Neutral Citation No. - 2024:AHC-LKO:35793

AFR

Court No.14 **Reserved**

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 6914 of 2023

Applicant :- Abbas Ansari
Opposite Party :- Directorate Of Enforcement, Allahabad
Counsel for Applicant :- Pranjal Krishna,Mirza Shariq Aziz,Purnendu Chakravarty
Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Jaspreet Singh, J.

1. The applicant is a sitting MLA from Mau Assembly Seat No.356 in State of Uttar Pradesh. He is stated to be a professional sport person and he has been arraigned as an accused in ECIR/ALSZO/27/2021 [Directorate of Enforcement through Assistant Director, Allahabad, Vs. M/s. Vikas Construction & others] for the commission of offence punishable under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA)

2. The instant ECIR has been lodged based upon an investigation, initiated on the basis of three FIRs relating to predicate offences.

(i) In FIR No.129 of 2020 registered under sections 419, 420, 433, 434, 447, 467, 468, 471 IPC and Sections 3 and 4 of Prevention of Damages to Public Property Act, 1984 against M/s Vikas Constructions through its partner. In the instant case, the allegation is that the partners of M/s Vikas Construction had encroached on public property by falsification of records.

(ii) The other FIR is bearing No.185 of 2021 registered under

Sections 419, 420, 468, 471, 120-B, 467 IPC against the accused of the said FIR. In the said FIR, significantly, the present applicant has neither been named nor he has been chargesheeted. Nevertheless, the allegations in the said FIR is that one of the co-accused in the said FIR, namely Mukhtar Ansari had taken funds from the MLA fund to build a school though no school was built and the land is being used for agricultural purposes.

(iii) The third FIR is bearing No.236 of 2020 registered under Sections 120-B, 420, 467, 468, 471 IPC read with Section 3 of Prevention of Damages to Public Property Act, 1984 against the applicant, his brother Umar Ansari and his father Mukhtar Ansari. In the said FIR, it has been stated that the accused alongwith the other two co-accused knowing that the property in question is owned and vested with the government but by using their influence usurped the said land, got a map prepared and constructed an illegal house thereby causing loss to the government. It is stated that in so far as the present case under Section 3 and 4 of the PMLA is concerned, the investigating agency has not alleged that any proceeds of crime have been generated from the predicate offence emanating from the FIR bearing No.236 of 2020.

3. Primarily, for the offences under Sections 3 and 4 of the PMLA, the proceeds of crime, have been generated from the scheduled offence of FIR bearing No.129 of 2020.

4. The applicant was arrested by the investigating agency on

04.11.2022 in context with the instant ECIR. The statement of the applicant was recorded. A supplementary complaint was also filed by the investigating agency. The special court has taken cognizance. In the aforesaid backdrop, the present applicant filed his first bail application under Sections 44/45 of the PMLA.

5. Mr. Kapil Sibal, learned Senior Counsel, assisted by Mr. Purnendu Chakravarty and Mr. Pranjal Krishna, has primarily submitted that the instant proceedings under PMLA have been initiated by the investigating agency primarily from the FIR relating to the predicate offences bearing Case Crime No.129 of 2020 and Case Crime No. 236 of 2020. It has been submitted that the investigating agency alleged that it is the firm M/s. Vikas Construction which is allegedly directly involved in the offence of money laundering. It is the firm M/s Vikas Construction which has usurped the land upon which constructions of go-downs was made which in turn was given on rent to the Food Corporation of India and the rentals received in excess of 15 crores and odd has been show as proceeds of crime. It is also alleged that the firm M/s. Vikas Construction obtained a subsidy of 2.25 crores from NABARD which is also shown as proceeds of crime.

6. The investigating agency further alleged that several high value transactions were both credited and debited into and from the account of the applicant who could not explain the same. It has been taken note of that the major share holders in the firm M/s. Vikas

Construction are Ms. Afshar Ansari (mother of the applicant) and Mr. Atif Raza (maternal uncle-Mamaji) amongst others. However, the present applicant could not explain source of income especially in respect of the transactions made from and into the account of the applicant.

7. Mr. Sibal has submitted that the present applicant is in no way connected to the firm M/s. Vikas Construction nor the present applicant had anything directly or indirectly to do with the daily affairs of the said firm M/s. Vikas Construction. The said firm operates its own business through its partner and the present applicant is neither a partner nor an authorized signatory nor he has any authority or control to deal with the funds belonging to the said partnership firm. There is no material to indicate that the applicant had any connection with the properties acquired by the said firm or in respect of the money/funds of the said firm. Merely because some partners in the firm M/s. Vikas Construction are related to the applicant, it does not mean that he too is a partner in crime. Hence, the applicant has been falsely implicated and even though in the investigation the trail of money has not been satisfactorily connected to the applicant yet he has been apprehended and is languishing in jail since 04.11.2022.

8. It is further submitted that the entire case of the prosecution revolves around the theory that the present applicant received money from his family members generated from the firm M/s. Vikas

Construction and since the applicant is a beneficiary of the said funds which allegedly according to the investigating agency are proceeds of crime, hence the applicant is alleged to have committed the said offence under the PMLA .

9. Mr. Sibal has further submitted that the applicant is completely unaware regarding the alleged origin of proceeds of crime. The allegations against the applicant are vague and baseless and apparently no specific role has been attributed to the applicant in the predicate offence nor the trial of tainted money has been tracked to the doorstep of the applicant.

10. It is further urged that it is one thing to say that the applicant may not have been able to explain the transactions from his account which at best may be a case of unaccounted money in the hands of the applicant but that in itself is not sufficient to charge the applicant for the alleged offence of money laundering.

11. The offence of money laundering as defined in Section 3 of the PMLA is not made out against the applicant. It necessarily, must be established that a person accused of an offence under Section 3 and 4 of the PMLA must be shown to have been involved in a process or activity connected with the proceeds of crime. Once the investigating agency on their own showing comes to the conclusion that the applicant was not concerned or connected with the firm M/s Vikas Construction and for the said reason he cannot be held as an accused in the predicate offence, consequently, no case for money laundering

in terms of Sections 3 and 4 of the Act of 2002 can be driven home against the applicant.

12. It is further submitted by Mr. Sibal that the applicant is a sports person and a national level rifle shooter having won accolades in the sporting arena for the country. He is also a representative of the public in capacity of a member of the Legislative Assembly and having his own source of income. It may be that some amount was transacted through the account of the applicant which has come from his mother and/or uncle (mamaji) but that in itself is not sufficient to allege that the applicant is involved in money laundering.

13. As far as the present applicant is concerned, certain money credited into the account of the applicant from his mother or uncle and utilized for import of fire arms for competitive purposes cannot be treated as proceeds of crime in the hands of the applicant.

14. '*Unaccounted money*' cannot be taken as a synonym for 'proceeds of crime' as both are distinct and separate concepts. Any amount which may be unaccounted but acquired from legitimate means cannot be treated as proceeds of crime unless it is established that it has been generated from a scheduled offence. On the aforesaid touch stone the investigating agency has not been able to make out a case against the applicant, hence the bail applications deserves to be allowed.

15. It has further been argued by Mr. Sibal that Section 45 of the PMLA provides for a twin condition to be satisfied while considering

an application for bail **(i)** the public prosecutor is given an opportunity to oppose the application for bail; **(ii)** where the bail application is opposed, the court must be satisfied that there are reasonable grounds to believe that the applicant is not guilty of an offence and that he is not likely to commit any offence while on bail.

16. In the instant case, in so far as the first condition is concerned, the same stands complied with as prosecution is duly represented and they have filed their counter-affidavit opposing bail application. In so far as the second condition is concerned, it is for the court to form its satisfaction, however, the contents and the material available on record would clearly establish that, in so far as the present applicant is concerned, the allegation against him is to the extent that he has received money from his mother and maternal uncle which has been utilized by the applicant for his personal use. However, there is nothing to indicate that the applicant knowingly committed any offence as provided in Section 3 of the PMLA nor the applicant was in any way involved in the commissioning of the predicate offence and in case if the predicate offence is not made out against the applicant then proceeding under the PMLA will also fall.

17. Moreover, the statement of the applicant was recorded on several dates and he cooperated during the entire investigation. ECIR has been filed before the special court of which cognizance has been taken and in the aforesaid circumstances, neither the applicant can tamper with the evidence which is mostly documented and submitted

before the court nor he can influence any witness. The applicant has deep root in the society, being a representative of the public and a national level rifle shooter too, all of this indicate that he is firmly entrenched in the society, hence not at flight risk and the applicant has been in jail since 04.11.2022 coupled with the fact that the minimum sentence as attracted upon commissioning of an offence under the PMLA is three years and it may extend up to seven years. Hence, in this backdrop, the applicant has already served for one and half years as an under trial and looking into the list of the witnesses filed alongwith the complaint before the special court which specifically mentions 14 witnesses, while not a single witness has been examined and there are voluminous records as evidence, accordingly, the trial is not likely to conclude soon, hence the bail application be allowed.

18. Mr. Rohit Tripathi, learned counsel appearing for the investigating agency has submitted that there is a distinction between the predicate offence and the offence under sections 3 and 4 of the PMLA. It is submitted that the learned Senior Counsel for the applicant has primarily based his submission on the premise that though the proceedings were initiated in context with three FIRs relating to predicate offence and as per the learned Senior Counsel for the applicant, no case is made out against the applicant in the predicate offence, accordingly the proceedings against the applicant for the offence under the PMLA will also falter, is not quite correct.

19. It is urged that Section 3 of the PMLA operates in a different

sphere. From the statement recorded by the investigating agency and looking into the Bank details, balance sheet and other documents, it clearly indicates the commissioning of the predicate offence. The proceeds generated from the predicate offence have clearly been traced to and for the benefit of the present applicant which is enough to establish complicity of the applicant to the offence of money laundering in terms of Section 3 of the Act 2002 and then it is the applicant who has to establish his innocence regarding non commissioning of an offence under the PMLA.

20. Mr. Tripathi has further argued that language used in Section 3 of the PMLA is very wide and inclusive. From the record it can clearly been seen that the proceeds of crime have been generated from the firm M/s Vikas Construction which is clearly connected to another firm M/s. Aaghaaz which is also a family firm which is controlled by the maternal grand father of the applicant amongst others. It is thus urged that in light of the investigation and the material collected, there is ample evidence to establish the complicity of the applicant in the commissioning of the offence under the PMLA.

21. It is further urged that the chargesheets have been filed by the police in FIR Nos.129 of 2020 and 236 of 2022. The investigation done under the PMLA clearly established that the applicant is not only the beneficiary of the proceeds of crime but he has actively participated in the offence of money laundering. The two family firms, namely M/s. Vikas Construction has Ms. Afsan Ansari (mother

of the applicant) and Mr. Atif Raza (uncle Mamaji) as partners amongst others and which has been used as vehicle for generating the proceeds of crime and the funds so generated have been transferred to and from M/s. Aaghaaz Project and Engineering Ltd., again a family owned company, and routing of funds through the aforesaid two firms and thereafter the end proceeds being debited and credited through the account of the present applicant is nothing but a clear case of layering the proceeds of crime which in turn has been utilized by the applicant and it has been attempted to show that the funds are untainted.

22. Mr. Tripathi has further urged that the present applicant did not cooperate during investigation and he was apprehended under Section 19 of the Act of 2002 on 04.11.2022. A lookout notice had to be issued against the applicant and it is only thereafter that the applicant was apprehended and then statements have been recorded. Merely denials that the applicant is no way connected with the firm M/s. Vikas Construction or M/s. Aaghaaz has to be considered noting the fact that the applicant has clearly given statements wherein he stated that as and when he required funds, the same was arranged by his mother Ms. Afsan Ansari and Mr. Atif Raza. He further stated that his maternal grand father (Nana), who controlled and is also a director and signatory in the Pvt. Ltd. Company M/s. Aaghaaz, hence, whenever the applicant required funds then the same was catared by the maternal grand father of the applicant and beyond this he was not aware of the various other transactions. In light of the said statement

and the funds in the account of the applicant which was utilized by the applicant for his personal expenses, his foreign trips as well as for importing arms for his participation in the sport on rifle shooting in such circumstances it cannot be said that the applicant has not been a direct beneficiary nor it can be said that he was not aware from where the funds were sourced or their origin.

23. In the aforesaid circumstances where the applicant knowingly has been a user of the proceeds of crime, hence he is *prima facie*, liable for the offence coupled with the fact that the status of the applicant as a sitting member of the Legislative Assembly, the influence yielded by his family including his deceased father, who had more than fifty criminal cases to his credit is enough to create a bonafide assumption that the applicant can very well influence any witness and this can also be corroborated from the fact that while the applicant was incarcerated in Chitrakoot Jail in connection with other cases against the applicant yet he was using the jail premise as his personal fiefdom with active connivance of the police and the Jail Authority, hence for all the aforesaid reasons the bail application deserves to be rejected.

24. In support of his submissions Mr. Tripathi has relied upon the decision of the Apex Court in ***Rohit Tandon Vs. Directorate of Enforcement (2018) 1 SCC 46, Nikesh Tara Chandra Shah Vs. Union of India & others (2018) 11 SCC 1, Vijai Madan Lal Chaudhary Vs. Union of India & others (2022) SCC 929, Saumya***

Chaurasia Vs. Directorate of Enforcement (2023) SCC Online SC 1674 and ***Pavana Dibbur Vs. Directorate of Enforcement 2023 SCC Online SC 1586.***

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

26. Before dealing with the respective submissions of the learned counsel for the parties, it will be appropriate to take a glance at the certain relevant provisions relating to PMLA.

Section 2(u) of the PMLA defines '*proceeds of crime*' as under:-

> *(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]*
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> *[Explanation- For the removal of doubts, it is hereby clarified that 'proceeds of crime' including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence]*

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

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

28. The offence of money laundering has been defined in Section 3

while the punishment for money laundering has been provided in Section 4 which reads as under:-

> *3. **Offence of money-laundering**- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*
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> [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]*
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> *4. **Punishment for money-laundering:-** Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a terms which shall not be less than three years but which may extend to seven years and shall also be liable to fine*
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> *Provided that where the proceeds of crime inolve in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.*

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

> *45. Offences to be cognizable and non-bailable:- (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless-}*
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> *(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.*
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> *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:*
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> *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-*
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> *(i) the Director; or*
>
> *(ii) any office of the Central Government or State Government authorised in writing in this behlaf by the Central Government by a general or a special order made in this behalf by that Government.*
>
> *[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]*
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> *(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitation under the Code of Criminal Procedure, 1973 (2 of 1974) or any*

other law for the time being in force on granting of bail.

[Explanation- For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under Section 19 and subject to the conditions enshrined under this section.]

30. Having taken a glance at the aforesaid statutory provisions it now will be worthwhile to notice certain decisions of the Apex Court on the issue of the offence of money laundering and the approach of courts while dealing with an application for bail.

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

"19. The sweep of Section 45 of the 2002 Act is no more res intergra. In a recent decision of this Court in Gautam Kundu v. Directorate of Enforcement (2015) 16 SCC 1, this Court has had an occasion to examine it in paras 28-30. It will be useful to advert to paras 28 to 30 of this decision which read thus : (SCC pp. 14-15)

"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.

29. Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any

person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule of PMLA:
(i) That the prosecutor must be given an opportunity to oppose the application for bail; and
(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.
30. The conditions specified under Section 45 of PMLA are mandatory and needs to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."
(emphasis supplied)
20. In para 34, this Court reiterated as follows : (Gautam Kundu case, SCC p. 16)
"34. ... We have noted that Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."
The decisions of this Court in Subrata Chattoraj v. Union of India (2014) 8 SCC 768*, Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439 and Union of India v. Hassan Ali Khan (2011) 10 SCC 235 have been noticed in the aforesaid decision.*
21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the

accused persons under Section 24 of the 2002 Act.
22. It is not necessary to multiply the authorities on the sweep of Section 45 of the 2002 Act which, as aforementioned, is no more res integra. The decision in Ranjitsing Brahmajeetsing Sharma v. State of Maharashtra (2005) 5 SCC 294 and State of Maharashtra v. Vishwanath Maranna Shetty, (2012) 10 SCC 561 , dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail.

31. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetised currency and also new currency has been acquired by him. The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the 2002 Act. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence. Further, the courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the 2002 Act while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other words, the fact that the investigation in the predicate offence instituted in terms of FIR No. 205/2016 or that the investigation qua the appellant in the complaint CC No. 700 of 2017 is completed; and that the proceeds of crime are already in possession of the investigating agency and provisional attachment order in relation thereto passed on 13-2-2017 has been confirmed; or that charge-sheet has been filed in FIR No. 205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2-1-2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence."

32. Similarly, the Apex Court in ***Nikesh Tarachand Shah v.***

Union of India, (2018) 11 SCC 1 has held as under:-]

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

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

> ***"269***. *From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.*
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> ***295***. *As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or*

indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.

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

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

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

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

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

(emphasis supplied)

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

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

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

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

> ***15.** The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of **Vijay Madanlal Choudhary**. In paragraph 253 of the said decision, this Court held thus:*
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> *"**253.** Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The*

authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

(underline supplied)

***16.** In paragraphs 269 and 270, this Court held thus:*

*"**269.** From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.*

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These

ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

(underline supplied)

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

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

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

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

c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;

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

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

offence which is specifically included in the Schedule.

36. Having examined the statutory provisions as well as the dictum of the Apex Court in the aforesaid mentioned decisions and applying the principles as laid therein to the facts of the instant case. The position as obtained, *prima facie*, is as under:-

(i) A partnership firm mainly M/s. Vikas Construction is the prime vehicle which appears to have been used for commissioning of the scheduled offence and for generating the proceeds of crime. The firm M/s. Vikas Construction through its partners is alleged to have usurped the government land in district Mau and Ghazipur by resorting to forgery, cheating and criminal trespass. This firm was initially constituted and run by Mr. Masood Alam and his four partners. Later, in August 2012 Mukhtar Ansari father of the applicant is alleged to have forcibly gained the control of the firm and three of the then existing partners were replaced and supplanted by Ms. Afsan Ansari (wife of Mukhtar Ansari, mother of the present applicant) Mr. Atif Raza and Mr. Anwar Sahzad (brother-in-law of Mukhtar Ansari and brother of Ms. Afsan Ansari and maternal uncle Mamaji of the present applicant).

(ii) During investigation, it was unearthed that the original partners of the said firm were forced to leave the firm and they were not even paid the value of their share and the amount to their credit in their capital account. The said firm was utilized for acquiring public contracts so much so that whenever the bid was made by the instant

firm. The contracts invariably went to the said firm. The said firm was used to procure loans from the public banks to construct go-downs which then were given an rent to the Food Corporation of India and the Uttar Pradesh State Ware Housing Corporation and the rent received from the Food Corporation of India and U.P. State Ware Housing Corporation to the tune of several crores have been generated. In this context, subsidy was also received from NABARD to the tune of more than 67 lakhs. The amount generated from the rent received was routed not only into the account of M/s. Vikas Construction but also in the other family firm M/s. Aashaaz and by creating layers thereafter the money was withdrawn both by cash as well as deposited in the loan account of M/s Vikas Construction as also for procuring immovable properties at such rates which were substantially much lower than the market price.

(iii) Certain properties have been sold to certain individuals while there was no apparent need to sell the property and the amount received from such sale was deposited into the account of M/s.Vikas Construction and M/s. Aaghaaz and also withdrawn in cash.

(iv) Money was transferred into the bank account of the applicant from M/s. Vikas Construction which was thereafter transferred to a firm, namely, M/s Laggar Industries Ltd for providing bullet proof modification of the vehicle belonging to the present applicant. The investigation revealed that the transactions made in and from the account of the applicant has been used by the applicant for not only

getting his vehicle bullet proofed but also for his foreign visit and purchase/import of guns and fire arms but what is more important is that whenever these transactions have been done they have either been sourced through M/s Vikas Construction and prior thereto cash deposits have been made in M/s Vikas Construction and the same trail has been noticed through various bank transfers and into the hands of the applicant.

(v) The record further indicates that a some of money was transferred from the account of M/s Vikas Construction into the account of M/s. Aaghaaz which thereafter was transferred to the account of the present applicant and out of the amount so transferred in the hands of the present applicant, part of the same was used to pay for importing of fire arms and a substantial amount was withdrawn in cash.

(vi) The record further indicates that on a particular date a cash deposit is made in the account of one Mashaza Enterprizes which on the same date is transferred by Mashaza Enterprizes to the account of the present applicant and the same is then utilized by the applicant for importing fire arms and a substantial amount is withdrawn in cash. Several other transactions have been unearthed during investigation including large number of amount being transferred into the account of the applicant from several firms which otherwise had no dealing with the applicant nor he could explain as to why the aforesaid firm would pay or deposit amount into the account of the applicant which

is then withdrawn by the applicant for his personal expenditure.

(vii) The record further indicates that during investigation it was clearly traced that the firm M/s. Vikas Construction and M/s. Aaghaaz which were in total control of the members of the family closely linked with the applicant [through his mother, maternal uncle (Mamaji), maternal grand father (Nanaji)] and of course the aforesaid web of the transactions was done by Mr. Atif Raza, who stated that he was only executing the directions of Mukhtar Ansari, the father of the applicant.

(viii) The statements recorded during investigation given by Mr. Atif Raza, the present applicant, the charted accountant all indicate that the mother of the applicant had 60% shares in the partnership M/s Vikas Construction and though she was a home maker but the said firm was used *prima facie* for generating the proceeds of crime and then funds have been transferred to various persons including the applicant.

(ix) The applicant could not indicate or explain the amount received into his account from Mashaza Enterprizes. He also could not authenticate the source of the funds or his explanation that he had generated his own income by training and mentoring other sports enthusiasts in the discipline of rifle shooting. This fact could not be verified from the organizations which as per the applicant used the professional talent of the applicant. On the contrary it was denied by the organizations that neither they had any panel of trainers wherein the applicant was a mentor/trainer. Hence, the statements of the

applicant was not found credible. Even otherwise the applicant feigned ignorance regarding several transactions which were done in and from the account of the applicant. Merely to state that whenever he needed funds, he would inform his mother and his maternal uncle and maternal grand father and they would arrange for the funds which were received and the applicant did not know anything beyond that. This explanation does not reflect credibility especially from the applicant who is a sitting MLA and an elected representative of the people.

37. Section 2(1)(u) defines the phrase '*proceeds of crime*' which clearly indicates that any person who derives any property or obtains, directly or indirectly as a result of a criminal activity would be treated as proceeds of crime. The word *'property*' as defined in Section 2(1)(v) includes both movable and immovable property as also tangible or intangible, corporeal or incorporeal and includes deeds and instruments evidencing title or interest indicates that it is a wholesome inclusive definition. The offence of money laundering as per Section 3 not only relates to generation of such proceeds of crime but it also includes any activity directly or indirectly relating to concealment or possession or acquisition or use amongst others. The said definition is very wide and inclusive, thus, the fact that directly or indirectly if any person is in possession or use of such proceeds of crime whether directly or indirectly, knowingly assists or knowingly is a party or actually involved or in any activity connected with proceeds of crime

relating to concealment possession acquisition or use or projecting the property as untainted property or claiming as untainted property in any manner whatsoever would be liable for commissioning of any offence under the PMLA.

38. In the instant case, from the perusal of the complaint which has been brought on record as annexure no.2 including the supplementary complaint which has been brought on record as annexure no.9, *prima faice*, it reflects the involvement of the present applicant. Even though this Court is conscious of the fact that at this stage a mini trial is not be held nor the court is required to enter into the merits or the depth of the evidence to return a finding of guilt but what is required is to *prima facie*, consider the material available on record for the Court to satisfy itself and to enable it to reasonably form an opinion, to believe, that the applicant is not guilty of the offence and that he is not likely to commit any offence on bail as enshrined in Section 45 of the PMLA.

39. While forming such satisfaction, the Court is also required to consider the nature and gravity of the accusation, severity of the punishment in the event of conviction, danger of the accused absconding or fleeing, character, behaviour means, position and standing of the accused and the likelihood of the offence being repeated, reasonable apprehension of the witnesses being influenced and danger, of course, of justice being defeated by grant of bail.

40. It is in the aforesaid backdrop, considering the material

available on record including the flow charts which clearly demonstrates the origin of funds and it also explains how it finds its way into the accounts of the applicant and its use by the applicant, and there is material against the applicant to link him with the movement and trail of funds to and from the two firms M/s. Vikas Construction and M/s. Aaghaaz.

41. Considering the family antecedents of the applicant including the statement which is contained in the ECIR that the applicant initially was not co-operative rather evaded the summons and only when the lookout notice was issued and in furtherance thereof the applicant was apprehended and during custody he gave his statements but nevertheless many of the transactions could not be explained by him by taking a plea that he did not know from where the fund was coming rather whenever he wanted the funds he asked his mother and maternal uncle and grand father who would arrange the funds. This plea considering the fact that the applicant is a member of the Legislative Assembly and a national level sportsman yet not knowing how the funds were being given to him including the quantum of the funds given by his relatives to pursue his own sporting and political pursuits does not inspire confidence.

42. Thus taking an overall view including the gravity of offence including the fact that the witnesses of fact are yet to be examined also keeping in mind the dictum of the Apex Court in ***Pavana Dibbur (supra)*** and for all the reasons aforesaid, this Court is unable to

persuade itself to form a, *prima facie*, satisfaction in terms of Section 45 of the PMLA, at this stage, that the applicant is not guilty or that he may not commit an offecne on bail. Thus, for all the aforesaid reasons, the bail application is **rejected**.

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

(Justice Jaspreet Singh)

Order Date :- May 9, 2024
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