude and covers any direct or indirect attempt to indulge or knowingly assist or being knowingly party or being actively involved in any process

or activity connected with the "proceeds of crime". Support to the said contention is in the form of the judgment rendered in the case of "*Vijay Madanal Choudhary & Others versus Union of India*" reported in 2022 SCC Online SC 929, "*Y. Balaji versus Karthik Desari and Another*" reported in 2023 SCC Online SC 645 and "*Anoop Bartaria & Etc. versus Deputy Director Enforcement Directorate & Another*" in SLP (Crl.) No. 2397-2398/2019.

**19.** With respect to the twin conditions enshrined in Section 45 (1) PMLA, 2002 reference has been made to the case of "*Vijay Madanlal Choudhary versus Union of India*" (supra), "*The Directorate of Enforcement versus M. Gopal Reddy & Anr.*" in SLP (Crl.) No. 8260/2021, "*Tarun Kumar versus Assistant Director Directorate of Enforcement*" reported in 2023 SCC Online 1486 and "*Union of India versus Varinder Singh*" reported in (2018) 15 SCC 248.

**20.** "*Vijay Madanlal Choudhary & Others versus Union of India*" (supra) once again is the fulcrum of the submission made by Mr. Raju, learned ASGI, that statements u/s 50 PMLA, 2002 are admissible. According to him, this submission is further fortified by the judgment of Delhi High Court dated 06.04.2023 in the case of "*Satyendra Kumar Jain versus Directorate of Enforcement*" reported in 2023 SCC OnLine Del 1953, "*Rohit Tandon versus Directorate of Enforcement*" reported in 2018 11 SCC 46 and "*Tarun Kumar versus Assistant Director Directorate of Enforcement*" (supra) validates the said submission.

**21.** The Court at the stage of bail cannot get into the credibility and reliability of witnesses put up by the prosecution and the case of "*Satish Jaggi versus State of Chhattisgarh*" reported in (2007) 11 SCC 195, is a pointer to that aspect. "*CBI versus V. Vijay Sai Reddy*" reported in (2013) 7 SCC 452, has been referred to show case the submission

that for grant of bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" and that non-arrest/non-arraying of the co-accused is not a ground for bail to another accused.

**22.** Even statements u/s 161 Cr.P.C. are required to be considered while adjudicating upon a bail application and in support of such submission reference has been made to the case of "*Salim Khan versus Sanjai Singh and Another*" reported in (2002) 9 SCC 670.

**23.** The offence of money laundering is an independent offence and a person accused of money laundering need not necessarily be an accused in the schedule offence. Once again reference has been made to the case of "*Vijay Madanlal Choudhary & Others versus Union of India*" (supra) as well as "*Dr. Manik Bhattacharya versus Ramesh Malik and Others*" reported in 2022 SCC Online SC 1465 and "*Pavana Dibbur versus The Directorate of Enforcement*" (supra).

**24.** In serious economic offences delay cannot be the only ground to grant bail and Section 436A Cr.P.C. is a sufficient safeguard. Reference in this connection has been made to the case of "*Religare Finvest Ltd. versus State of Nct of Delhi & Anr.*" of the Delhi High Court in CRL MC 796/221, "*State of Bihar and Another versus Amit Kumar Alias Bachcha Rai*" reported in (2017) 13 SCC 751 and "*Satyendra Kumar Jain versus Directorate of Enforcement*" in SLP (Crl.) No. 6561/2023.

**25.** To spruce up the submission that reason to believe does not include considering merits or demerits, Mr. Raju has referred to "*Gurucharan Singh versus State (Delhi Admn.)*" reported in (1978) 1 SCC 118, "*Nimmagadda Prasad versus Central Bureau of Investigation*" reported in (2013) 7 SCC 466, "*Ranjitsing Brarhmajeetsing Sharma versus State of Maharashtra & Another*" reported in (2005) 5 SCC 294, "*Puran*

*versus Rambilas and Another*" reported in (2001) 6 SCC 338, "*Lokesh Singh versus State of Uttar Pradesh and Another*" reported in (2008) 16 SCC 753, "*Chaman Lal versus State of Uttar Pradesh and Anothe*" reported in (2004) 7 SCC 525, "*State of Maharashtra versus Sitaram Popat Vetal and Another*" reported in (2004) 7 SCC 521, "*Dilawar Balu Kurane versus State of Maharashtra*" reported in (2002) 2 SCC 135.

**26.** Mr. Raju, learned ASGI has referred to the case of "*Directorate of Enforcement versus Aditya Tripathi*" reported in 2023 SCC Online SC 619 to buttress his submission that the investigation in the schedule/predicate offence is an irrelevant consideration for the purposes of bail u/s 45 PMLA, 2002. Once cognizance has been taken the same implies that judicial mind has been applied to the fact that prima facie offence has been established and his submission according to Mr. Raju gains credence from the judgment rendered in the case of "*Manharibhai Muljibhai Kakadia and Another versus Shailesbhbhai Mohnabhai Patel and Others*" reported in (2012) 10 SCC 517.

**27.** Mr. Raju, learned ASGI based on his extensive submission has concluded that the dominant features of the case do not entitle the petitioner to the grant of bail and, therefore, this application deserves to be dismissed.

**28.** Miss Meenakshi Arora, learned Senior Counsel for the petitioner has sought to negate the submission of the learned ASGI by firstly referring to the order of the Division Bench dated 03.05.2024 in W.P.(Cr.) No. 68 of 2024 and submitting that Section 19 PMLA, 2002 and Section 45 PMLA, 2002 are intrinsically different as the said provisions are invoked and operate at different stages. She has submitted, in such context, that the prosecution complaint was filed by the Enforcement Directorate post the order passed in W.P.(Cr.) No. 68 of 2024 and it goes without saying that cognizance was

taken at a later stage. This would be evident from the finding recorded by the Division Bench to the effect that "at this juncture, a prosecution complaint is yet to be filed and the result of the investigation in Sadar P.S. Case No. 272 of 2023 is awaited". It has been submitted that the order in W.P.(Cr.) No. 68 of 2024 was delivered on 03.05.2024 and during the intervening period from the date of reserving the order and its deliverance the prosecution complaint was filed on 30.03.2024.

**29.** Miss Arora has submitted that the right to grant of bail to the petitioner cannot be subjugated by the order of the Division Bench as both operate in different fields. The observations made by the Division Bench that the provisions of PMLA, 2002 have to interpreted, expanded and expounded whenever the need arises keeping in mind the object and purpose behind the legislature are not in the teeth of the judgment rendered by the Hon'ble Supreme Court in "*Vijay Madanlal Choudhary & Others versus Union of India*" (supra) rather is contrary to the observations made therein.

**30.** It has been contended that the findings recorded at para 3.5 of the prosecution complaint regarding 4.83 of land speaks about the mutilation of the pages of Register-II but the same is with respect to a different piece of land not co-related to the subject matter of the prosecution complaint. Para 3.1 of the prosecution complaint relates to acquisition and possession of 8.86 acres of land by the petitioner but such allegations are farfetched and not backed up by any substantive evidence. It has been submitted that the starting point of the accusation is an image recovered from the mobile of Bhanu Pratap Prasad which contains the details of a cluster of landed properties at Baragain and while reading out the table which forms part of para 3.9 it has been sought to be impressed upon that though the names were entered during the period 1978 to 1989 but the name of the petitioner does

not figure in the same. Miss Arora, learned Senior Counsel for the petitioner has reiterated the submission advanced by Mr. Kapil Sibal that it is the case of the Enforcement Directorate that timely action could prevent the illegal acquisition of properties by forging and fabricating government records. The documents were not in possession of the petitioner but in possession of Bhanu Pratap Prasad. This has been contradicted by the own finding of the Enforcement Directorate that the lands were illegally and fraudulent acquired and possessed by the petitioner. There was no forgery as the Enforcement Directorate itself has stated about foiling efforts to forge the document. Once again a vague assumption has been created on account of the presence of the Map/Plan of a Banquet Hall derived from the WhatsApp chat between Binod Singh and the petitioner. Continuous possession of the petitioner as assigned to the petitioner in para 10.29 of the prosecution complaint is also a misnomer and is scuttled in absence of any concrete evidence. The learned Senior Counsel has briefly taken the Court through the statements u/s 50 PMLA, 2002 and has submitted that the absence of any other evidence obscures the validity of such statements. The Electric Meter was in the name of Hilariyas Kachhap and Raj Kumar Pahan had a registered document of the year 2015 and the purported acquisition and possession of the petitioner over the said land cannot be inferred. In fact, at the time, when the summons were issued to the petitioner he came to be informed in December, 2023 about the subject matter of the case. Referring to the case of "*Rohit Tandon versus Directorate of Enforcement*" (supra), it has been submitted that a formidable case was made out against the said accused but the test of formidability is absent in the case of the petitioner. This observation finds reflected in the case of "*Tarun Kumar versus Assistant Director, Directorate of Enforcement*" (supra) as well.

**31.** Miss Arora has referred to the supplementary prosecution complaint at para 9.11 which relates to a false deed prepared by Md. Saddam Hussain, Afsar Ali and others who were close accomplices of Bhanu Pratap Prasad and the same has been interpreted by the Enforcement Directorate to show possession of the petitioner over Plot Nos. 989 and 996. The acquisition of property in a fraudulent and concealed manner as at para 9.21 is an inconclusive proposition which does not establish any connection with the petitioner. The visual representation at para 9.24 does not complete the chain to establish its relatedness with the petitioner. It has been submitted that cognizance on the supplementary prosecution complaint has been taken on 13.06.2024. Learned Senior Counsel has also referred to the case of "*Ranjitsing Brarhmajeetsing Sharma versus State of Maharashtra & Another*" reported in (2005) 5 SCC 294 and "*Tarsem Lal versus Directorate of Enforcement Jalandhar Zonal Office*" reported in 2024 SCC Online SC 971. She has reiterated about the incarceration of the petitioner in custody which is since 31.01.2024.

**32.** I have heard the learned counsels for the respective sides and have also perused the affidavits filed including the prosecution complaint and the supplementary prosecution complaint.

**33.** Mr. Kapil Sibal, learned Senior Counsel for the petitioner has stated about absence of any predicate offence and, therefore, the provisions of PMLA, 2002 will not be applicable. A predicate offence or a schedule offence is defined in Section 2(1)(y) of the PMLA, 2002 which 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 offence is One Crore Rupees or more; or

(iii) the offences prescribed under Part C of the Schedule. Section 3 of PMLA, 2002 reads as follows:

> ***"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 with the [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,—*
>
> ***(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.]"*

**34.** Section 2 (1)(u) and Section 2 (1)(v) defines "Proceeds of Crime" and "Property" respectively and the same reads as under:

> ***2. Definitions.—(1) In this Act, unless the context otherwise requires,—*** ..............
>
> ***(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" include 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;]*

***(v)** "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;*

*[**Explanation**.—For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;*

**35.** In "***Vijay Madanlal Choudhary & Others versus Union of India***" (supra), it has been held as follows:

> ***"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.*

***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 July 31, 2019) ; and the same has been merely explained and clarified by way of Explanation vide the 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.*"

**36.** In "***Pavana Dibbur versus the Directorate of Enforcement***" (supra), the same view was taken as in "***Vijay Madanlal Choudhary & Others versus Union of India***" which reads thus:

> ***"18.*** *In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the*

*chargesheets filed in the scheduled offences deserves to be rejected."*

**37.** In the present case it all started with the investigation into the fraudulent acquisition of land which was in possession of the Ministry of Defence, Government of India and this led to identifying some private persons in connivance with government officials which were part of a land grabbing syndicate and whose involvement ranged from falsification of government records to tampering with the original revenue records. Recoveries were effected from the premises of Bhanu Pratap Prasad, Revenue Sub Inspector, Circle Office, Baragain, Ranchi which included property documents and 17 original registers (Register-II). This led to registration of Sadar P.S. Case No. 272/23. The documents seized according to the Enforcement Directorate manifested in a trail designating the role of the petitioner in the illegal acquisition and possession of 8.86 acres of land situated at Shanti Nagar, Baragain, Bariatu Road (near Lalu Khatal). It is, therefore, the case of the Enforcement Directorate that the provisions of PMLA, 2002 would apply since the petitioner had derived or obtained property as a result of a scheduled offence and had indulged himself in an activity connected with the said property. The factual aspects of the case would negate the submission of the learned Senior Counsel for the petitioner that there has been no schedule offence and, therefore, no case of money laundering is made out. In fact, the same issue was raised by the petitioner in W.P.(Cr.) No. 68 of 2024 but the Division Bench had invalidated the said submission in the following manner:

> ***"19.*** *Mr. Kapil Sibal, the learned senior counsel submitted that the offence of conspiracy included in Part-A to the Schedule is not a standalone offence and to rope in the petitioner who is not an accused in Sadar PS Case No. 272 of 2023*

*with the aid of section 120-B of the Indian Penal Code, the ED must show that there was a criminal conspiracy among the accused persons to commit one or the other offences included in Parts A, B and C of the Schedule. It is contended that the petitioner not being accused of committing a scheduled offence and not connected with any proceeds of crime cannot be prosecuted. We do not find any substance in this submission. In a series of pronouncements, the Hon'ble Supreme Court held that it is not necessary that the person accused of the offence of money-laundering was made an accused in the First Information Report lodged for the commission of a predicate offence. A decision on the point is found in "Y. Balaji" 11 where the issue contested was whether mere registration of a First Information Report for a predicate offence which may be a scheduled offence is sufficient for the ED to register an ECIR and summon a person under section 50 of the PMLA. On behalf of the accused, it was contended that unless the commission of the scheduled offence generated proceeds of crime which was laundered by someone the ED cannot issue summons under section 50(2) by registering an ECIR even before identifying some property as representing the proceeds of crime. The Hon'ble Supreme Court held that: "these contentions, in our opinion, if accepted, would amount to putting the cart before the horse. Unfortunately for the accused, this is not the scheme of the Act".*

**38.** Since the order dated 03.05.2024 passed in W.P.(Cr.) No. 68 of 2024 has been extensively referred to by the learned Additional Solicitor General of India stressing primarily on the binding nature of the said order upon this Court particularly with respect to the findings recorded in each of the issues, the said order has been perused. The prayer in the writ application, varied though it is, can be summed up primarily to focus on the issuance of summons to the petitioner which according to the petitioner was illegal and in colourable exercise of power as well as vindictive and to declare the arrest and continued detention of the petitioner as unwarranted,

arbitrary and violative of Article-21 of the Constitution of India. The fundamental issue was with respect to Section 19 PMLA, 2002. When W.P.(Cr.) No. 68 of 2024 was heard on 28.02.2024, the prosecution complaint was not filed by the Enforcement Directorate but the same was subsequently filed on 30.03.2024 and, cognizance was taken. Thus an entirely new scenario has emerged with the filing of the prosecution complaint and the supplementary prosecution complaint. The present case being an application of bail and operating in an entirely different sphere and in view of the changed circumstances noted above would not be shackled by the observations made in W.P.(Cr.) No. 68 of 2024.

**39.** The involvement of the petitioner as per the prosecuting agency is primarily through the angle of conspiracy though according to the Enforcement Directorate Section 120B was struck off in the formal FIR at the behest of the Police in spite of conspiracy playing a predominant role in the predicate offence which led to institution of Sadar P.S. Case No. 272 of 2023. The prelude to the entire episode culminating in submission of prosecution complaint and supplementary prosecution complaint by the Enforcement Directorate is the recovery of huge quantity of incriminating documents showing forgery, manipulation and tampering of government records and mutilation of government revenue records. It is the consistent case of the Enforcement Directorate that the petitioner had manoeuvred the State Agency while holding the post of Chief Minister of Jharkhand in acquisition and possession of 8.86 acres of land at Shanti Nagar, Baragain, Bariatu, Ranchi and the Investigating Agency has attempted to connect the dots criminating the petitioner with derivation of the said property which can be construed to be from "proceeds of crime". The image retrieved from the mobile phone of Bhanu Pratap Prasad revealed the details of a

cluster of landed property in Baragain Anchal totalling an area of 8.86 acres which was said to have been possessed by the petitioner since 2010-11. The plan of a Banquet Hall was retrieved from the mobile phone of Binod Singh who is a close accomplice of the petitioner and the location of the Baragain Banquet Hall co-relates with the existence of the property of 8.86 acres. Once the petitioner had got a whiff of the impending action of the Enforcement Directorate, he, in order to thwart such move had set up Raj Kumar Pahan whose filing of an application u/s 71A CNT Act for restoration registered as SAR Case No. 81/2023-24 culminated in an order passed in haste without following the requisite procedure thus circumventing the acquisition and possession of the land by the petitioner. A link between the petitioner and his accomplices have also sought to be established from the statement of Bhanu Pratap Prasad, Hilariyas Kachhap, Manoj Kumar, Uday Shankar and Abhishek Kumar @ Pintu.

**40.** At this juncture, it would be apt to refer to the statements recorded u/s 50 PMLA, 2002 which primarily concentrates on the purported acquisition and possession of 8.86 acres of land at Baragain by the petitioner. The statement of Bhanu Pratap Prasad was recorded on several occasions and without going into the details of such statements, what can be culled out is that on a verbal direction from Manoj Kumar, Circle Officer, Baragain he had verified the property having 8.86 acres and he as well as the Anchal Aamin had admitted that they had come to know that the land belonged to the present petitioner. It would evident from the statement of Bhanu Pratap Prasad that his involvement in forging and manipulation of government records had spread its tentacles to a wider spectrum and not particularly to only 8.86 acres of land which is the subject matter of the present case.

**41.** The statement of the petitioner seems to reveal complete denial of the allegation of acquisition and possession of 8.86 acres of land at Baragain. He had also denied of having any acquaintance with Bhanu Pratap Prasad. He had denied of having any knowledge about the retrieved image of a cluster of land recovered from the mobile of Bhanu Pratap Prasad. The petitioner was also confronted with the WhatsApp chat between him and Binod Singh which contained sharing of information and conversation in respect of various properties but he had given a false statement regarding these chats. The construction of a Banquet Hall proposed at Lalu Khatal, Baragain prepared by Grid Consultants and shared by Binod Singh on WhatsApp with the petitioner have also been met with an elusive reply by the petitioner. Inference has been drawn by the Enforcement Directorate that the Banquet Hall was meant to be constructed on the 8.86 acres of land of the petitioner since there was no other land of such proportion in the vicinity of Lalu Khatal, Bariatu. In the statement of Baijnath Munda it is revealed that the land in question was originally owned by his ancestors and was forcibly acquired by the petitioner and Shibu Soren and the petitioner is in possession of the same since the year 2010.

**42.** The statement of Santosh Munda u/s 50 PMLA, 2002 divulges that he is the Caretaker of the land measuring 8.86 acres which has been acquired and possessed by the petitioner illegally and that he was earlier involved in the construction of the boundary wall after which he got the work of a Caretaker.

**43.** As per the statement of Manoj Kumar, Circle Officer, Baragain he had instructed Bhanu Pratap Prasad to inspect the property and furnish a report on the direction of Uday Shankar, PPS, CMO and as per Uday Shankar such direction was received by him from Abhishek Prasad @ Pinto

the Press Advisor to the petitioner. The verification of the land according to Abhishek Prasad @ Pinto was on the instruction of the petitioner.

**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 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 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 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 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 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...*

*xxxx xxxx xxxx xxxx*

*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 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 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, 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 application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:*
>
> ***Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:***
>
> ***Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—***
>
> *(i) the Director; or*
>
> *(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.*

***[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]***
***(2) The limitation on granting of bail specified in [* * *] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.***
***[Explanation.—For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (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.]"***

**49.** In *Gurucharan Singh versus State (Delhi Admn.)*" (supra) the "reasonable grounds" as appearing in Section 437 Cr.P.C. has been considered and it has been held as follows:

***"21.** Section 437 CrPC is concerned only with the Court of Magistrate. It expressly excludes the High Court and the Court of Session. The language of Section 437(1) may be contrasted with Section 437(7) to which we have already made a reference. While under sub-section (1) of Section 437 CrPC the words are: "If there appear to be reasonable grounds for believing that he has been guilty", sub-section (7) says: "that there are reasonable grounds for believing that the accused is not guilty of such an offence". This difference in language occurs on account of the stage at which the two sub-sections operate. During the initial investigation of a case in*

*order to confine a person in detention, there should only appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life. Whereas after submission of charge-sheet or during trial for such an offence the Court has an opportunity to form somewhat clear opinion as to whether there are reasonable grounds for believing that the accused is not guilty of such an offence. At that stage the degree of certainty of opinion in that behalf is more after the trial is over and judgment is deferred than at a pre-trial stage even after the charge-sheet. There is a noticeable trend in the above provisions of law that even in case of such non-bailable offences a person need not be detained in custody for any period more than it is absolutely necessary, if there are no reasonable grounds for believing that he is guilty of such an offence. There will be, however, certain overriding considerations to which we shall refer hereafter. Whenever a person is arrested by the police for such an offence, there should be materials produced before the Court to come to a conclusion as to the nature of the case he is involved in or he is suspected of. If at that stage from the materials available there appear reasonable grounds for believing that the person has been guilty of an offence punishable with death or imprisonment for life, the Court has no other option than to commit him to custody. At that stage, the Court is concerned with the existence of the materials against the accused and not as to whether those materials are credible or not on the merits.*"

**50.** In the case of "*Nimmagadda Prasad versus Central Bureau of Investigation*" (supra), it has been held as under:

"**24.** *While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable*

> *apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.*"

**51.** In the case of "*Ranjitsing Brahmajeetsing Sharma versus State of Maharashtra*" (supra), the Hon'ble Supreme Court was considering the interpretation and application of the Maharashtra Control of Organized Crime Act, 1999 (MCOCA) and the twin conditions for grant of bail as enumerated in Section 21 of the said Act seems to be almost pari materia with Section 45 PMLA, 2002 and the factors which must weigh in the mind of the Court while granting or denying bail has been dealt with in the following manner.

> ***"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.*

***47.*** *In Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528 : 2004 SCC (Cri) 1977] this Court observed : (SCC pp. 537-38, para 18)*

> *"18. We agree that a conclusive finding in regard to the points urged by both the sides is not expected of the court considering a bail application. Still one should not forget, as observed by this Court in the case Puran v. Rambilas [(2001) 6 SCC 338 : 2001 SCC (Cri) 1124] : (SCC p. 344, para 8)*
>
> *'Giving reasons is different from discussing merits or demerits. At the stage of granting bail a detailed examination of evidence and elaborate documentation of the merits of the case has not to be undertaken. … That did not mean that whilst granting bail some reasons for prima facie concluding why bail was being granted did not have to be indicated.'*

*We respectfully agree with the above dictum of this Court. We also feel that such expression of prima facie reasons for granting bail is a requirement of law in cases where such orders on bail application are appealable, more so because of the fact that the appellate court has every right to know the basis for granting the bail. Therefore, we are not in agreement with the argument addressed by the learned counsel for the accused that the High Court was not expected even to indicate a prima facie finding on all points urged before it while granting bail, more so in the background of the facts of this case where on facts it is established that a large number of witnesses who were examined after the respondent was enlarged on bail had turned hostile and there are complaints made to the court as to the threats administered by the respondent or his supporters to witnesses in the case. In such circumstances, the Court was duty-bound to apply its mind to the allegations put forth by the investigating agency and ought to have given at least a prima facie finding in regard to these*

*allegations because they go to the very root of the right of the accused to seek bail. The non-consideration of these vital facts as to the allegations of threat or inducement made to the witnesses by the respondent during the period he was on bail has vitiated the conclusions arrived at by the High Court while granting bail to the respondent. The other ground apart from the ground of incarceration which appealed to the High Court to grant bail was the fact that a large number of witnesses are yet to be examined and there is no likelihood of the trial coming to an end in the near future. As stated hereinabove, this ground on the facts of this case is also not sufficient either individually or coupled with the period of incarceration to release the respondent on bail because of the serious allegations of tampering with the witnesses made against the respondent.*"

**52.** The consideration which has to be bestowed in the case of circumstantial evidence has been assigned in the under noted paragraph.

"***43.*** *Section 21(4) of MCOCA does not make any distinction between an offence which entails punishment of life imprisonment and an imprisonment for a year or two. It does not provide that even in case a person remains behind the bars for a period exceeding three years, although his involvement may be in terms of Section 24 of the Act, the court is prohibited to enlarge him on bail. Each case, therefore, must be considered on its own facts. The question as to whether he is involved in the commission of organised crime or abetment thereof must be judged objectively. Only because some allegations have been made against a high-ranking officer, which cannot be brushed aside, may not by itself be sufficient to continue to keep him behind the bars although on an objective consideration the court may come to the conclusion that the evidences against him are not such as would lead to his conviction. In case of circumstantial evidence like the present one, not only culpability or mens rea of the accused should be prima facie established, the court must also consider the question as to whether the*

*circumstantial evidence is such whereby all the links in the chain are complete.”*

**53.** The restriction on the power of Court to grant bail has been dealt with and the same reads as under:

> ***“35.*** *Presumption of innocence is a human right. (See Narendra Singh v. State of M.P. [(2004) 10 SCC 699 : 2004 SCC (Cri) 1893] , SCC para 31.) Article 21 in view of its expansive meaning not only protects life and liberty but also envisages a fair procedure. Liberty of a person should not ordinarily be interfered with unless there exist cogent grounds therefor. Sub-section (4) of Section 21 must be interpreted keeping in view the aforementioned salutary principles. Giving an opportunity to the Public Prosecutor to oppose an application for release of an accused appears to be reasonable restriction but clause (b) of sub-section (4) of Section 21 must be given a proper meaning.*
>
> ***36.*** *Does this statute require that before a person is released on bail, the court, albeit prima facie, must come to the conclusion that he is not guilty of such offence? Is it necessary for the court to record such a finding? Would there be any machinery available to the court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?*
>
> ***37.*** *Such findings are required to be recorded only for the purpose of arriving at an objective finding on the basis of materials on record only for grant of bail and for no other purpose.*
>
> ***38.*** *We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean*

*an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Penal Code, 1860 may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.***"**

**54.** In "*Tarun Kumar versus Assistant Director Directorate of Enforcement*" (supra) the twin conditions as enshrined in Section 45 PMLA, 2002 was once again put to test and it has been held as follows:

***"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.***"**

**55.** In "*Vijay Madanlal Choudhary & Others versus Union of India*" (supra), the broad probabilities based on the materials collected during investigation is to be considered and while reiterating the observations made in "*Ranjitsing Brahmajeetsing Sharma*", it was concluded thus:

> ***"401.*** *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.***"**

**56.** In the case of "*Y. Balaji versus Karthik Desari and Another*" reported in 2023 SCC Online SC 645, it has been held as follows:

> ***"100.*** *All the three FIRs allege that the accused herein had committed offences included in the*

> *Schedule by taking illegal gratification for providing appointment to several persons in the Public Transport Corporation. In one case it is alleged that a sum of more than Rs. 2 crores had been collected and in another case a sum of Rs. 95 lakhs had been collected. It is this bribe money that constitutes the 'proceeds of crime' within the meaning of Section 2(1)(u). It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of "acquisition" takes place. Even if he does not retain it but "uses" it, he will be guilty of the offence of money-laundering, since "use" is one of the six activities mentioned in Section 3.***"**

**57.** In the case of **"*Vijay Agrawal through prokar versus Enforcement Directorate*",** reported in (2023) 2 HCC (Del) 651, it has been held as follows:

> **"*35.*** *In the present case, the petitioner is stated to be renowned developer and his plea that he did not know that he is dealing with the tainted money cannot be brushed aside mechanically. If the liberty of an individual is concerned, the court cannot proceed merely on the basis of assumptions and presumptions. The evidentiary value of the statement recorded under Section 50 of the PMLA has to be tested at the end of the trial and not at the stage of bail. The twin conditions of Section 45 do not put an absolute restrain on the grant of bail or require a positive finding qua guilt.*
>
> ***36.*** *A bare perusal of the Section 2(u) of the Prevention of Money-Laundering Act, 2005 which provides for the definition of "proceeds of crime" indicates that it is the property derived or obtained, directly or indirectly which relates to criminal activity relating to a scheduled offence. Similarly in*

*order to be punished under Section 3 of the PMLA, it is necessary that person dealing with the "proceed of crime" must have some knowledge that it is tainted money. Though, the direct evidence in this regard may not be possible and the court is also conscious of the fact that at this stage, the evidence cannot meticulously be examined for this purpose. At the same time, for the purpose that evidence cannot be meticulously examined at this stage, the court cannot merely proceed on the basis of assumption. There has to be some substantial link between the money received and criminal activity relating to scheduled offence which can be attributed to the petitioner.***"**

**58.** The plethora of judgments cited by the learned counsel for the respective sides gives prominence to the broad parameters which have to be satisfied in order to fulfill the twin conditions set out in Section 45 PMLA, 2002.

**59.** "*Ranjitsing Brahmajeetsing Sharma versus State of Maharashtra*" (supra), reminds the duty of the Court not to weigh the evidence meticulously at the time of consideration of bail but to arrive at a finding on the basis of broad probabilities. The application of mind must be inherent in the order refusing or granting bail to the applicant more so in cases of serious nature.

**60.** The present case in the perspective of the legal pronouncements referred to above is manifest with circumstantial evidence and according to the Enforcement Directorate the chain is complete thereby foisting the role of the petitioner in the acquisition and possession of 8.86 acres of land at Shanti Nagar, Baragain, Bariatu, Ranchi. It is pertinent to note that in the numerous registers and revenue records recovered from the premises of Bhanu Pratap Prasad the name of the petitioner or his family members does not figure. The plan of a Banquet Hall retrieved from the mobile of Binod Singh in his WhatsApp chat with the petitioner depicts

the area as Lalu Khatal, and since the 8.86 acres of land allegedly possessed by the petitioner is in the vicinity of Lalu Khatal and since there was no other open tract of land of considerable dimension in the said area it was inferred that the plan of the Banquet Hall was prepared at the behest of the petitioner being oblivious to the fact that even the clients name did not figure in the plan submitted by Grid Consultants.

**61.** On consideration of the statements of the persons recorded u/s 50 PMLA, 2002, it transpires that Bhanu Pratap Prasad was directed by Manoj Kumar, Circle Officer, Baragain to submit a verification report giving details of the property measuring 8.86 acres. He has stated about the petitioner being the owner of the said property. The Aamin, Shristidhar Mahto had disclosed that he had "come to know" that the property belonged to the petitioner. The said Bhanu Pratap Prasad was subsequently confronted with the revenue records recovered from his premises but in none of his ensuing statements the name of the petitioner figures. Ashok Jaiswal, Shashi Bhushan Singh and Bishnu Kumar Bhagat have claimed to have purchased the land in the year 1985 but the petitioner and others had forcibly got them evicted in the year 2009-10 and the complaints made were not entertained by the Police. It is indeed surprising as to how these persons could purchase the land when admittedly it is a "Bakast Bhuinhari" land which is non-transferrable in terms of Section 48 of the CNT Act. The verification of the land as ostensively done at the behest of the petitioner is traced back to Abhishek @ Pintu, the Press Advisor and whose initiation of such verification ultimately reached Bhanu Pratap Prasad through various intermediaries, which is apparent from the statement of such persons recorded u/s 50 PMLA, 2002. As per the allegations emanating from the statements of the persons recorded u/s 50 PMLA, 2002, the petitioner had acquired and possessed the

land comprising of 8.86 acres in the year 2010 and the boundary wall was also constructed and it seems that only during the tenure of Bhanu Pratap Prasad, Revenue Sub Inspector, Circle Office, Baragain, Ranchi there was a necessity to verify the land in question which seems to be farfetched and with an intent to prosecute the petitioner. The Electric Meter installed in the said premises is in the name of Hilariyas Kachhap and here also the presence of the petitioner in any tangible or intangible form is absent. The Enforcement Directorate has questioned the order dated 29.01.2024 in S.A.R. Case No. 81/2023-24 as the same was instituted by Raj Kumar Pahan at the behest of the petitioner to create parallel evidence to exculpate the petitioner from the schedule offence which would gain strength from the haste with which the order was passed. The order dated 29.01.2024 in S.A.R. Case No. 81/2023-24 had been perused and it seems that all safeguards had been taken as legally required and thereafter the land was ordered to be restored in favour of Raj Kumar Pahan and Others. This order has attained finality in absence of any challenge mounted to it by the other side. It also seems that this was not the only case disposed of by the SAR Court during the period 2023-2024 but three other cases as well were disposed of and the order dated 29.01.2024 considering the reasons given cannot be concluded to be an order fraught with baseless reasonings.

**62.** The overall conspectus of the case based on broad probabilities does not specifically or indirectly assign the petitioner to be involved in the acquisition and possession as well as concealment of 8.86 acres of land at Shanti Nagar, Baragain, Ranchi connected to the "proceeds of crime". None of the registers/revenue records bare imprint of the direct involvement of the petitioner in the acquisition and possession of the said land. As it has been noticed above, the statement of

some of the persons u/s 50 PMLA, 2002 designated the petitioner in the acquisition and possession of the property in question in the year 2010 without any material worth consideration and for all this while none of the ousted persons had approached the competent authority by registering any complaint which has conveniently been discounted by the Enforcement Directorate that the approaches though made to the Police proved futile. There was no reason for the purported oustees from the land in question not to have approached the authorities for redressal of their grievance if at all the petitioner had acquired and possessed the said land when the petitioner was not in power. The claim of the Enforcement Directorate that its timely action had prevented the illegal acquisition of the land by forging and manipulating the records seems to be an ambiguous statement when considered in the backdrop of the allegation that the land was already acquired and possessed by the petitioner as per some of the statements recorded u/s 50 PMLA, 2002 and that too from the year 2010 onwards.

**63.** The consequence of the findings recorded by this Court satisfies the condition as at Section 45 PMLA, 2002 to the effect that there is "reason to believe" that the petitioner is not guilty of the offence as alleged. So far as the condition that he is not likely to commit any offence while on bail reference is once again made to the case of "*Ranjitsing Brahmajeetsing Sharma versus State of Maharashtra & Another*" (supra) which has interpreted such provision as under:

> ***"38.*** *.... The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence*

> *under Section 279 of the Penal Code, 1860 may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity…"*

**64.** Though the conduct of the petitioner has been sought to be highlighted by the Enforcement Directorate on account of the First Information Report instituted by the petitioner against the officials of the Enforcement Directorate but on an overall conspectus of the case there is no likelihood of the petitioner committing a similar nature of offence. The twin conditions as prescribed u/s 45 PMLA, 2002 having been fulfilled, I am inclined to allow this application. Accordingly, the petitioner is directed to be released on bail on furnishing bail bond of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of the like amount each, to the satisfaction of learned Additional Judicial Commissioner-I-cum-Special Judge, PMLA, Ranchi in connection with ECIR Case No. 06/2023, arising out of ECIR/RNZO/25/2023 dated 26.06.2023.

**(Rongon Mukhopadhyay, J.)**

*Alok/AFR*