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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 19.11.2025

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W.P.(C) 17000/2025 CM APPL. 69879/2025

SHYAMSUNDAR SHARMA

.....Petitioner

Through: Mr. Nitin Kanwar, Ms. Parul Kanwar, Mr. Rajiv Kumar, Mr. Dushyant Nayak, Mr. Shivam Jain and Mr. Jitendra Kumar, Advocates

versus

ACIT/INITIATING OFFICER, BENAMI PROHIBITION UNIT-2, DELHI & ANR.

.....Respondent

Through: Mr. Shlok Chandra, Sr. Standing Counsel, Ms. Naincy Jain, Jr. Standing Counsel and Ms. Madhavi Shukla, Jr. Standing Counsel, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE VINOD KUMAR

VINOD KUMAR, J. (ORAL)

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India challenging a Show



Cause Notice issued under Section 24(1) dated 21.03.2025, Provisional Attachment Order under Section 24(3) dated 21.03.2025, Provisional Attachment Order under Section 24(4) dated 30.07.2025 and the consequent Notice issued by Adjudicating Authority under Section 26(1) dated 29.08.2025 issued under the Prohibition Of Benami Property Transactions Act, 1988 as amended by the Finance Act 2021 (in short 'the Benami Act').

2. This petition has been filed with the following prayer(s):

"1. Issue a writ of CERTIORARI or any other appropriate writ, order or direction quashing the Impugned Show Cause Notice u/s 24(1) vide dated 21.03.2025, impugned Provisional Attachment Order u/s 24(3) dated 21.03.2025, and impugned Provisional Attachment Order u/s 24(4)(a)(i) dated 30.07.2025 and the consequent Notice u/s 26(1) dated 29.08.2025 of the Prohibition Of Benami Property Transactions Act, 1988, and other Consequential proceedings;

2. Issue a writ of CERTIORARI or any other appropriate writ, order or direction to defreeze all the bank accounts of the Petitioner in the interest of Justice attached/frozen by the Respondent No. 1;

3. Issue a writ of Prohibition or any other appropriate writ, order or direction to prohibit/retraining the Adjudicating authority and any other authority to initiate further proceedings u/s 26(1) dated 29.08.2025, of the Prohibition Of Benami Property Transactions Act, 1988, or to initiate any consequential proceedings; and

4. Rule NISI in terms of prayers (1), (2) and (3) above
5. For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case;"



FACTUAL MATRIX

3. The petitioner runs a business of Goods Transport Services in the name of Shyam Air Couriers since 2009 and provides goods courier services since 2014 to Vestige Marketing Pvt. Ltd. ('VMPL'), a marketing company that deals in FMCG and health related products. VMPL operates a direct-selling, multi-level marketing network. The system functions on the basis of members distributors introducing additional persons into the scheme downline. Various commissions are paid to the members computed on the basis of the number of new members they introduce. A major portion of VMPL's expenditure pertains to such commission payments. There is no fixed percentage for calculating these commissions, and the same varies from distributor to distributor. The industry attracts participants by highlighting the high commission income paid to individual distributors.

4. Sh. Gautam Bali, Sh. Kanwar Bir Singh and Sh. Deepak Sood are the owners/Directors of VMPL and Sh. Deepak Choudhary is the Auditor of the same company.

5. On 20.09.2023, a search action under Section 132 of the Income Tax Act, 1961 was conducted on VMPL, Sh. Gautam Bali, Sh. Kanwar Bir Singh and Sh. Deepak Sood and other related entities. During the search at Head Office of VMPL at A-89, Phase II, Okhla Industrial Area, New Delhi 110020, Excel sheets titled "Bogus Expenses Employee-Wise" were found in a pen drive.



6. It was found that VMPL Group has made payment to various parties for the use of services but the said services were not received by them. In lieu of the payment made by VMPL Group through the banking channel towards the said bogus bills, the cash was returned to Sh. Kanwar Bir Singh, Sh. Gautam Bali, Sh. Deepak Sood and Sh. Deepak Choudhury. This indicated that the accommodation entry providers held the sums advanced by the VMPL group in their bank accounts and subsequently returned the corresponding amounts in cash to the individuals involved in the arrangement. The said bank balance was held by the accommodation entry providers for the immediate benefit of Sh. Kanwar Bir Singh, Sh. Gautam Bali, Sh. Deepak Sood and Sh. Deepak Choudhury. The said benefit was provided by way of cash. The Excel sheet titled "Bogus Expenses Employee-Wise" discovered in a pen drive also listed "Shyamsundar Choudhary", receiving bogus payments from FY18-19 till FY 22-23.

7. During post-search investigation, on analysis of the cloned data excel sheets titled as 'Bogus Expense Employee-wise', a delineated party-wise breakdown of transactions was found linked to bogus expenses under categories such as 'Marketing Expenses,' 'Business Promotion Expenses', 'Services,' and 'Bonus/Commission'. The evidence corroborated the statements given by Directors and employees of the company. The excel sheet contained a list of parties which were arranged by various employees. The contents of excel sheet are reproduced here:



<i>Party Name</i>	<i>Amount (In Rs.)</i>	<i>FY</i>
<i>Sone Enterprise</i>	<i>2,15,59,765.00</i>	<i>2022-23</i>
<i>Sone Enterprise</i>	<i>1,18,22,103.00</i>	<i>2021-22</i>
<i>Sone Enterprise</i>	<i>52,65,674.00</i>	<i>2020-21</i>
<i>Devendra Enterprises</i>	<i>2,15,22,546.00</i>	<i>2022-23</i>
<i>Devendra Enterprises</i>	<i>1,23,47,799.00</i>	<i>2021-22</i>
<i>Devendra Enterprises</i>	<i>72,69,434.00</i>	<i>2020-21</i>
<i>Golden Ent</i>	<i>30,09,944.00</i>	<i>2022-23</i>
<i>Haryana Traders</i>	<i>31,51,563.00</i>	<i>2021-22</i>
<i>NK Traders</i>	<i>18,88,732.00</i>	<i>2020-21</i>
<i>Om Trading Co</i>	<i>8,00,000.00</i>	<i>2022-23</i>
<i>Om Trading Co</i>	<i>30,93,180.00</i>	<i>2022-23</i>
<i>Shyam Sunder Choudhary</i>	<i>4,00,000.00</i>	<i>2022-23</i>
<i>Shyam Sunder Choudhary</i>	<i>22,00,000.00</i>	<i>2023-24</i>
<i>Shyam Sunder Choudhary</i>	<i>16,00,000.00</i>	<i>2022-23</i>
<i>Shyam Sunder Choudhary</i>	<i>16,00,000.00</i>	<i>2022-23</i>
<i>Shyam Sunder Choudhary</i>	<i>8,00,000.00</i>	<i>2021-22</i>
<i>Hersh Vardhan Choudhary</i>	<i>14,00,000.00</i>	<i>2020-21</i>
<i>Hersh Vardhan Choudhary</i>	<i>20,00,000.00,</i>	<i>2019-20</i>
<i>Hersh Vardhan Choudhary</i>	<i>4,00,000.00</i>	<i>2018-19</i>
<i>Sudha Choudhary</i>	<i>28,56,770.00</i>	<i>2020-21</i>
<i>Ankur File Products</i>	<i>27,73,707.00</i>	<i>2020-21</i>



<i>KK Fashion</i>	<i>29,77,322.00</i>	<i>2023-24</i>
<i>KK Fashion</i>	<i>1,62,41,067.00</i>	<i>2022-23</i>
<i>KK Fashion</i>	<i>22,97,773.00</i>	<i>2021-22</i>
<i>August Financial Services</i>	<i>9,90,000.00</i>	<i>2022-23</i>
<i>August Financial Services</i>	<i>9,90,000.00</i>	<i>2021-22</i>
<i>August Financial Services</i>	<i>9,48,000.00</i>	<i>2020-21</i>
<i>August Financial Services</i>	<i>8,76,000.00</i>	<i>2018-19</i>
<i>Design bee Infrastructure</i>	<i>7,02,000.00</i>	<i>2017-18</i>
<i>Design bee Infrastructure</i>	<i>7,02,000.00</i>	<i>2023-24</i>
<i>Design bee Infrastructure</i>	<i>44,87,989.00</i>	<i>2022-23</i>
<i>Garv Enterprise</i>	<i>2,66,90,796.00</i>	<i>2021-22</i>
<i>Garv Enterprise</i>	<i>1,39,93,690.00</i>	<i>2023-24</i>
<i>Garv Enterprise</i>	<i>10,17,799.00</i> <i>1,11,11,799.00</i>	<i>2022-23</i>
<i>Garv Enterprise</i>	<i>1,26,93,509.00</i>	<i>2021-22</i>
<i>Garv Enterprise</i>	<i>1,28,24,291.00</i>	<i>2020-21</i>
<i>Garv Enterprise</i>	<i>1,03,46,985.00</i>	<i>2019-20</i>
<i>Garv Enterprise</i>	<i>85,27,156.00</i>	<i>2017-18</i>
<i>Star Infra Design Pvt Ltd</i>	<i>14,69,721.00</i>	<i>2023-24</i>
<i>Star Infra Design Pvt Ltd</i>	<i>1,58,72,218.00</i>	<i>2021-22</i>
<i>Star Infra Design Pvt Ltd</i>	<i>98,66,135.00</i>	<i>2020-21</i>
<i>Star Infra Design Pvt Ltd</i>	<i>3.97,50,257.00</i>	<i>2019-20</i>



<i>Star Infra Design Pvt Ltd</i>	<i>5,48,78,272.00</i>	<i>2018-19</i>
<i>Star Infra Design Pvt Ltd</i>	<i>1,25,44.659.00</i>	<i>2017-18</i>
<i>RR Creation</i>	<i>56,74,273.00</i>	<i>2023-24</i>
<i>RR Creation</i>	<i>1,04,69,544.00</i>	<i>2022-23</i>
<i>RR Creation</i>	<i>28,42,599.00</i>	<i>2021-22</i>
<i>Aditi Sales</i>	<i>3,72,72,738.00</i>	<i>2018-19</i>
<i>Commission</i>	<i>7,41,59,951.00</i>	<i>2018-19</i>
<i>Commission</i>	<i>5,61,03,426.00</i>	<i>2017-18</i>
<i>Total</i>	<i>57,24,96,495.00</i>	

8. As per respondent, the name of the file i.e., 'Bogus Expenses Employee-Wise', itself mentions bogus expenses and is suggestive of the fact that parties are bogus and no actual transaction took place between them.

9. On basis of aforesaid material, the Initiating Officer was of the view that concerned parties including the petitioner were Benamidars of bogus transactions by VPML and consequently issued impugned Show Cause Notice to them. The Show Cause Notice called upon the petitioner to explain as to why said property should not be treated as Benami Property and action should not be taken against him. Relevant portion of Show Cause Notice is extracted as under:



6. Accordingly, on the basis of the material in possession and discussion above, I have reasons to believe that M/s Devendra Enterprises, M/s Shyam Sundar, M/s August Financial Services Pvt. Ltd., M/s Designbea Infrastructures, M/s Garv Enterprises, M/s Star Infra Design Private Ltd., M/s Axiom Landbase Pvt. Ltd., M/s Chawla Enterprise, M/s Gurunanak Marketing, M/s Mesh Education Pvt. Ltd., M/s Bencher Enterprises, M/s Kumar Enterprises, M/s Humble Service are Benamidar(s) within the meaning of section 2(10) of the PBPT Act. Payment made to the bank accounts of Benamidars for the bogus services/expenses amounting to Rs. 84,25,41,217/- is Benami property u/s 2(8) of the PBPT Act, and the Beneficial Owner(s) u/s 2(12) of the PBPT Act are M/s Vestige Marketing Pvt. Ltd., Sh. Gautam Bali, Sh. Kanwar Bir Singh, Sh. Deepak Sood and Sh. Deepak Choudhury. The Benamidar(s) and beneficial owner(s) have entered into the said Benami transaction within the meaning of section 2(9)(A)(a) of the PBPT Act, 1988.

10. The Initiating Officer vide order dated 21.03.2025 also provisionally attached Bank accounts of the petitioner. The petitioner filed reply to the notice specifically stating that his name is 'Shyam Sunder Sharma' and not 'Shyam Sunder Choudhary' and his business name is 'M/S Shyam Air Courier' and not 'M/s Shyam Sunder'. Petitioner also claimed that all his transactions with VMPL were genuine. Along with his reply, he attached his bank statements, ledger and details of all the transactions as documentary evidence for perusal of the Initiating Officer.

11. This reply by the Petitioner was duly considered by the Initiating Officer and he dealt with the reply in the attachment order dated 30.07.2025 in the following manner:



Para 6.9 of the provisional attachment order.

Shri Shyam Sundar Sharma (Prop. M/s Shyam Air Courier, PAN:CJLPS8305Q) filed his reply dated 10.06.2025 and relies solely on a declaration from M/s Vestige Marketing Pvt. Ltd. (VMPL) dated 15/05/2026, claiming that transactions between VMPL and Shyam Air Courier were genuine. No additional documents, such as E-way bills, invoices, ledger accounts, or bank statements, were submitted by ShyamSundar Sharma to substantiate the claims. Based on the evidence detailed in the Show Cause Notice, the reply is found to unsubstantiated and inconsistent with the findings. Rebuttal to Claims Made by Shyam Sundar Sharma:

- i. *Shri Shyam Sundar Sharma's reply hinges entirely on the declaration by VMPL (Annexure 1), which asserts that transactions with Shyam Air Courier for transportation and courier services from FY 2018-19 were genuine, duly invoiced, and paid through banking channels. However, neither the reply nor the declaration provides any documentary evidence (e.g., tax invoices, delivery challans, E-way bills, or bank statements) to support these claims, despite ShyamSundar Sharma's offer to produce such documents if required. The absence of supporting documents in the reply undermines its credibility, especially given the substantial evidence in the Show Cause Notice (Page 19, Exhibit 18) listing transactions with Shyam Sundar for amounts such as Rs. 22,00,000 (FY 2021-22), Rs. 16,40,000 (FY 2020-21), Rs. 16,40,000 (FY 2019-20), and Rs. 16,40,000(FY 2018-19) in an Excel sheet titled "Bogus Expense Employee-wise," indicating these were fictitious transactions.*
- ii. *Further, the Show Cause Notice records Sh. Kanwar Bir Singh's admission under oath u/s 132(4) of the Income-tax Act, 1961, on 21/09/2023, that VMPL claimed expenses for bogus services, directly contradicting the claim of genuine transactions. Sh. Gautam Bali, another promoter, corroborated this, admitting that promoters, including himself, received cash from vendors, including Shyam Air Courier, in lieu of payments for bogus expenses. Sh. Deepak Sood admitted to receiving unaccounted cash of Rs. 57 to 63 Crores from FY 2013-14 to FY 2020-21 through bogus billing, implicating vendors like Shyam Air Courier. Sh. Deepak Choudhury, VMPL's CA/Auditor, admitted under oath to arranging bogus bills through vendors, including Shyam Air Courier, to generate cash*



- after a 2-3% commission, further contradicting the claim of legitimate services.*
- iii. *The Show Cause Notice details the modus operandi where VMPL paid vendors like Shyam Air Courier via cheque/RTGS, receiving cash back after a commission deduction. This is supported by Sh. Deepak Choudhury's that Shyam Air Courier was among the bogus vendors used for such arrangements. A flow diagram (Exhibit 20) illustrates how funds were transferred to vendors' bank accounts, with cash returned to VMPL's promoters, confirming the Benami nature of these transactions under Section 2(9)(A) of the PBPT Act. Digital evidence, including Excel sheets seized from VMPL's head office (Page 19, Exhibit 18), explicitly lists Shyam Air Courier under bogus expenses, contradicting VMPL's declaration of genuine transactions.*
- iv. *The reply and VMPL's declaration do not address the specific allegation in the Show Cause Notice that Shyam Air Courier (Shyam Sundar Sharma, Proprietor) is a Benamidar under Section 2(10) of the PBPT Act, holding proceeds in its bank account for the benefit of VMPL and its promoters (Sh. Kanwar Bir Singh, Sh. Gautam Bali, Sh. Deepak Sood, and Sh. Deepak Choudhury) as beneficial owners under Section 2(12). The generic assertion of compliance with statutory obligations lacks specificity and fails to refute the detailed evidence of Benami transactions. Further, as far as the claim of financial hardship, affecting loan repayments, salaries, school fees, medical expenses, and business operations is concerned, it is stated that no evidence, such as bank statements, loan agreements, or payment schedules, was provided to substantiate these claims. Even otherwise, the provisional attachment under Section 24(3) of the PBPT Act is justified given the evidence of Benami transactions, and the hardship claims do not override the legal basis for the attachment.*
- v. *The reply by Shyam Sundar Sharma, relying solely on VMPL's declaration dated 15/05/2026, fails to refute the evidence in the Show Cause Notice. The declaration's claims of genuine transactions are contradicted evidence on record. The absence of supporting documents in the reply further weakens its credibility. The transactions with Shyam Air Courier are Benami under Section 2(9)(A) of the PBPT Act, with Shyam Air Courier (Sh. Shyam Sundar Shanna, Proprietor) acting as a Benamidar (Section 2(10)*



*for the benefit of VMPL and its promoters(Section 2(12).
Therefore, the reply is rejected as the request to drop the
proceedings or de-freeze the bank accounts is not tenable.*

12. With above reasons, the Initiating Officer passed an order attaching four bank accounts of the petitioner. Thereafter he drew up a statement of the case and referred it to the Adjudicating Authority.

13. On 29.08.2025, the Adjudicating Authority issued a notice under Section 26 to the Petitioner, to which an adjournment letter was moved by the petitioner and instead of contesting the matter there, they filed the present writ petition.

CONTENTIONS OF THE PETITIONER

14. Mr. Nitin Kanwar, learned counsel appearing on behalf of the petitioner, while denying all the allegations of bogus or fraudulent transaction raised in the Show Cause Notice, submits that all the transactions with VMPL are genuine and against the services supplied by him by way of transportations/ courier services.

15. In response to the Excel sheets recovered during the search of premises of VMPL, Mr. Kanwar submits that, as per the contents of Excel Sheets, the payment was made to one Mr. Shyam Sunder Choudhary, whereas his client's name is Mr. Shyam Sunder Sharma and his business/ trade name is M/s Shyam Air Courier, not M/s Shyam Sunder.



16. Further he submits that the transaction between his client and VMPL were not for the amounts stated in the excel sheet and in support of this contention he has submitted bank statements and ledger accounts.

17. Learned Counsel for the petitioner vehemently submits that the Initiating Officer had no reason to believe and no satisfaction was recorded as to how the alleged business transaction is a Benami transaction. He further submits that the proceedings initiated against the Petitioner are based on borrowed satisfaction and that no independent enquiry or investigation was conducted by the Initiating Officer. He further contends that four essential conditions which must be satisfied before issuance of notice were not followed by the IO. To support this, he relied on ***Amarendra Kumar Versus Union Of India & Ors. [Civil Appeal Nos. 1147311474 Of 2018]***

28. *“Where an Act or the statutory rules framed thereunder left an action dependent upon the opinion of the authority concerned, by some such expression as ‘is satisfied’ or ‘is of the opinion’ or ‘if it has reason to believe’ or ‘if it considered necessary’, the opinion of the authority is conclusive, (a) if the procedure prescribed by the Act or rules for formation of the opinion was duly followed, (b) if the authority acted bona fide, (c) if the authority itself formed the opinion and did not borrow the opinion of somebody else and (d) if the authority did not proceed on a fundamental misconception of the law and the matter in regard to which the opinion had to be formed.”*



18. Learned counsel for the petitioner heavily relied upon ***Directorate of Enforcement through Deputy Director Vs. Poonam Malik [2025 SCC OnLine Del 8397]***, a judgment dated 14.11.2025 by Delhi High Court, in which it was held that freezing of a bank account in violation of statutory requirement has far reaching consequences and such action directly impinges upon the Constitutional right guaranteed under Article 300A of the Constitution of India and where the freezing order does not disclose any reason to believe, such freezing order would be held invalid.

19. He further submits that it is the duty of the Respondent to prove that the business transactions with VMPL are Benami transactions under section 2(9)(A) of the Benami Act. To contend this, he relied on ***Central Bureau of Investigation Vs. V.C. Shukla and Ors. [MANU/SC/0168/1998]***

20. He further submits that the digital data on which the Initiating Officer has relied cannot be termed as evidence without compliance of certificate under section 65B of the Indian Evidence Act, 1872. To contend this, he relied upon the judgment dated 28.01.2025 of Supreme Court in ***Chandrabhan Sudam Sanap Versus The State Of Maharashtra Criminal Appeal No. 879 Of 2019.***

21. Further, it is argued that before issuing Show Cause Notice, no hearing was given to petitioner nor he was afforded opportunity to cross-examine witnesses. In nutshell, it is argued



that there is no material to connect the petitioner to the Benami transaction, and the IO had no material before him and had no reason to believe that the Petitioner held the property as Benamidar.

CONTENTIONS ON BEHALF OF RESPONDENTS

22. Learned Senior Standing Counsel, Mr. Shlok Chandra, appearing on behalf of the Revenue, submits that VMPL operates a direct-selling, multi-level marketing structure in which distributor payouts primarily depend on enrolments, resulting in substantial expenditure towards commissions. Pursuant to a search under Section 132 of the Income Tax Act 1961 on 20.09.2023, conducted on the VMPL Group, its directors, and auditor, incriminating material was found indicating large scale bogus billing. It was revealed that payments were recorded as made towards services never rendered and that amounts paid through banking channels were subsequently returned in cash to key individuals of the group, thereby establishing the involvement of accommodation entry providers who merely routed VMPL's funds for its benefit.

23. He further submits that, based on the material discovered during and after the search under Section 132(4) of the Income Tax Act, 1961, VMPL and its group entities were found to have systematically booked substantial bogus expenses under heads such as "Marketing," "Business Promotion," "Services," and



“Bonus/Commission.” Forensic analysis of seized electronic devices yielded multiple Excel sheets, including one titled “Bogus Expense Employee-wise,” detailing employees who arranged the bogus vendors. These documents, along with corresponding digital ledgers, aligned with the sworn statements of the Directors and employees.

24. Mr. Chandra further submits that the reply filed by the petitioner to the Show Cause Notice relies solely on the declaration filed by VMPL, which asserts that transaction with Shyam Air Courier for transportation and courier services from FY 2018-2029 were genuine, duly invoiced, and paid through banking channels. But the petitioner did not submit any proof of such transactions like bills, invoices etc. despite opportunity provided to him by the Initiating Officer.

25. Learned Counsel for Revenue has relied on *V.S.J. Dinakaran V. DCIT (Benami Prohibition), (2023) 146 taxmann.com 7 (Madras)* to argue that at this stage of Show Cause Notice, there is no adjudication, it is only a step in the process of adjudication.

26. Learned counsel relied on *Dinesh Chand Surana V. DCIT [2022] 142 taxmann.com 494 [Madras]* and *Krishna Sudama Marketing Pvt Ltd. V. UOI [2024] 160 taxmann.com 724 (Calcutta)* to argue that Section 24 of the Benami Act does not contemplate any prior opportunity of hearing being given to the



notice, and it is merely a precursor to provide teeth to the authority to prevent the disposal of subject property of Benami transaction till an adjudication takes place under section 24 of the Benami Act.

27. It is argued that the Show Cause Notice discloses the material which led the Initiating Officer to have reasons to believe that the petitioner is a Benamidar.

ANALYSIS AND CONCLUSION

28. First we would like to reproduce Section 24 of the Benami Act as under:

*“24. Notice and attachment of property involved in Benami transaction.—(1) Where the Initiating Officer, **on the basis of material in his possession, has reason to believe** that any person is a Benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as Benami property.*

(2) Where a notice under sub-section (1) specifies any property as being held by a Benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held Benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and



taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3),—

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.”

[Explanation.—For the purposes of this section, in computing the period of limitation, the period during which the proceeding is stayed by an order or injunction of any court shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (4) available to the Initiating Officer for passing order of attachment is less than thirty days, such remaining period shall be deemed to be extended to thirty days:

Provided further that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (5) available to the Initiating Officer to refer the order of attachment to Adjudicating Authority is less than seven days, such remaining period shall be deemed to be extended to seven days.]



29. Perusal of the above Section would show that for the purpose of issuing Show Cause Notice to a person under Section 24 (1) of the Benami Act, following are the preconditions:

- (1) There should be material in the possession of Initiating Officer indicating Benami transactions;
- (2) On the basis of such material, the Initiating Officer must have reasons to believe that any person is a *Benamidar* in respect of a property.

30. If above preconditions are fulfilled, the Initiating Officer is required to record reasons in writing for issuing a show cause notice under Section 24 (1) of the Benami Act.

31. Whenever a notice issued by Initiating Officer under Section 24 (1) of the Benami Act is challenged, the Court will direct its attention to the material in possession of the Initiating Officer. This would be an objective inquiry and Court can ask as to what is the material in possession of the Initiating Officer. However, while entering into this inquiry, the Court would not go into the question of sufficiency or quality of the material in possession of the Initiating Officer.

32. In the present case, the Initiating Officer was having in his possession Excel sheets containing the details of the bogus transactions and their amounts against certain names including one Shyamsundar, which corroborated the statements of



beneficial owners. Therefore, in the present case first condition is satisfied. The second aspect of the inquiry would be as to whether the Initiating Officer had **reasons to believe** that the petitioner is a Benamidar in response of a property. This part is subjective in nature and should be seen from the angle of Initiating Officer. The Courts cannot substitute their own wisdom with the logic and reasoning of Initiating Officer, though the Court can examine relevance of reasons *vis a vis* material seized, which persuaded the Initiating Officer to issue a notice under Section 24 (1) of the Benami Act. Here the expression “has reason to believe” as occurring in Section 24 of the Benami Act requires some discussion. This Act provides a quasi judicial mechanism, hierarchy and procedure to deal with Benami transactions, which is civil in nature. It also makes Benami transactions punishable under Chapter VII and makes it a criminal offence. Therefore, we can take benefit of definition of this expression as found in Section 2 (29) of Bharatiya Nyaya Sanhita, 2023 (in short BNS), which is equivalent to Section 26 of Indian Penal Code, 1860. This expression also appears in Section 35 of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short BNSS), which is equivalent to Section 41 (1) (b) of Criminal Procedure Code, 1973. I reproduce Section 2 (29) of Bharatiya Nyaya Sanhita, 2023 (BNS) as under:

2 (29) "reason to believe".---A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise;



33. The above definition clearly indicate the subjective nature of the expression. In Section 35 of BNSS, a police officer is empowered to arrest a person on **reasonable suspicion**, which may lead him to believe a person to be involved in a cognizable offence. Whereas a **reasonable suspicion** may be a reason for a police officer to believe criminal involvement of a person under BNSS, the Benami Act makes the precondition more stringent. In Section 24 of the Benami Act, only on the basis of some material in his possession, the Initiating Officer can form a belief of a person being Benamidar in respect of a property. Standard of basis of belief is on higher pedestal in the Benami Act than the belief under BNS and BNSS (earlier IPC and Cr.P.C.) but it falls short of 'prima-facie case' which is a standard for a Judicial or Quashi Judicial Authority for proceeding against a person under respective laws. Therefore, Section 24 (1) of the Benami Act does not burden an Initiating Officer to first work out a *prima-facie* case before issuing a show cause notice or give opportunity of hearing and cross examining the witnesses to notice. This is a reason that under Section 24 (4), the Initiating Officer is empowered either to continue with the provisional attachment made under Section 24 (3) of the Benami Act or revoke such provisional attachment with prior approval of the Approving Authority. The Initiating Officer, under Section 24 (5) of the Benami Act may thereafter draw up a statement of the case and refer it to the Adjudicating Authority. On receipt of reference under Section 24 (5), the Adjudicating Authority shall issue a



notice to the *Benamidar* and after considering his reply and making the necessary enquiries and calling for evidence, provide for an opportunity of being heard to the *Benamidar* as well as the Initiating Officer.

34. As we are considering the validity of show cause notice, we cannot enter into the question of standard of proof in accordance with Bharatiya Sakshya Adhiniyam, 2023. It is enough that the Initiating Officer seized of some material and on the basis of such material he formed an opinion.

35. The argument of the petitioner is that he is no where connected with the alleged transactions/bogus dealings as he is 'Shyamsundar Sharma' whereas in the aforesaid Excel sheets, the name is mentioned as 'Shyamsundar Choudhary'. Contradicting the submission of learned Counsel for the petitioner, it is argued by learned Counsel for the respondent that 'Shyamsundar Sharma' was running a business in the name of 'M/s. Shyam Air Courier' and has business dealings with the searched persons. As per inquiry, there is no person with the name 'Shyamsundar' other than 'Shyamsundar Sharma', with whom the searched person had business dealings. Therefore, as per the respondent, the Initiating Officer has reasons to believe that 'Shyamsundar Choudhary' mentioned in the printout is none other than 'Shyamsundar Sharma'.

36. The petitioner has argued that he himself had given his



PAN number to the Initiating Officer and that it was not discovered during search and seizure. Therefore, it is argued that he has been misidentified. Similarly, the four accounts are in petitioner's name whereas the attachment order writes the names of someone else like M/s. Devendra Enterprises. We disagree with these submissions of learned Counsel for the petitioner. Perusal of the Show Cause Notice and the attachment order reveals that identity of the petitioner was revealed not only through the contents in Pendrive but also in the statement of beneficial owners namely, Sh.Deepak Choudhary and Sh.Gautam Bali.

37. After considering the rival submissions we are of the opinion that the Initiating Officer has written in detail as to what are the reasons to believe that the petitioner is a Benamidar. This opinion cannot be tinkered with by the Court specially when the petitioner has an efficacious remedy before Adjudicating Officer under Section 26 of the Benami Act.

38. We have considered the judgments cited by learned Counsel for the petitioner in *Amarendra Kumar* (Supra).The Supreme Court of India in the said case infact held that wherever the expression 'reason to believe' appears, the opinion of the Authority would be conclusive. Therefore, para 28 of the aforesaid judgment favours more to the respondent than the petitioner. Learned Counsel for the petitioner has read in detail *Directorate of Enforcement through Deputy Director Vs.*



Poonam Malik (Supra) of this court. We are of the opinion that in the said case bank accounts of a party were freeze only on suspicion and not on basis of some material. On the contrary, in the present case after initial attachment, the Initiating Officer considered the reply of the petitioner herein and duly dealt with the same in detail. The relevant portion of attachment order has already been reproduced. The reasons in the same are self speaking and need no further elaboration. We have also considered **Central Bureau of Investigation Vs. V.C. Shukla and Ors.** (Supra), which casts onus on the department to prove that business transaction are Benami. This judgment refers to principles of evidence which are not required to be considered at the stage of issuing show cause notice or passing attachment order. The law laid down on Section 65 B of Indian Evidence Act in **Chandrabhan Sudam Sanap** (Supra) is clear but is not relevant at this point of time.

39. During arguments before this Court learned Counsel for the petitioner raised following questions:

- (i) *Where the jurisdictional conditions of Benami transaction under Section 2 (9) (A) are prima-facie not satisfied, can still notice be issued under PBPT Act?*
- (ii) *The prior approval of the approving authority is condition precedent before passing the provisional attachment order under Section 24 (3) and final attachment order under Section 24 (4) of the PBPT Act, 1988. Whether non-annexing the copy of approval will vitiate whole procedure under Section 24 and thus, liable to be quashed?*
- (iii) *Whether the statements of parties (only relevant extracts*



were copies), referred in Show Cause Notice, which are not stating single word about the petitioner or his entity and further where neither the same was provided nor opportunity to cross-examine them was provided, can be termed as tangible material, for forming reason to believe?

- (iv) *Whether mere mentioning name (that too is of somebody else in the present case) in the excel sheets without any corroboration is only dumb documents or can be said to be tangible material, for forming reason to believe?*
- (v) *Whether Benami being criminal law, can the excel sheet being electronic evidence be admitted as evidence in the eyes of law without providing 65B certificate of Indian Evidence Act, 1882, which is precedent condition to be satisfied before relying upon electronic evidence?*
- (vi) *Whether the department can paint everybody with the same brush i.e. can the petitioner (whose name or his entity's name was not taken by anybody) be equated with the persons who were named by Sh. Deepak Choudhary entering into bogus transactions on his behest?*
- (vii) *Whether the onus to prove that there is Benami transaction, Benami property is on the Department and the onus is to be proved beyond reasonable doubt, which was not satisfied by the Department?*
- (viii) *Whether the petitioner can be asked to prove negative, when the initial onus to prove Benami transaction was not satisfied by the Department?*
- (ix) *Whether there will be violation of Principle of Natural Justice and Article 14 of the Constitution;*
 - a. *Where the department has to provide each document (whether relied upon or not), including statements recorded if any and enquiry and investigation material?*
 - b. *Where the comprehensive reply dated 24.03.2025 was not considered by the Department?*
- (x) *Whether issuance of vague SCN without having any specific allegations and without classification of alleged property, can be called a proper SCN? Whether there were only two*



parties in place of three parties as per the mandate of Section 2 (9) (A) of the PBPT Act, 2016 and this so called alleged transactions can only be termed information for reopening Income Tax Cases and cannot be termed as reason to believe for issuing show cause notice under Section 24 (1) and consequently passing provisional attachment order under Section 24 (3)?

- (xi) *Whether the order under Section 24(3), so as to make provisional attachment of four Bank Accounts, has to passed with proper application of mind by the Initiating Officer, as to how it were related with M/s. Devender Enterprises and Sh. Shyam Sunder Choudhary, as the section contains the word “is of opinion” and thus in absence of the same, it is in violation of Article 300A of the Constitution?*

40. In question no.1, the petitioner has raised doubt as to whether the case of petitioner falls within the definition of Benami transaction as defined under Section 2 (9) of the Act. We are of the opinion that in show cause notice, the Initiating Officer has given reasons as to how it is a case of Benami transaction and at this initial stage, this Court would not like to enter into the complexities of the merit and evidence of the case for the purpose of determination of a Benami transaction.

41. On the Second question raised above by learned Counsel for the petitioner, there is no doubt that Section 24 (3) of the Benami Act provides for previous approval of the Approving Authority in writing for attaching provisionally the property held Benami. But there is no statutory requirement that copy of such approval by the Approving Authority should be supplied to Benamidar or Beneficial owner alongwith attachment order.



However, if the petitioner makes a demand of such copy, the department must provide it to him. Remaining questions raised by the petitioner as above are to be considered by Adjudicating Authorities and not by this Court.

42. Grievance of the petitioner is that his all accounts have been attached leaving no money with him even to pay salaries of his employees and conduct normal business activities. We are of the opinion that it would be open for the petitioner to raise this plea before the Adjudicating Authority, who is empowered to revoke the attachment order under Section 26 of the Benami Act. Here, we deem it appropriate to say that any observations of this Court in this order shall not affect the adjudicating process and the Adjudicating Authority shall be at liberty to form its own opinion on all the issues raised by the petitioner before it. Accordingly, we find no substance in the writ petition. The same is dismissed.

43. The pending application is also dismissed as infructuous.

VINOD KUMAR, J

V. KAMESWAR RAO, J

November 19, 2025

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