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

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*Reserved on: 04.03.2024*  
*Pronounced on: 11.03.2024*

+ **BAIL APPLN. 795/2024**

AMANATULLAH KHAN

..... Petitioner

Through: Mr. Kapil Sibal, Senior Advocate with Mr. Rajat Bhardwaj, Mr. Adit S. Pujari, Mohd. Irshad, Mr. Kanish Raj, Mr. Kaustubh Khanna, Mr. Rishikesh Kumar, Ms. Roopali, Advocates

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Manish Jain, SPP, Mr. S. Benjamin, SPP, Mr. Vivek Gurnani, Mr. Kartik Sabharwal, Mr. Kanishk Maurya, Mr. Vivek Gaurav and Ms. Pranjal, Advocates

**CORAM:****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****J U D G M E N T****INDEX TO THE JUDGMENT****FACTUAL BACKGROUND ..... 3**



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**SWARANA KANTA SHARMA, J.**

1. By way of present application filed under Section 438 of the Code of Criminal Procedure, 1973 ('*Cr.P.C*') read with Section 45 and 65 of Prevention of Money Laundering Act, 2002 ('*PMLA*'), the applicant Sh. Amanatullah Khan seeks grant of pre-arrest bail in case arising out of ECIR No. DLZO-I/35/2022, dated 16.09.2022, registered for offences punishable under Sections 44 and 45 of the PMLA.

**FACTUAL BACKGROUND**

2. The case of the prosecution, as discerned from the impugned order and the ECIR No. DLZO-I/35/2022, is that a case was registered against the applicant i.e., Amanatullah Khan, a Member of Legislative Assembly ('*MLA*') of Delhi, from Aam Aadmi Party, as well as Mr. Mahboob Alam, the then CEO of Delhi Waqf Board ('*DWB*') and other unknown persons, in relation to the predicate offence's case registered against the accused persons i.e. **FIR No. 9(A)** dated 23.11.2016, registered by the Central Bureau of Investigation ('*CBI*'), AC-III, New Delhi for offences punishable under Section 120B of Indian Penal Code, 1860 ('*IPC*') and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 ('*PC Act*'). Thereafter, the following cases were also clubbed in the present ECIR:

*i.* **FIR No. 05/2020**, dated 28.01.2020, registered at Police Station Anti Corruption Branch ('*ACB*'), Delhi, for offence



punishable under Section 7 of the PC Act read with Section 120B of IPC;

*ii.* **FIR No. 378**, dated 16.09.2022, registered as Police Station Jamia Nagar, Delhi for offence punishable under Sections 25/54 & 59 of the Arms Act, 1959; and

*iii.* **FIR No. 380**, dated 16.09.2022, registered at Police Station Jamia Nagar, Delhi for offence punishable under Sections 25, 54 & 59 of the Arms Act, 1959.

3. Insofar as *FIR No. 9(A)* is concerned, the CBI had filed a chargesheet on 31.08.2022, *inter alia*, alleging as under:

*i.* Mr. Mahboob Alam, IPS (Retd.), had been illegally appointed by the applicant/accused Amanatullah Khan, by issuing tailor made advertisement, passing resolution for his appointment before the closing date for receipt of applications and not calling other candidates for interview;

*ii.* Mr. Mahboob Alam's salary had also been wrongly fixed by DWB, instead of the Service Department, and he had received Rs.4,44,375/-, as salary between the period May to September 2016;

*iii.* After the reconstitution of DWB in March 2016, 41 persons had been appointed in DWB on a contractual or daily wage basis. It included Mr. Mehboob Alam, Retd. IPS, as the CEO, Mr. R.K. Yadav, Retd. ACP, as Member Vigilance Committee, and Mr. Bhanwar Singh, Retd. Patwari as Patwari, in the category of retired persons. The latter two persons had been appointed without there being any such posts. Further,



advertisements for only 22 posts had been published, and no advertisement had been published for the remaining 19 posts. Out of these 41 members, 23 persons, who were later engaged on a contract basis/daily-wage basis, had been working unofficially in DWB on the instructions of the applicant/accused Amanatullah Khan. After the issuance of engagement letters, they had received remuneration from May/June 2016 to September 2016. A total of Rs. 27,20,494/- had been paid to them, and Rs. 4,17,107/- had been paid to four staff members, who had been engaged in the National Waqf Development Corporation Limited ('NAWADCO') Scheme.

- iv. The applicant/accused Amanatullah Khan, who was the Chairman of DWB, had allegedly misused his official position and had engaged his relatives and persons known to him, namely, Hamid Akhtar, Asadullah, Azhar Masood Khan, Abdul Mannan, Aquib Jawed, Imran Ali, Ahrar, Zair Khan, Aamir, Kifayatullah, Rafiushan, Bhanwar Singh, Ms. Uzma, Yunus, Abdul Aleem Abbasi, Iltafat Khan, Talha Khan, Kaleem Ahmad Khan, Arsad Khan, Tanwir Alam, Munira Akhtar, Firoja and Ms. Nazia Khatoon, to work in DWB. However, there had been no official order which allowed them to work in DWB. However, to make their appointments legal, an advertisement had been published on 24.04.2016 in Urdu newspapers.
4. The summary of the allegations, in *FIR No. 05/2020*, registered



at Police Station ACB, Delhi, for offence punishable under Section 7 of the PC Act read with Section 120B of IPC; registered on the complaint dated 25.06.2019 of Mr. Hafiz Irshad Qureshi, investigation in which is pending, are as under:

- i.* The Chairman of DWB had given advertisement in the daily, '*Inquilab*' dated 26.02.2019 for various posts, and as a result, walk-in interviews had been held in the office of DWB, Daryaganj, Delhi on 01.03.2019 and 02.03.2019, without the prior approval of the Revenue Secretary, Delhi Administration, Secretary (Services), Delhi Administration and the concerned Minister for DWB.
- ii.* The applicant/accused i.e. Amanatullah Khan had purchased a fogging machine for Rs. 7,00,000/-, for use in Okhla area, whereas payment for the same had been made by DWB. Further, tents worth Rs. 25,00,000/-, had been purchased by the earlier committee, and the same had been lying abandoned in Fatehpuri Masjid, Delhi. The original value of the said tents was not more than Rs. 4 lacs, and the DWB had to suffer a loss due to waste of the tents.
- iii.* Properties worth more than Rs. 100 crore had been handed over to unauthorized persons without any due process. In eight cases of tenancies, there had been no clarity about advertisements for calling bids. In some other cases, files had not been shown to the CEO and possession of the properties had been handed over without execution of rent agreements and 10 cases were being processed irregularly. There had been



misappropriation of DWB properties worth Rs. 100 crores by the Chairman i.e. present applicant, in collusion with Mr. Mehfooz and Mr. Khalid Usmani, UDC.

- iv. After the dissolution of DWB by the Hon'ble Lt. Governor in October, 2016, Mr. Mehfooz Mohd. had tampered with the files, and thereafter, the CBI had sealed the office of DWB at Daryaganj, Delhi;
- v. Despite the complaints, recruitments had been made by the Chairman, DWB and the engagement/appointment letters had been issued to the candidates without due procedure;
- vi. The funds for the widows and other social workers had been converted and misused towards the salary of the persons recruited by the Chairman, DWB;
- vii. The Chairman i.e. the present applicant and one Mr. Himat Akhtar had opened an account, from which they had been withdrawing huge funds and converting the same for their personal purpose;
- viii. Rs. 5,00,000/- had been spent on renovation of the office of Chairman, without floating any tender.

5. In *FIR Nos. 378 and 380*, registered at Police Station Jamia Nagar, Delhi for offences punishable under Section 25, 54 & 59 of the Arms Act, 1959, there are allegations pertaining to the recovery of illegal weapons from the possession of Hamid Ali Khan and Kausar Imam Siddiqui, who both are close associates of the applicant Amanatullah Khan. Investigation in these two FIRs is pending.

6. In the *present ECIR*, after investigation, the Directorate of



Enforcement has filed a prosecution complaint against accused no. 1 Zeeshan Haider, accused no. 2 Daud Nasir, accused no. 3 Jawed Imam Siddiqui, accused no. 4 Kausar Imam Siddiqui and accused no. 5 M/s Sky Powers i.e. a partnership firm being controlled and managed by accused no. 1 Zeeshan Haider, for offences punishable under Sections 44 read with Section 45 of PMLA. Details of the same are summarized hereunder:

- i.* As alleged, the present applicant Amanatullah Khan, MLA and Chairman of DWB had accumulated proceeds of crime out of illegal gratification in lieu of giving favours to the bidders by leasing out the Waqf properties to them, illegally giving jobs to various persons in DWB and misappropriating DWB funds.
- ii.* The applicant herein, in conspiracy with accused namely Zeeshan Haider, Daud Nasir, Jawed Imam Siddiqui, Kausar Imam Siddiqui and M/s Sky Powers had laundered the proceeds of crime by utilizing the same for purchasing properties i.e. Plot nos. 275 and 276, Tikona Park, Jamia Nagar, Delhi from Jawed Imam Siddiqui, in the name of M/s Sky Powers as well as Sarah Construction Company i.e. a proprietorship of Daud Nasir, *vide* Sale Agreement dated 17.09.2021. As per the evidence recovered by the investigating agencies including one white colour diary, an amount of approximately Rs. 36 crores had been paid, for purchasing the properties in question, to Jawed Ahmed Siddiqui and his wife Ms. Ayesha Quamar. Out of Rs. 36 crores, an amount of Rs. 27 crores had been paid in cash and Rs. 9 crores through bank.



- iii.* Further, Zeeshan Haider had allegedly paid a sum of Rs. 12.80 crores, of which Rs. 8.90 crores had been purportedly paid in cash and Rs. 3.90 crores had been transferred through banking channels. During investigation, his Income Tax Returns (ITRs) and Balance Sheets were analyzed and his declared Gross Total Income, since the fiscal year 2014-15, was found to be Rs. 3.5 to 4.5 lacs, except for the Assessment Year 2019-20, when the same was Rs. 10.31 lacs. Furthermore, for his firm M/s Sky Powers, he had declared a Gross Total Income of zero for the Assessment Years 2018-19, 2019-20, and 2020-21. As alleged, considering his and his firm's income, it is improbable that he could have financed the acquisition of land worth crores of rupees.
- iv.* Moreover, Daud Nasir had allegedly paid about Rs. 6.54 crores, out of which Rs. 4.32 crores had been paid in cash and Rs. 2.22 crores had been transferred through banking channels. During investigation, his Income Tax Returns (ITRs) and Balance Sheets were also analyzed and it was revealed that he had declared a Gross Total Income of about Rs. 5 to 7 lacs only, and on the basis of this income, it was implausible that Daud Nasir could have financed the acquisition of land valued at Rs. 36 crores.
- v.* Further during investigation, it was revealed that Jawed Imam Siddiqui was the owner of properties in question, which were acquired in the name of his wife, Ms. Ayesha Quamar. It is also alleged that in collusion with the present applicant, co-



accused namely Zeeshan Haider, Kausar Imam Siddiqui, and Daud Nasir, had orchestrated a false and fabricated Agreement to Sell dated 17.09.2021, indicating a total sale consideration of Rs. 13.40 crores, which was submitted with the intent to mislead the investigation.

- vi. It is also alleged that through the aforementioned agreement, accused Zeeshan Haider and Daud Nasir have allegedly acted as *benamidars* for the present applicant Amanatullah Khan. With the intention to conceal the actual amount paid to the seller, Zeeshan Haider, Daud Nasir, Jawed Imam Siddiqui, and Kausar Imam Siddiqui allegedly collaborated to launder the proceeds of crime of the present applicant/accused Amanatullah Khan. Out of the total payment of approximately Rs. 36 crores made to Jawed Imam Siddiqui, Rs. 27 crores are the proceeds of crime acquired by the applicant/accused Amanatullah Khan.

#### **SUBMISSIONS ON BEHALF OF THE APPLICANT**

7. Sh. Kapil Sibal, Senior Counsel appearing on behalf of the applicant/accused argues that the present applicant is an MLA from Okhla constituency in Delhi and has been falsely implicated in the present case. Learned Senior counsel further argues that as far as the predicate offence cases of the present applicant are concerned, he has been granted bail by the learned Trial Court in FIR bearing No. 09(A) registered by the CBI, *vide* order dated 01.03.2023. It is further



submitted that the applicant has also been granted bail by the learned Trial Court in FIR bearing No. 05/2020 registered by the ACB, *vide* order dated 28.09.2022.

8. Sh. Kapil Sibal, Senior Counsel for the applicant/accused further argues that after the registration of the present ECIR on 16.09.2022, searches were conducted at the residential premises of the present applicant/accused on 10.10.2023 and nothing incriminating was found against him. It is also contended that FIR bearing No. 5A, registered by Police Station ACB, Delhi, for offences punishable under Section 7 of the PC Act and Section 120B of IPC, contains the same allegations as in FIR bearing No. 9A, registered by CBI, for offences punishable under Section 13(1)(2) PC Act and Section 120B IPC. Therefore, there cannot be two FIRs on the same set of facts or allegations. In FIR bearing No. 9 (A), CBI has filed the chargesheet, with respect to illegal appointment of Mr. Mehboob Alam as CEO of the DWB, illegal appointment of 33 persons as staff in DWB, arbitrary appointment of members of Waqf Vigilance Committee and appointment of Consultant without the sanctioned post and other allegations were found to be administrative irregularities.

9. Learned Senior Counsel further contended that '*proceeds of crime*' is *sine qua non* for the commission of the offence of money laundering and as the Directorate of Enforcement has not furnished any evidence demonstrating the present applicant's participation in the placement, layering, and/or integration of proceeds of crime, there arises no issue of contravention of PMLA provisions. It is



further submitted that the following points establish that no proceed of crime have been generated in the instant case:

- i. On an application filed by the applicant before the learned Trial Court, for fair and proper investigation by CBI, it was submitted by the concerned Investigating Officer that the investigation is going on only on four aspects, i.e. purchase of computer and its accessories without the approval of the DWB, distribution of 1500 ladies suits for widows/destitute, renovation of the office of DWB at Vikas Bhawan-II, for Rs. 25 lacs and purchase of 88 number of tents @Rs. 30,93,750/- through the limited tendering process, with approval of the chairman of DWB. It is therefore, submitted that there is no material or allegation against the applicant that any bribe amount was paid to him concerning alleged corruption in the tenancy of DWB properties. Furthermore, as per the chargesheet, there is no allegation of illegal gain to the applicant.
- ii. It has further been pointed out that while granting bail to the present applicant in FIR bearing No. 9(A) registered by CBI, AC-III, New Delhi, *vide* order dated 01.03.2023, the learned Trial Court has held that no recovery of any money is stated to have been effected from any of the applicants. Moreover, the present applicant was also granted bail in FIR bearing No. 05/2020, *vide* order dated 28.09.2022, wherein the learned Trial Court, while dealing with similar allegations, has held that there is no material on record to show that any of the



recruited employees had paid bribe to the accused in securing the employment or that these employees had withdrawn their salaries from the Waqf Fund without doing any work or that they were not qualified for the job and that it has also come on record that previously, DWB had recruited employees without there being any rules and regulations. It was also held that tenancies have been created at a higher rent than the rent being taken from the earlier tenants. Therefore, *prima facie*, no loss to the exchequer has been caused concerning the said tenancies.

10. Thus, it has been asserted by learned Senior Counsel that considering the aforementioned points, it is noteworthy that the precise amount of purported proceeds of crime remains undisclosed, and there are no allegations concerning the generation of such proceeds in the predicate offences case. The trail of money has not been traced. Moreover, there exists no evidence implicating the present applicant in any acts involving the placement, layering, or integration of proceeds of crime.

11. Sh. Kapil Sibal, learned Senior Counsel appearing for the present applicant/accused argues that prosecution under Section 3 of the PMLA hinges on proving illicit gains from criminal activities tied to the scheduled offences. The Directorate of Enforcement cannot apply the PMLA speculatively or assume scheduled offences without any evidence. The present applicant has not been shown to assist in any activity related to the proceeds of crime making the PMLA inapplicable to him. It is further argued that without an *iota* of



evidence against the present applicant in involvement in criminal activities or benefiting from it, the very basis of the proceedings initiated against the petitioner is legally flawed, unjust and arbitrary. It is vehemently argued by the learned Senior Counsel that despite various manipulations in the records, there is no evidence to indicate that the alleged property in question in the ECIR has been acquired through criminal activities associated with a scheduled offence. Hence, any alleged amount cannot fall under the definition of 'Proceeds of Crime' as per Section 2(1)(u) of the PMLA. Since there is no presence of proceeds of crime as defined in Section 2(1)(u) of PMLA, the Directorate of Enforcement is not authorized to intervene or initiate any action under PMLA. If any material is found during the investigation which relates to the scheduled offence then that material as per Section 66(2) of the PMLA has to be sent by the Director, Directorate of Enforcement to the appropriate investigating agency of the scheduled offence for taking appropriate actions, let alone any action from the Directorate of Enforcement.

12. Sh. Kapil Sibal, learned Senior Counsel appearing for the present applicant/accused further submits that on 12.01.2024, the present applicant had received a summon under Section 50 of the PMLA from the Directorate of Enforcement directing him to appear before them on 23.01.2024 at 11:00 AM. However, on 22.01.2024, the present applicant via email had informed the Assistant Director, Directorate of Enforcement that he was not in a position to appear as he was busy with arrangements for the upcoming Republic Day function at his Okhla Constituency as well as he had to attend certain



important meetings. After that, on 23.01.2024, Directorate of Enforcement had replied to the email of the present applicant/accused and had then directed him to appear on 30.01.2024. Thereafter, on 06.02.2024, the present applicant had received another summon under Section 50 of the PMLA from the Directorate of Enforcement directing him to appear before them on 09.02.2024 at 11:00 AM for extraction and examination of the data of the phone seized during the search conducted on 10.10.2023. Pursuant to the same the present applicant on 09.02.2024, had informed the Assistant Director, Directorate of Enforcement, *via* email that he had authorized a person to appear on his behalf and on 09.02.2024, the authorized person had appeared before the Directorate of Enforcement and had complied with the summon by assisting Directorate of Enforcement in extracting and examining the phone data. Further, on 16.02.2024, the present applicant had again received a summons under Section 50 of the PMLA from Directorate of Enforcement, directing him to appear before Directorate of Enforcement on 19.02.2024 at 11:00 AM. However, on 19.02.2024 the present applicant *via* email had informed the Assistant Director, Directorate of Enforcement, that the anticipatory bail application of the present applicant is pending for adjudication before the learned Trial Court and that the learned Trial Court was pleased to issue notice for 20.02.2024. It was further stated in the email that the present applicant would render full cooperation to the Directorate of Enforcement after the adjudication of the said application by the learned Trial Court. It is further contended that on 24.02.2024, the present applicant had received yet another summons



under Section 50 of the PMLA from Directorate of Enforcement directing him to appear before Directorate of Enforcement on 26.02.2024 at 11 AM for collecting details of all the bank accounts maintained by the applicant and his family members. However, on 27.02.2024 the present applicant *via* email had informed the Assistant Director, Directorate of Enforcement that the anticipatory bail application of the present applicant is pending adjudication before the learned Trial Court and is listed for orders on 01.03.2024 and had further sought time to appear after the final adjudication of the matter. Furthermore, on 29.02.2024 the present applicant had further received another summon under Section 50 of the PMLA from Directorate of Enforcement directing him to appear before the Directorate of Enforcement on 04.03.2024 at 11 AM for compliance of the earlier summons despite knowing the fact that the applicant's bail application is pending for adjudication before the learned Trial Court.

13. Sh. Kapil Sibal, learned Senior Counsel appearing for the present applicant/accused further contended that the court, at the stage of bail, is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. It is argued that 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 based on material available on record is required to be looked into at this stage. It is further submitted that the applicant herein has consistently exhibited a steadfast commitment to cooperating with the ongoing investigation, readily adhering to all directives to participate in the



proceedings. It is submitted that the present applicant is a two-time MLA, and he holds deep-seated connections within the societal fabric, further mitigating any concerns regarding flight risk. It is further submitted that the investigation into the predicate offense cases has been exhaustively conducted, yet no evidence implicating the present applicant has been unearthed. Consequently, given the absence of any substantive grounds, there is no reason to believe that custodial interrogation of the present applicant is required in this case. Therefore, it is submitted that the present applicant is ready to join the investigation and cooperate with Directorate of Enforcement and therefore, the present applicant be enlarged on anticipatory bail pursuant to any stringent conditions imposed by this Court to which the present applicant shall adhere.

#### **SUBMISSIONS ON BEHALF OF THE RESPONDENT**

14. *Per contra*, Sh. Zoheb Hossain, Special Counsel appearing on behalf of the Directorate of Enforcement opposes the present anticipatory bail application filed by the applicant/accused and further argues that the anticipatory bail application deserves to be dismissed as the rigors of the mandatory twin conditions under Section 45 of the PMLA are equally applicable in case of anticipatory bail. Reliance for the same has been placed on the judgment of the Hon'ble Supreme Court in *Vijay Madanlal Choudhary & Ors. vs Union of India & Ors* 2022 SCC OnLine 929, wherein the Hon'ble Apex Court has upheld the constitutional validity of the twin



conditions of bail, as prescribed in Section 45 of the PMLA and has observed that the relief of bail, be it in the nature of regular bail or anticipatory bail, is circumscribed by the conditions in Section 45 of the PMLA. It is further submitted that based on the investigation being conducted and material available on record, it is prima facie established that the applicant has inter alia committed the offence of money laundering by indulging in the process or activity relating to a schedule offence. It is also submitted that the present applicant/accused has remained non cooperative in the investigation conducted so far as inter alia he has failed to appear on summons issued under Section 50 of the PMLA Act on numerous occasions. Despite the investigating agency giving the present applicant/accused a reasonable time to appear before it in pursuance of the ongoing investigation.

15. Sh. Zoheb Hossain, learned Special Counsel for Directorate of Enforcement further argues that as per explanation 1 to Section 44 of the PMLA, investigation into the offence of money laundering is independent of the investigation conducted by the predicate agency. It is further argued that ongoing investigations concerning the applicant reveal that the contents of the diaries hold factual accuracy. During the investigation the diaries, seized in this instance, hold evidentiary significance under Section 22 of the PMLA. The total transaction involving the tainted property amounts to Rs. 36.00 crores approx., with Rs. 27 crores constituting proceeds of crime generated by the present applicant/accused through criminal activities linked to the scheduled offense. These funds were utilized to acquire properties



under the names of proxies, Zeeshan Haider and Daud Nasir, in an attempt to launder them by presenting them as legitimate assets. During further investigation accused Sh. Kausar Imam Siddiqui was presented with two sale agreements, one with a consideration of Rs. 13.40 crores and the other with a consideration of Rs. 36 crores, and was asked to verify the authenticity of each. When confronted, he had denied any knowledge of the sale agreement with a consideration of Rs. 13.40 crores, stating that he had not witnessed it as a middleman in the sale/purchase of the property belonging to Jawed Imam Siddiqui/Ayesha Quamar. However, he had confirmed the authenticity of the sale agreement with a total consideration of Rs. 36 crores, stating that he had witnessed it during the sale of the property belonging to Ayesha Quamar, wife of Jawed Imam Siddiqui. He had also admitted that properties no. 275 and 276 in Tikona Park, Jamia Nagar, Delhi, were sold by Jawed Imam Siddiqui to Zeeshan Haider and Daud Nasir upon the instructions of the present applicant/accused.

16. Furthermore, Sh. Zoheb Hossain appearing for Directorate of Enforcement further contends that despite the issuance of numerous summons to the applicant, he has intentionally evaded them and has not cooperated with the investigation in person thus far. Based on the conduct of the present applicant, it is evident that the same demonstrates a lack of honesty, and it is apparent that he has no intention of participating in the investigation. It is further argued that the present applicant/accused has deliberately evaded the summons under Section 50 of the PMLA. It is further emphasized that as per



the catena of judgments of the Hon'ble Apex Court that during the bail application stage, the court should avoid delving into the merits of the case to determine whether an offense has been committed by the accused. Rather, the focus should solely be on assessing the charges against the accused and their involvement in the offense's commission. In the present case, ample evidence has been presented to *prima facie* establish that the applicant has engaged in money laundering activities by participating in processes or activities related to scheduled offenses and actively concealing material facts. It is thus prayed that the anticipatory bail application moved by the present applicant/accused be dismissed.

### **PRE-ARREST BAIL: LAW AND PRECEDENTS**

17. Section 438 of Cr.P.C. provides that when a person has any reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may approach either High Court or Court of Sessions for seeking a direction that in event of arrest, he shall be released on bail.

18. In case of *Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1*, Five-Judge Bench of Hon'ble Apex Court had concluded that following factors are to be considered by the Courts while deciding anticipatory bail applications:

“92.4. Courts ought to be generally guided by considerations such as the **nature and gravity of the offences**, the **role attributed to the applicant**, and the **facts of the case**, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind



of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

(Emphasis supplied)

19. The Hon'ble Supreme Court of India in *Sumitha Pradeep v. Arun Kumar C.K. & Anr.* 2022 SCC OnLine SC 1529 has summed up the three points that have to be kept in mind for grant of anticipatory bail, which are: (i) prima facie case against accused, (ii) nature of offence, and (iii) severity of the punishment. The relevant observations are as under:

“...There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the **prima facie case put up against the accused**. Thereafter, the **nature of the offence should be looked into along with the severity of the punishment**. Custodial interrogation can be one of the grounds to decline custodial interrogation. However, **even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail...**”

(Emphasis supplied)

20. In case of *P. Chidambaram v. Directorate of Enforcement* (2019) 9 SCC 24, the Hon'ble Apex Court has made following observations on grant of anticipatory bail and has held that grant of anticipatory bail to some extent, interferes with the course of investigation and thus, Courts must circumspect while exercising such power:

“69. Ordinarily, arrest is a part of procedure of the



investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the **nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail.** Grant of anticipatory bail to some extent **interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail.** Anticipatory bail is not to be granted as a matter of rule and it has to be **granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.**”

(Emphasis supplied)

## **GRANT OF BAIL IN CASES UNDER PMLA**

### **Section 45 of PMLA**

21. For the purpose of considering bail in case of money laundering, Section 45 of PMLA is relevant, which reads as under:

“45. Offences to be cognisable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given a opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied **that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:**

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of



money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in subsection (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

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

(Emphasis Supplied)

### **Judicial Precedents: Mandatory Twin Conditions**

22. Section 45(1) of PMLA lists the twin conditions that must be satisfied before an accused can be enlarged on bail in a case of



money laundering. In this context, it will be relevant to take note of the observations of Hon'ble Apex Court in case of *Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929*, on the satisfaction of mandatory twin conditions under Section 45 of PMLA, which are extracted hereunder:

“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.

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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 *Prasad Nimmagadda*, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."

(Emphasis Supplied)

23. In case of *Tarun Kumar v. Enforcement Directorate 2023 SCC OnLine SC 1486*, the Hon'ble Apex Court had held as under:

**"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.”

(Emphasis Supplied)

### **Section 45 of PMLA Applicable in case of Anticipatory Bail**

24. The Hon’ble Apex Court in case of *The Asst. Director Enforcement Directorate v. Dr. V.C. Mohan* 2022 SCC OnLine SC 452 had clarified that the provisions of Section 45 of PMLA would also be attracted while deciding an application filed under Section 438 of Cr.P.C., seeking pre-arrest bail. The relevant observations in this regard are as under:

“...That does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play.

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...It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered — although the application is under Section 438 of Code of Criminal Procedure.”



25. In *Vijay Madanlal Choudhary* (*supra*) also, the Hon'ble Apex Court had dealt with the argument of non-application of rigors of Section 45 of PMLA in respect of anticipatory bail filed under Section 438 of Cr.P.C. It was concluded, in the following words, that the twin tests of Section 45 of PMLA will have to be satisfied even in cases of anticipatory bails:

“410. Therefore, as noted above, investigation in an economic offence, more so in case of money-laundering, requires a systematic approach. **Further, it can never be the intention of the Parliament to exclude the operation of Section 45 of 2002 Act in the case of anticipatory bail**, otherwise, it will create an unnecessary dichotomy between bail and anticipatory bail which not only will be irrational but also discriminatory and arbitrary. Thus, **it is totally misconceived that the rigors of Section 45 of the 2002 Act will not apply in the case of anticipatory bail.**

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412. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and **rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act**, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.”

(Emphasis supplied)

26. Again in the decision of *Directorate of Enforcement v. M. Gopal Reddy* *Crl.Appeal No. 534/2023*, the Hon'ble Apex Court had expressed that the High Court concerned had erred in arriving at a finding that Section 45 of PMLA was not to be considered while granting anticipatory bail to an accused. The relevant portion of judgment reads as under:



“By the impugned judgment and order, while granting anticipatory bail the High Court has observed that the provisions of Section 45 of the Act, 2002 shall not be applicable with respect to the anticipatory bail applications/ proceedings under Section 438 Cr. P.C. For which the High Court has relied upon the decision of this Court in the case of *Nikesh Tarachand Shah (supra)*. In the case of *Dr. V.C. Mohan (supra)*, this Court has specifically observed and held that it is the wrong understanding that in the case of *Nikesh Tarachand Shah (supra)* this Court has held that the rigour of Section 45 of the Act, 2002 shall not be applicable to the application under Section 438 Cr. P.C. In the case of *Dr. V.C. Mohan (supra)* in which the decision of this Court in the case of *Nikesh Tarachand Shah (supra)* was pressed into service, it is specifically observed by this Court that it is one thing to say that Section 45 of the Act, 2002 to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the Act, 2002, the underlying principles and rigours of Section 45 of the Act, must get triggered - although the application is under Section 438 Cr. P.C. Therefore, the observations made by the High Court that the provisions of Section 45 of the Act, 2002 shall not be applicable in connection with an application under Section 438 Cr. P.C. is just contrary to the decision in the case of *Dr. V.C. Mohan (supra)* and the same is on misunderstanding of the observations made in the case of *Nikesh Tarachand Shah (supra)*. Once the rigour under Section 45 of the Act, 2002 shall be applicable the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is unsustainable.

### **Adjudication of Anticipatory Bail in cases of Money Laundering**

27. In cases under PMLA, which are economic offences in nature, the following crucial observations of Hon’ble Apex Court in *P. Chidambaram (supra)* in respect of grant or refusal of anticipatory bails are relevant to be considered:

“78. Power under Section 438 Cr.P.C. being an



extraordinary remedy, **has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society.** In *Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105*, it was held that in economic offences, the accused is not entitled to anticipatory bail.

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83. **Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation.** Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

84. In a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage. As held in *Anil Sharma*, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 Cr.P.C. is to be invoked only in exceptional cases where the case alleged is frivolous or groundless..."

(Emphasis supplied)

## **SECTION 50 OF PMLA**

### **Power of Directorate of Enforcement to Summon Any Person under Section 50 of PMLA**

28. While taking note of the observations made by the Hon'ble Apex Court in case of *Vijay Madanlal Choudhary (supra)*, this



Bench in case of *Moloy Ghatak v. Directorate of Enforcement* 2023 SCC OnLine Del 7443 had made the following observations on the power of Directorate of Enforcement to issue summons to any person under Section 50 of PMLA and the consequent duty of such person to attend the same. The observations are extracted hereunder:

“20. In *Vijay Madanlal Choudhary v. Union of India* 2022 SCC OnLine SC 929, the Hon’ble Apex Court had discussed the scope of Section 50 and the power to issue summons therein, by way of following observations:

“425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression —proceeding in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. **Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act.** The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so



summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established.

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431. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. **In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority.** It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money- laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a



situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.”

21. It is apparent from the reading of Section 50 of PMLA as well as decision in *Vijay Madanlal Choudhary (supra)* that the power conferred upon the authorities by virtue of Section 50 of PMLA empower them to summon ‘any person’ whose attendance may be crucial either to give some evidence or to produce any records during the course of investigation or proceedings under PMLA. The persons so summoned are also bound to attend in person or through authorised agent and are required to state truth upon any subject concerning which such person is being examined or is expected to make statement and produce documents as may be required in a case.”

(Emphasis supplied)

29. Recently, the Hon’ble Apex Court in case of *Directorate of Enforcement v. State of Tamil Nadu, SLP (Crl.) NO. 1959-1963/2024*, explained the power to summon a person under Section 50 of PMLA and consequent duty of the person so summoned to respect and respond to the same. These observations are extracted hereunder:

5. Sub-section (3) of Section 50 thereof being relevant, reads as under:-

“(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the



truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.”

6. From the bare reading of the said provisions, **it clearly transpires that the concerned officers as mentioned therein, have the power to summon any person whose attendance he considers necessary, either to give evidence or produce any record during the course of investigation or proceeding under the PMLA.** Since, the petitioner – ED is conducting the inquiry / investigation under the PMLA, in connection with the four FIRs, namely (I) FIR No. 08 2018 dated 23.08.2018 registered by V&AC, Thanjavur, under Sections 120(B), 421, 409, 109 of IPC and Sections 13(1)(c), 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act) r/w 109 of IPC etc.; (II) FIR No. 03 2020 dated 20.10.2020 registered by V&AC, Dindigul under Sections 41, 109 of IPC and Section 7(a) of P.C. Act; (III) FIR No. 02 2022 dated 05.02.2022 registered by V&AC, Theni under Sections 7, 13(c), 13(1)(d)(I), 13(1)(a) r/w 13(2) and 12 of P.C. Act, Sections 120(B), 167, 379, 409, 465, 468, 471, 477 r/w 109 of IPC and Sections 7, 8(1), 13(1)(a) r/w 13(2) and 12 of PC Act, as amended; (IV) FIR No. 68/2023 dated 25.04.2023 registered by Murappanadu Police Station, Thoothukudi District, under Section 449, 332, 302 and 506(2) of IPC, and since some of the offences of the said FIRs are scheduled offences under PMLA, the same would be the investigation/proceeding under the PMLA, **and the District Collectors or the persons to whom the summons are issued under Section 50(2) of the Act are obliged to respect and respond to the said summons.**

(Emphasis supplied)

### **Evidentiary Value of Statements Recorded under Section 50 of PMLA: At the Stage of Consideration of Bail/Anticipatory Bail**

30. In the case of *Rohit Tandon v. Directorate of Enforcement (2018) 11 SCC 46*, three- judge bench of the Hon’ble Apex Court has held that such statements are admissible in nature and can make out a



formidable case about involvement of accused in the offence of money laundering. The relevant observations of the Hon'ble Apex Court are as under:

“ 31. ...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 Act of 2002. 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...”

(Emphasis supplied)

31. Furthermore, the challenge to Section 50 of PMLA was rejected by the Hon'ble Apex Court in case of *Vijay Madanlal Choudhary (supra)*, wherein it was held that the statements recorded under Section 50 of PMLA cannot be compared to statements under Section 67 of NDPS Act, and that such statements were not in violation of Article 20(3) of the Constitution of India.

32. Therefore, at the stage of adjudicating an anticipatory bail application, the statements recorded under Section 50 of PMLA, will be relevant to be considered and appreciated, alongwith other evidence collected by the investigating agency, for the purpose of ascertaining whether the offence of money-laundering is *prima facie* made out against an accused or not.



## INVESTIGATION CONDUCTED SO FAR & THE ROLE OF PRESENT APPLICANT

### **Investigation by the Agencies: Seizure of Incriminating Material**

33. In the present case, the ACB, while carrying out investigation in FIR No. 05/2020, had conducted searches at various locations, owned and controlled by the applicant Amanatullah Khan and his close associates Hamid Ali Khan, and Kausar Imam Siddiqui i.e. accused no. 4 in prosecution complaint, which had led to seizure of various incriminating documents/records/articles, including illegal weapons and three diaries containing details of huge cash transactions valuing more than Rs. 100 crores during the period 2018 to 2022, which disclosed sale/purchase of various properties in Delhi, Dehradun, Telangana etc.

34. One white diary was seized from the possession of Kausar Imam Siddiqui which revealed that there were huge cash transactions running into crores of rupees between Jawed Imam Siddiqui i.e. accused no. 3 in prosecution complaint, and the present applicant and his close associates namely Zeeshan Haider i.e. accused no. 1 in prosecution complaint, Daud Nasir i.e. accused no. 2 in prosecution complaint, and others. These transactions were mentioned at page nos. 92 to 103 of the diary under the heading, “2021 Sale Plot- 12 GJ 17.09.2021 Sale for Zeeshan”.

35. As per details mentioned in the diary, the total amount involved in the said transaction was about Rs. 36 crores out of which about Rs. 9 crores were paid by way of bank transactions and about Rs. 27 crores were paid through cash. Further, out of the said Rs. 36



crores, about Rs. 8.33 crores were paid directly by the *present applicant*, as reflected in the diary.

36. A table, depicting the transactions mentioned in the aforesaid **white diary**, as shown in the prosecution complaint, is drawn hereunder for reference:

<i>S.No.</i>	<i>Name of the Persons</i>	<i>Amounts transacted through Cash (in Crores)</i>	<i>Amounts transacted through banking channel (in Crores)</i>	<i>Total amounts (in Crores)</i>
1.	Amanatullah Khan	8.13	0.20	8.33
2.	Zeeshan Haider	8.907	3.90	12.807
3.	Daud Nasir	4.32	2.22	6.54
4.	Yamin Ali Chaudhary	1.50	-	1.5
5.	Nawab@ Nawab Ahmed	1.53	-	1.53
6.	Sakib Bhai Jasola@ Squib Islam Khan	2.28	-	2.28
7.	Third Parties Payment	-	2.2293	2.5
8.	Name not mentioned	0.10		
	<b>Total</b>	<b>26.767</b>	<b>8.63</b>	<b>35.38</b>

### **Execution of Sale Agreements of properties in Question**

37. As regards the properties in question, it is the case of



prosecution that the properties i.e. Plot nos. 275 and 276, TTI, Tikona Park, Jamia Nagar, New Delhi were owned by Jawed Imam Siddiqui in the name of his wife Ayesha Quamar and these properties were transferred to Zeeshan Haider and Daud Nasir, close associates of the *present applicant*, in the year 2021 through an agreement to sell dated 17.09.2021 and Kausar Imam Siddiqui, who was a close associate of the present applicant, had acted as his middleman and fund manager

38. As per prosecution, Zeeshan Haider, Daud Nasir and Jawed Imam Siddiqui in their statements recorded under Section 50 of PMLA have admitted the transactions about the properties in question and had also submitted the details of the agreement. According to the version of the accused persons, agreement dated 17.09.2021 was purportedly executed between the seller Ayesha Quamar and the purchaser i.e. M/s. Sky Powers (accused no. 5 in prosecution complaint), a firm owned by Zeeshan Haider, as well as Sara Constructions, a proprietorship of Daud Nasir. **In this agreement, the sale consideration was mentioned as Rs. 13.40 crores** out of which Rs. 5 crores were shown to have been paid through bank transactions and rest of the amount was shown to be paid in future, without there being any further details.

#### **Search and Seizure by the Directorate of Enforcement**

39. In the present case, further searches were carried out at several locations and various incriminating records and digital evidence were seized including the mobile phone of Zeeshan Haider as well as



another sale agreement dated 17.09.2021, in addition to the agreement which was submitted by the accused persons in respect of the same properties in question and executed between the same parties.

40. **However**, in this sale agreement, **the total amount of consideration for the sale was shown as Rs. 36 crores** out of which Rs. 5 crores were shown to have been paid by way of bank transactions and remaining amount was shown to be paid in future, without there being any other details. It was discovered that the said agreement was witnessed by Kausar Imam Siddiqui and one Waqar Ahmed Khan.

41. Thus, it is the case of prosecution that the agreement which was seized by the Directorate of Enforcement during the search, was the original agreement executed in respect of the properties in question, and the agreement submitted by the accused persons earlier was false and fabricated.

#### **Section 50 PMLA statement of Kausar Imam Siddiqui**

42. Kausar Imam Siddiqui has disclosed in his statement recorded under Section 50 of PMLA that he knew the *present applicant* Amanatullah Khan for a long period of time and had come in close contact with him in **January 2020 i.e. after he had joined Aam Aadmi Party. He has further disclosed that he was holding the position of Vice President of Ward No. 189 (AAP) in September-October 2021, and he used to manage the expenses, organize rallies, make transport arrangements, etc., on the instructions of**



**the present applicant Amanatullah Khan and his associates including the relatives of Amanatullah Khan.**

43. In his statement recorded under Section 50 of PMLA, Kausar Imam Siddiqui, has **denied having any knowledge** about sale agreement having consideration amount of Rs. 13.40 crores and rather, he has **confirmed** that the agreement having consideration amount of Rs. 36 crores was the genuine agreement and was executed at the time of sale of the properties in question, and that he was a witness to the same agreement.

44. **Kausar** has also **admitted the contents mentioned in the white diary**, which was seized during the investigation in the present case by the ACB of Delhi Police, and further that the content written in the diary *qua* the transaction in question was **written by him in his own handwriting**. It was also disclosed by him that **he had noted the financial transactions in the white diary including the transaction *qua* properties in question, on the direction of the present applicant.**

45. He has further stated in his statement recorded under Section 50 of PMLA, **that his cousin Jawed Imam Siddiqui had sold the properties in question to Zeeshan Haider, through him, at the behest of the present applicant**, wherein Kausar was to receive a total of Rs. 50-55 lacs as commission, however, he had received only Rs. 16-17 lacs till date.



**Analysis of bank account statements of sellers and buyers of property including the accused persons**

46. As regards the bank account statements of the sellers of the property i.e. Jawed Imam Siddiqui and Ayesha Quamar, it was revealed that the amount which was transacted through bank was credited into their bank accounts, and further, that a total amount of Rs. 11 crores had been deposited in their bank accounts during the period between 2017 to 2022, and out of the same, cash deposit of about Rs. 3.81 crore were declared as sale proceeds of the properties in question.

47. It is also the case of prosecution that the transactions carried out through banks, which are mentioned in the diary, matches with the corresponding bank account statements of the sellers of the property. Similarly, certain cash transactions mentioned in the diary also match with the cash deposits made in the bank accounts of Jawed Imam Siddiqui and Ayesha Quamar. **It, thus, corroborates the contents of the seized diary which shows that the total amount of consideration for purchasing the property in question was Rs. 36 crores, and therefore, the agreement showing the sale consideration amount as Rs. 13.4 crore was a false and fabricated agreement, which had been created at a later stage to mislead the investigation and to conceal the actual sale transaction value, so that the cash amounting to Rs. 27 crore infused in the property, which is the proceeds of crime in the hands of *present applicant*, may be concealed.**

48. Thereafter, bank account statement of Daud Nasir was also



analyzed who had, as per the contents of the diary, paid Rs. 6.54 crores, out of which Rs. 2.2 crores were paid through bank and Rs. 4.32 crores were paid in cash. **The bank account statement of his firm revealed that the gross total income of his firm in the year 2017-18 was only about Rs. 5-7 lacs and it was not possible for him to purchase land worth crores of rupees.**

49. Bank statements of Zeeshan Haider were also scrutinized who, as per the contents of the diary, had paid Rs. 12.3 crores, out of which Rs. 3.40 crores were paid through bank and Rs. 8.90 crore were paid in cash. As per his balance sheets, his gross total income since the year 2014-15 **was only about Rs. 3-4 lacs and about Rs. 10 lacs in the year 2019-20.** His firm i.e. M/s. Sky Powers, which had entered into the sale agreement, had **no income** at all during the relevant period of time. Thus, it is the case of prosecution that with this level of income, **it was also not possible for Zeeshan Haider to purchase the properties in question.** It is also alleged that in the diary, Zeeshan Haider had put his signatures on the entries of the entire transaction of Rs. 36 crores pertaining to the properties in question.

50. As per the diary, one Saquib Islam Khan had paid an amount of Rs. 2.28 crores to Jawed Imam Siddiqui. However, during investigation, Kausar Imam Siddiqui had disclosed that **Saquib was either close relative or close associate of the present applicant and Kausar Imam Siddiqui had collected Rs. 2.28 crores in cash from Saquib on the instruction of present applicant** and settled the same as per directions of Jawed Imam Siddiqui.



51. As regards the payment made by Yamin Ali Chaudhury of Rs. 1.5 crores in cash and Nawab Ahmed of Rs. 1.53 crore in cash, one **WhatsApp chat** was recovered by the prosecution between Nawab and Yamin Ali from which it could be inferred that the *present applicant* was the main person behind purchase of the properties.

52. Therefore, on the basis aforesaid, it is the case of prosecution that the **cash amounts which have been paid** by Daud Nasir, Zeeshan Haider, Saquib Islam Khan, Yamin Ali Chaudhury and Nawab Ahmed, **were in fact the proceeds of crime which came from the present applicant Amanatullah Khan.**

**CAN FILING OR PENDENCY OF ANTICIPATORY BAIL APPLICATION OR PETITION FOR QUASHING OF SUMMONS BE GROUND TO NOT JOIN INVESTIGATION?**

53. In the case at hand, the applicant had first preferred a petition before this Court wherein he had challenged the summons issued to him, and on this ground itself, he had skipped the summons issued to him by the Directorate of Enforcement. However, after a week of filing this petition, the applicant had chosen to withdraw the same by not pressing for any relief. Thereafter, he had avoided subsequent summons on grounds of anticipatory bail application being filed before the Sessions Court, the same being listed for arguments or it being reserved for orders.

54. Thus, it is one of the arguments raised before this Court that since the applicant was pursuing his legal remedies, it cannot be held that he did not cooperate with the investigating agency deliberately.



55. There is no doubt that a person is entitled to all remedies, reliefs and fundamental rights available to him under the Constitution and law, such as to seek anticipatory bail, when apprehending arrest by the investigating agency or to file a petition challenging validity of summons issued to him. However, to hold that filing of a petition or an application, which is not diligently pursued, would amount to a justification for not joining investigation despite repeated summons and notices being received from the law enforcement agency, will be a dangerous proposition.

56. In other words, if such an argument is accepted, it would also result in situations where a person so summoned would either file a petition before a Constitutional Court challenging the validity of a summon and then not join investigation citing the pendency of such petition before a Court of law which he even may or may not diligently pursue, or would file anticipatory bail applications, right from the Sessions Court till the Hon'ble Apex Court and then also not join investigation on this pretext, even if he is not granted any interim protection by any Court of law. Thus, legal strategies cannot be allowed to defeat the ends of justice and the rights of agencies to carry out investigation.

57. To give validity to this argument and the stand taken by the applicant before this Court, that despite issuance of six summons by the investigating agency, he will not appear before the agency but will wait till grant of anticipatory bail, will result in anarchy as any person who is summoned and asked to join investigation, would take a stand that till anticipatory bail is not granted by a Court of law, he



will not join investigation too.

58. The Courts of law cannot allow a legal strategy, commonly used by a person, to obstruct investigation or join investigation as that would amount to stripping the investigating agency of their valuable right to summon a person under the law, to give information about a suspected crime especially under the law, which has been upheld by the Hon'ble Apex Court as constitutional and not illegal.

59. To reiterate, the investigating agencies are involved in investigating offences, as per law, and rather it is the boundened duty of every citizen to join investigation when called for. Needless to say, this Court should not be laying down that a citizen will not have a right to seek anticipatory bail, however, to make that a ground for not appearing before the investigating agency cannot be permitted by Courts.

**WHETHER NON-COOPERATION WITH THE INVESTIGATION AGENCY WILL COME IN WAY OF GRANT OR REFUSAL OF ANTICIPATORY BAIL**

60. The State has a right to summon a person, through the investigating agencies, to ensure rule of law and bring those who are in conflict with law and in violation of law, within the confines of law. The power of Directorate of Enforcement to summon a person is circumscribed under Section 50 of PMLA and as held by Hon'ble Apex Court in case of *Vijay Madanlal Choudhary (supra)* and *Directorate of Enforcement v. State of Tamil Nadu (supra)*, a person so summoned under Section 50 is bound to respect the same.



61. Not responding to or attending to the notices or summons of an investigating agency would amount to non-cooperation with investigation.

**The Conduct of Applicant of Non-Compliance of Six Summons Issued by Directorate of Enforcement**

62. The present applicant was presented with six opportunities by the investigating agency to join the investigation and submit the relevant details, but the applicant refused to join the process of investigation. The conduct of the applicant in this light has been summarized in the form a table, as follows:

<i>S.no.</i>	<i>Summons</i>	<i>Date of appearance</i>	<i>Joined or not Joined</i>	<i>Reason Cited</i>
1.	12.01.2024	23.01.2024	Not Joined	Refused to join on account of republic day preparations.
2.	(Second opportunity to join the first Summons)	30.01.2024	Not Joined	No reason cited.
3.	6.02.2024	9.02.2024	Not Joined	Filed a Writ Petition for summon quashing on 07.02.2024.  Later dismissed as withdrawn, as prayer was not pressed.



4.	16.02.2024	19.02.2024	Not Joined	Anticipatory Bail application filed.  Replied on 19.02.2024 that anticipatory bail application is listed for hearing on 20.02.2024
5.	24.02.2024	26.02.2024	Not Joined	Replied on 27.02.2024 that the anticipatory bail application of the applicant is reserved for orders on 01.03.2024.
6.	29.02.2024	04.03.2024	Not Joined	No Reason Cited.

63. **This Court wonders whether a person's plea of being busy with personal or official work can be a valid ground on several occasions to avoid summons on the ground that he is a public person. The answer in this Court's opinion has to be in the negative, since cooperating with investigating agency by a public figure too is public service, as the public is entitled to know from the legal representative about the allegations levelled by an investigating agency on the basis of statements of witnesses recorded under Section 50 PMLA which are in nature of judicial proceedings and admissible in law, and on the basis of evidence collected during investigation.**

64. As a public servant i.e. a person who is in service of public, especially the one who professes that his whole life is for public service, he should have cooperated with the investigation. Moreso,



since the allegations are also of misuse of public funds to his own use by purchasing properties through his associates as well as other irregularities committed by him as Chairman of the Delhi Waqf Board, it becomes crucial that he joins and cooperates with investigation.

65. This Court notes that the Directorate of Enforcement has issued repeated summons to the present applicant, however, he has not joined the investigation till date. The applicant has also failed to provide the investigation agency with documents which were mentioned in '*Annexure-A*' which was repeatedly sent to him with the summons on several dates. **In case, the applicant had nothing to hide and the investigating agency was calling him for investigation, he could have joined the investigation and clarified his position.** *For a reference*, the details which the applicant had been asked to submit are as under:

“Annexure - A

1. Details of your family members along with their PAN and contact details.
2. Details of Firms/ Companies/ Trusts/ Proprietorships etc. in which you or your family members are Director/Trustee/ Chairman/Proprietor/Beneficial Owner etc.
3. Details of all Bank Accounts maintained by you, your family members and company/firm etc. (if any).
4. Details of movable and immovable properties held in yours, your family members and company/firm's etc. (if any) name along with the details of all movable/immovable properties gifted/donated by you to any of your family members or any other person.
5. ITRs from 2015 and onwards filed by you and your family members.
6. Company/firm (if any) Balance Sheet from 2015 and



onwards.

7. Details of Criminal/civil cases pending or initiated against you.”

66. When this Court analyzes the material available on record and the investigation conducted so far, it appears that the **basic purpose for calling or summoning the applicant** herein in the present ECIR is that the evidence collected so far, be it the diaries seized during investigation or the statements recorded under Section 50 of PMLA, have revealed that the properties in questions were purchased from money, including cash amount of about Rs. 27 crores, which is the proceeds of crime generated by the applicant. The **cause behind summoning the applicant**, alongwith list of documents such as bank details of the applicant and his family members, details of properties, etc., is that the Directorate of Enforcement, as per the law of land, wants to first confront the applicant with the statements recorded under Section 50 of PMLA of his close associates and the contents of diary seized in the present case which reveal that he had paid an amount of Rs. 8 crores in cash towards the purchase of properties in question.

67. In a case where a person who has **systematically and repeatedly avoided summons** of the investigating agency, extending relief of grant of anticipatory bail to him, in face of prosecuting agency having been able to place on record *prima facie material* which needs to be confronted with the accused by joining investigation, involving allegations of money laundering and misuse of public money etc. which are serious in nature, **will amount to**



trivializing the alleged offence and the attendant message to the public that there is no need to obey the law i.e. responding to the summons and joining investigation which is a requirement of law.

68. **To allege institutional bias without any evidence**, through the use of words “*the applicant is being victimized*”, “*to tarnish the image of applicant*”, “*ED is targeting innocent people on the basis of a concocted story*”, despite the fact that the accused himself has failed to join investigation repeatedly, without any material in support whereof, does not reveal any form of systematic discrimination or targeting. Non-joining of investigation on this ground therefore, cannot be held in the favour of the applicant/accused since the assessment of evidence gathered by the investigating agency will ultimately be put before the Court of law.

69. **Every effort of any individual to avoid compliance with requirements of law will invite legal consequences.** As in the present case, effort to avoid compliance with the summons and joining investigative process repeatedly will become a relevant consideration while adjudicating an application for grant of anticipatory bail which has its own jurisprudence.

### **BALANCING THE RIGHT OF ACCUSED & RIGHT OF INVESTIGATING AGENCY**

70. Right to life, liberty and security of a person is paramount under the Constitution of India and in the criminal law in India. However, at the same time, the powers of the investigating agency to



investigate an offence wherein the joining and providing information by a person is required, sending of summons cannot amount to infringing one's right to freedom and personal liberty on the pretext that the person concerned has apprehension of being arrested. For that, he has a separate remedy to take recourse too, in the form of anticipatory bail as well as regular bail before the Court of law or quashing of summons on whatever ground he deems appropriate.

71. In case, the conduct of a person for not joining investigation on the pretext that if he joins investigation, he will be arrested, is given protection and declared valid, no accused/person will ever enter office of any investigating agency for an offence, howsoever, heinous as he will apprehend arrest.

72. Ensuring rule of law is the prime duty of the Courts as well as investigating agency which balances the rights of the accused, a suspected accused or a person who can assist in arresting an accused or solving a case, the journey of which starts on registration of an ECIR in a PMLA case and a complaint or an FIR in a case of a criminal offence.

73. Thus, a person in India has a fundamental right to liberty and life, and the shield of law remains available even to an accused against whom an offence is alleged and his liberty can be curtailed only, as per law. His right against arbitrary detention or arrest to be informed of specific offence, he is accused of, at appropriate stage of investigation, protection against self incrimination, presumption of innocence till held guilty, bail not jail being a rule etc. remain available to an individual who is suspected accused. **However, in an**



**attempt to ensure that fundamental rights remain available to a person as cited above, it does not mean that the right of the State to investigate an offence has to be sacrificed, which is for the larger interest of the country, State or community.**

**BEYOND PRIVILEGE: UPHOLDING ACCOUNTABILITY OF PUBLIC FIGURES**

**74. This Court cannot allow a new jurisprudence or different sets of rules to prevail regarding investigation qua ‘classes’ & ‘masses’ by each time permitting an excuse or request that being a public figure, being an MLA, Chairman of the Waqf Board and being busy with some activities of his constituency, he could not appear before the investigating agency.**

**75. Being a public figure in politics, he is essentially first and foremost in the public service and it is natural that he would have at all times, something or the other happening in his constituency. It is for the public figure to find time and appear before the investigating agency, when so required as per the law, since the investigating agencies are also working for the State itself and are working towards public service being public servants.**

**76. Even the lawmakers should know that disobeying the law will get them caught up in legal consequences as envisaged under criminal law as any other common citizen without creating a special class for them as all citizens are equal in the eyes of law. This is more critical when such persons refuse to assist but rather resist the investigative process, especially the process which has not**



been struck down by a Court of law as illegal.

77. Undoubtedly, every such person as any other citizen of India is entitled to the protection of law, however, the law will also equally apply to him, subject to any privilege if at all, in a case applicable to him. Needless to say, the protection as per law which is available to all citizens is also available to such members and public figures. **Their standing in lives or being an elected representative of the people does not create a class or elite class entitling them to different treatment being extended under the same law.**

78. Rather an **electorate representative** and his conduct in cooperating with the investigating agencies on public turf has to be equal, if not on a higher pedestal. **Furthermore, the investigating agencies in India have a right to conduct investigation and to perform their duties on behalf of citizens of this country itself as in the present case, the electorate i.e. citizens of Delhi, without any intimidation, influence or avoidance by the public figure.**

79. To conclude, **an MLA or a public figure is not above the law of the land.**

80. **In the realm of governance and public service, the role of an elected official carries significant weight and responsibility.** As an MLA, the applicant stands as a figure of authority and influence, entrusted with representing the interests and aspirations of their constituents. It is **crucial to acknowledge that the actions of such public figures are observed closely by those they serve, often looking up to them for guidance and leadership.** Thus, the **applicant's failure to cooperate with the investigating agency sets**



a perilous precedent.

### EROSION OF TRUST: THE FALLOUT OF OBSTRUCTING JUSTICE

81. In this Court's opinion, **repeated disobedience of summons of the investigating agency is equivalent to *Obstruction of investigation - Obstruction of investigation is equivalent to obstruction of administration of justice - Obstruction of administration of justice is equivalent to *Eroding trust and confidence in the criminal justice system - and eroding trust and confidence in the criminal justice system will lead to *Anarchy and diminished respect for the rule of law.*****

82. Obstructing justice by not joining investigation is a hindrance in pursuit of justice. It is the right of an investigating agency and the State to pursue vigorously an investigation to the best of their ability, and further to conduct investigation fairly, independently, and objectively without any ill-will or enmity towards either the accused or the victim. **Obstructing administration of justice, thus, thwarts the lawful authority of an investigating agency and hampers the legitimate investigative process.**

83. The law is enacted to serve public interest by promoting accountability of a citizen to the law and in case of accountability of a public servant to the community at large and to the State. The **negatively impacting facts** on the community at large by holding such conduct to be legitimate despite disobedience of repeated summons by an investigating agency **will send a message to public**



**that non-compliance of repeated summons i.e. almost six summons without a valid excuse would not invite *ire* of law.** It will also **compromise future investigations** by the same agencies as the public opinion and message will be formed that, if any person skips multiple summons of any investigating agency including ED, neither the investigating agency nor the Court of law are able to bring such persons to obey the mandate of law and such a person can be enlarged on anticipatory bail. **Conversely, a message may be taken by the public that such avoidance of multiple summons and non-joining of investigation by any investigating agency is permissible in law.**

84. When a person does not join investigation upon receipt of summons of investigating agency which have not been declared illegal or struck down by a Court of law, it means that he has acted in a way so as to prevent the Law Enforcement Agency from collecting information about a suspected offence. Such an attempt and conduct of a person results in delaying the administration of justice, since it delays investigation of a suspected offence. **Refusing to assist, aid, provide relevant information asked for by the Law Enforcement Agency when lawfully asked, failing to appear before the investigating agency, despite being bound in law, such non-appearance thus, amounts to obstructing the Law Enforcement Agency** and the concerned officers from performing their duties to investigate the case which is equivalent to obstructing administration of justice and investigation.

85. **In the background of a decision that a Court of law**



reaches, lies the public interest analysis, as a Court of law is aware regarding possible impact of its decision and the alleged conduct of the accused in relation to an alleged offence and his reluctance to join investigation on the community at large.

### TO SUM UP

86. This Court observes that the cases of conspiracy and financial irregularities, bribe, etc. often revolve around a dark cover of evidentiary complexities. Initially, the investigating agency was presented with a fabricated sale agreement, concealing the original document. However, a breakthrough occurred during a search conducted at the premises of one of the accused, Kausar Imam Siddiqui, who has ties to the present applicant/accused.

87. It is crucial to highlight the challenging nature of the investigative process, often shrouded in conflicting evidence. It is the process of investigation that permeates this dark cover of complexities. In light of this, it becomes imperative for all involved parties, including the accused, to actively engage in the investigation. However, despite being afforded numerous opportunities, amounting to six opportunities in the present case, the applicant consistently failed to cooperate with the investigation. Such non-compliance with investigative protocols cannot be overlooked by the Courts. When an accused repeatedly abstains from participation in the investigation, it not only hampers the progress of the investigation but also raises suspicions regarding their intentions. This Court is, therefore,



compelled to consider the conduct of the applicant in light of his persistent refusal to engage in the investigative process.

88. Reverting to the merits of the case, this Court has taken note of the material placed by the investigating agency and the investigation conducted so far, which has revealed the following crucial facts, concerning the role of present applicant:

- A. The seizure of diary by the investigating agency which reveals that the properties in question were purchased for about Rs. 36 crore out of which Rs. 27 crores were paid in cash, and out of the total amount of Rs. 36 crores, an amount of Rs. 8.33 crores was paid by the present applicant;
- B. Recovery of one Sale Agreement which shows the sale consideration as Rs. 36 crore, as against one alleged false and fabricated agreement which shows the sale consideration as Rs. 13.40 crore which has been allegedly prepared at the behest of present applicant to conceal the proceeds of crime and misguide the investigating agency;
- C. The statement of accused Kausar Imam Siddiqui recorded under Section 50 of PMLA in which he admits that the agreement having consideration amount as Rs. 36 crores is genuine and was executed at the time of sale of properties and the said agreement was witnessed by him, and that the contents of the diary seized by the ACB had been written by him in his handwriting, which includes the amounts paid and attributed to the present applicant in respect of transaction in question;
- D. The bank account statements of the sellers of the properties in



question, which corroborate the factum of sale agreement having consideration of Rs. 36 crores being genuine and the agreement having Rs. 13.40 crores as sale consideration being false and fabricated;

- E. The bank account statements of purchasers of the properties and other persons who have purportedly paid money, which reflect that the cash amounts paid by the said persons were actually the proceeds of crime generated by the present applicant as a result of criminal activity related to scheduled offence;
- F. Kausar Imam Siddiqui's statement under Section 50 of PMLA, in which he states that he used to manage expenses, organize rallies, etc. and work on the instructions of the present applicant and his associates and that the properties in question were sold by his cousin brother to Zeeshan and Daud, at the behest of present applicant;
- G. These proceeds of crime generated by the applicant were used in purchasing properties in the name of *benamidars* Zeeshan Haider and Daud Nasir.

89. Therefore, the material evidences so gathered during the course of investigation under PMLA revealed that the applicant Amanatullah Khan has acquired huge cash amounts, being the proceeds of crime out of criminal activities relating to his corrupt and illegal activities relating to illegal recruitment of the persons in Delhi Waqf Board, leasing out the properties of Delhi Waqf Board in unfair & illegal manner, misappropriation of Delhi Waqf Board funds



including others while being the public servant i.e. Chairman of Delhi Waqf Board and MLA from Okhla Legislative Assembly of Delhi during the period from 2015 onwards. In order to launder the same, he had hatched a criminal conspiracy along with his close associates and others and in pursuant thereupon, he had invested his ill-gotten money i.e. proceeds of crime, in the immovable properties through his associates namely Zeeshan Haider, Daud Nasir and others. As alleged, he had purchased immovable properties in the name of *benamidars* i.e. Zeeshan Haider and Daud Nasir, both accused persons, by concealing and suppressing their actual value which is very nominal in comparison to their actual sale value and actively concealed amounts that were paid in cash to the seller, which are the proceeds of crime acquired by the applicant Amanatullah Khan out of his corrupt and illegal activities relating to the offences scheduled under PMLA.

90. Thus, the material brought before this Court at this stage is sufficient to attract bar under Section 45 of PMLA, and it *prima facie* shows the offence of money laundering being committed by the present accused/applicant.

91. Further, the applicant despite being summoned on six occasions till date, has not joined investigation and cooperated with the investigating agency. Though a list of documents was also supplied by the agency to the applicant, as an Annexure to the summons, the applicant has failed to submit those documents with the investigating agency.

92. Thus, considering the aforesaid facts and circumstances, this



Court does not find it a fit case for grant of pre-arrest bail to the present applicant Amanatullah Khan.

93. It is, however, clarified that the observations made hereinabove are solely for the purpose of adjudicating the present application seeking pre-arrest bail, and the same shall not be construed as opinion of this Court on the merits of the case.

94. Accordingly, the present bail application stands dismissed.

95. The judgment be uploaded on the website forthwith.

**SWARANA KANTA SHARMA, J**

**MARCH 11, 2024/ns**