IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRAMOD KUMAR AGRAWAL

ON THE 27th OF SEPTEMBER, 2025

MISC. CRIMINAL CASE No. 19270 of 2025

SAURABH SHARMA

Versus

DIRECTOR OF ENFORECEMENT

Appearance:

Shri Qasim Ali with Shri Deepesh Joshi, learned counsel for the applicant.

Shri Vkram Singh, learned counsel for the respondent.

Reserved on : 30.07.2025

Pronounced on 27.09.2025

ORDER

This is first application filed by the applicant under Section 483 of BNSS, 2023 for grant of regular bail relating to Crime No.ECIR/BHZO/19/2024 registered at Police Station - Directorate of Enforcement, Bhopal Zone, Bhopal (M.P.) for the offence punishable under Section 3 & 4 of Prevention of Money Laundering Act, 2002. Applicant is under custody since 10.02.2025.

2. As per the prosecution story, FIR No.0195/2024 dated 19.12.2024 was registered under sections 13(2) r/w 13(1)(B) of P.C Act, 1988 (as amended in 2018) by SPE Lokayukta, Madhya Pradesh on allegation that he has acquired disproportionate assets in his name and in the name of his family members, his friend while he was working as a Constable, MP Transport Department. In that FIR, it is alleged that Smt. Divya Tiwari, wife of Saurabh Sharma purchased a plot from Jiauddin for Rs.6,59,679/- on 07.09.2022. On the same day, Chetan Singh Gaur (co-accused) who is friend and business partner of Saurabh Sharma

purchased another plot from Akhtar Jia for Rs.5,28,255/-. Saurabh Sharma was establishing a branch of renowned Jaipuria School in which he has made his mother Smt. Usha Sharma as Chairperson and his wife Smt. Divya Tiwari as director. Saurabh Sharma has made significant fixed deposit in the name of his son Aviral Sharma. Additionally, M/s Aviral Building Construction Pvt. Ltd, incorporated in 2021 in which Sharad Jaiswal and Chetan Singh Gaur are directors and Rohit Tiwari, brother-in-law of Saurabh Sharma is as Additional Director. In this company, Saurabh Sharma allegedly amassed substantial wealth through corrupt practices within the Transport Department.

3. In the search of Lokayukt, it is also found a ware house in the names of his mother Smt. Uma Sharma and his friend and business partner Chetan Singh Gaur situated at Sukhi Sewania, Bhopal, contracts for fisheries business at Govind Sagar Dam and Rajghat Dam, Uttar Pradesh worth rupees several crores in the names of his wife Divya Tiwari and his friend and business partner Chetan Singh Gaur, three houses in Indore and a housing project near Dewas Naka in Indore in the name of his wife Smt. Divya Tiwari, 18 acres land purchased in the name of Smt. Divya Tiwari and Chetan Singh Gaur in Gwalior Municipal Corporation, 1 Villa in Dubai worth Rs.150 crores under M.R.Group Builders, four bungalows in Bhopal and an ongoing school construction project in Kolar in the name of his mother Smt. Uma Sharma. It is also found that he acquired three petrol pumps in Hoshangabad Road and Abdullahganj, spread over 5 acres, a Luxurious residence at E-7/78, Arera Colony, Bhopal where large amounts of cash are reportedly kept. It is also alleged that Saurabh Sharma is involved in Hawala deals. During search of Lokayukta, on 19.12.2024 from the residence of applicant E-7/78 Arera Colony a total amount of Rs.3.86 crore were seized including cash of Rs.1,14,53,000/- gold jewellery to the tune of Rs.50,37,425/- and other valuable items. During search operation of Lokayukta, at the premises of co-accused Chetan Singh Gaur at E-7/657 Arera Colony, Bhopal on 19.12.2024 cash amount of Rs.1,687 crore and silver of worth Rs.2.11 crores were seized. Applicant was getting salary of Rs.28000/- per month.

4. On the basis of this FIR, respondent registered a case ECIR/BHZO/19/2024 against

Saurabh Sharma (applicant) and other co-accused persons under section 3 and 4 of PMLA. The ECIR/BHZO/19/2024 recites that section 13(2) r/w 13(1)(B) of P.C Act is scheduled offence and the allegations contained in the aforesaid FIR show that the accused persons (including the applicant herein) have committed the offence under Section 3 of PMLA which is punishable under Section 4 of the said act.

5. Applicant and other co-accused persons were summoned by the respondent and their statement were recorded under Section 50(2) and (3) of PMLA. Search was also made by the Income Tax Department in Innova Car No.MP07BA0050 in which there was cash of Rs.11.60 crore and 51.893 kg gold worth of Rs.40,27,43,902/-. The said innova car is registered in the name of the co-accused Chetan Singh Gaur but that vehicle was used by the applicant Saurabh Sharma. Applicant and other co-accused persons were arrested and after investigation complaint was filed before the competent Court. During the investigation conducted by ED, it is found that huge amount and properties have been made by the present applicant in his name and in the name of his family members, relatives, friends and company.

6. Learned counsel for the applicant has made following submissions:

i. Applicant is innocent and has been falsely implicated in this case. It is submitted that present applicant was earlier arrested in Prevention of Corruption Act on 28.01.2025. In that case, Lokayukt police has not filed charge sheet in the prescribed period, therefore, default bail was granted on 01.04.2025. Thereafter, ED has registered ECIR/BHZO/19/2024.

ii. It is submitted that charge sheet under the Prevention of Corruption Act which is a "Schedule offence" has not been filed, therefore, "Proceedes of crime" does not come into picture. The filing of charge sheet under Section 173 of Cr.P.C is mandatory even for passing the attachment order under Section 5 of Prevention of Money Laundering Act, 2002 (herein after referred as "PMLA, 2002").

iii. It is submitted that the properties mentioned in the FIR dated 19.12.2024 and ECIR dated 21.12.224 are not belonging to the applicant. It is further submitted that various other properties which are in the name of the other persons/company, have been shown to be connected with the applicant without any *prima facie* evidence. There are no properties registered in the name of applicant. As per ED, the properties which are shown in the name of present applicant are not in the name of him. Prosecution has relied on the statement of the co-accused but that evidence has no substantive value.

iv. It is further submitted that gold and cash recovered from Toyota Innova Car No. MP07BA0050, does not belong to the present applicant but belongs to other co-accused Chetan Gaur. That car has not been seized from the present applicant, therefore only on the basis of statement of co-accused it cannot be presumed that gold and cash which has been seized from the car belongs to the present applicant. Provisions of Sections 17 and 18 of PMLA, 2002 has not been complied with. It is well settled law that statement of co-accused cannot relied for implicating the other co-accused persons. In this regard, he has placed reliance in the judgment delivered by the Hon'ble Supreme Court in the case of **Prem Prakash Vs. Union of India 2024 (9) SCC 787.**

v. It is further submitted that in this case trial will take considerable time and there is no likelihood or conclusion of trial within short span of time, therefore, applicant should be enlarged on bail. In this regard, he has placed reliance in the judgment delivered by the Hon'ble Supreme Court in the cases of **Anwar Dhebar Vs. Directorate of Enforcement Criminal Appeal No. 2669 of 2025 and Ramkripal Meena Vs. Directorate of Enforcement 2024 SCC Online SC 2276**. It is further submitted that provisions attachment order No.05/2025 has already been passed and property has been attached thus, there is no likelihood of applicant committing any such offence while on bail. He further placed reliance in the judgment delivered by the Hon'ble Supreme Court in the cases of **V.Senthil Balaji V. The Deputy Director, Directorate of Enforcement (Criminal Appeal No.4011d of 2024), Arvind Kejriwar v. Directorate of Enforcement (2025) 2 SCC 248, Dr. Natesha V. Directorate of Enforcement (W.P.No.32956 of 2024), Rashmi Metaliks Ltd. V. Directorate**

of Enforcement (2022) 238 AIC 398 and Mari Appa V. State of M.P 1990 MPLJ 621.

vi. The applicant has no previous criminal record. There is no chance of tampering the witnesses. It is submitted that twin conditions for granting of bail under Section 45 of PMLA, 2002 have already been satisfied fully as due opportunities have been granted to the respondent to oppose the bail application. It is further submitted that the applicant cooperates at every stage of the investigation and appears before the ED on multiple occasions as and when he was required for investigation. There is reasonable grounds to believe that the applicant is not guilty of such an offence of money laundering. The applicant is a well reputed individual with having good reputation in the society and community. He does not have any criminal antecedent. He is to abide by all the conditions which may imposed by the Court while granting bail to him with the undertaking that he will not tamper with any evidence or to influence any witness of the case. The investigation against the present applicant has been completed. Therefore, the applicant may be enlarged on regular bail.

7. Learned counsel for the respondent vehemently opposed the bail application and made the following submissions:

Sr. No.	**Details of assets attached/seized/frozen**	**Total Value (Rs. In Crores)**
1	Amount attached vide PAO No.05/2025 dated 25.03.2025 (Included Gold and Cash recovered by Income Tax department of worth of Rs.51,89,27,402/-)	92,07,18,721/-
2	Amounts/bank accounts frozen/properties seized u/s 17 and 20(1) of PMLA, 2002 (A/c Balance frozen= Rs.8,29,04,735 Cash Seized= Rs.14,20,000/- Silver= Rs.9,16,688/- weighing 9964 grams)	8,52,41,423/-
	SPE, Lokalyukta seizure as per their affidavit filed before Special Court, PC Act, Bhopal. (Seized from the premise of Chetan Singh Gaur Rs.1,68,70,000/- in Cash and Silver of worth of	

3	Rs.2,10,50,716/-, Total= 3,79,20,716/- (Seized from the premise of Saurabh Sharma Rs.1,14,53,000/- in Cash, Gold ornaments of worth of Rs.50,37,425/- and other valuable items of worth of Rs.2,21,12,400/- Total= 3,86,02,825/-)	7,65,23,541/-
4	Total	Rs.108,24,83,685/-

i. It is submitted that during investigation, it is found that all these properties purchased by the applicant in the name of his family members, relatives and friends and their companies/firms were purchased by him through ill-gotten money earned by applicant while working as a constable in the Transport department. It is submitted that Sourabh Sharma when he was working as a constable in Transport Department was getting salary of Rs.28000/- per month and has acquired huge amount of movable and immovable properties approximate worth of Rs.108 crores in the name of his family members (his wife, Smt. Divya Tiwari, mother-Smt.Uma Sharma, Rekha Tiwari (mother-in-law), M/s Rajmata Bharat Mata Shiksha Avam Samaj Kalyan Samiti Bhopal and his friends name Shri Chetan Singh Gaur and Shri Sharad Jaiswal and their firms M/s Aviral Building Construction Pvt. Ltd. and Ms. Aviral Enterprises Pvt. Ltd. and Ms/ Instant UR Infrastructures Pvt. Ltd. etc.

ii. It is submitted that Sourabh Sharma, his (wife) Divya Tiwari, (mother) Uma Sharma, (friend) Chetan Singh Gaur, Sharad Jaiswal and Rekha Tiwari (mother-in-law) have no legitimate source of income for purchasing various properties/assets in their name. It is also submitted that co-accused Chetan Singh and Sourabh Jaiswal looking after the business of Sourabh Sharma and properties were purchased through funds arranged by applicant only in the form of unsecured loans.

iii. It is further submitted that applicant helped his friend co-accused Chetan Singh and Sharad Jaiswal in getting unsecured loans of crores of rupees from various persons, individuals /firms. He also took multiple unsecured loan from the various persons/entities, who do not have financial capacity for providing such huge amounts to persons/entities related to Saurabh Sharma. It is further submitted that during investigation, it is found that all the unsecured loans were obtained by him for laundering his illegal money.

iv. It is further submitted that firms and companies were not doing any legitimate business and they are for only to launder the proceeds of crime acquired by applicant through corrupt practices. All the properties which were seized during investigation belongs to applicant. It is further submitted that all the properties purchased by applicant in the name of his family members, relatives, friends and their companies/firms are nothing but proceeds of crime as all these properties were obtained and derived as a result of criminal activity relating to schedule offence.

v. It is further submitted that during the course of search operation, gold jewellery and bullions were seized and panchanama was prepared on 03.04.2025. Valuation report was prepared by registered valuers. As per report, total value of seized gold jewellery and bullions amounts to Rs.2,03,77,934/-. It is further submitted that 58 bank accounts relating to present crime and co-accused persons have been frozen in this matter. Details of those bank accounts have been mentioned in the complaint

vi. It is further contended that for granting the bail in the case of PMLA, 2002 compliance of twin conditions mentioned under Section 45 of the Act is mandatory. At the time of considering the bail application in the PMLA, 2002 the underlying principles of provisions of Section 45 of PMLA, 2002 must get triggered. In this regard he has placed reliance in the case of **Vijay Mandanlal Chaudhary Vs. Union of India (2023) 12 SCC 1 in which in paras 162, 316 and 382.20 it is held as under:**

> *162. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. In case the scheduled offence is not already registered by the*

jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.

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316. 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.

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382.20. As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

viii. It is further contended that economic offences come under category of heinous offences and at the time of considering the bail application it should not be considered as an ordinary offence.

ix. It is further submitted that in case of an offence of corruption, the criminal activity and the generation of the proceeds of crime are like Siamese twin and the acquisition of the proceeds of crime in such cases would itself tantamount to money laundering. In this regard, he has place reliance in the judgement delivered by the Hon'ble Supreme Court in the case of **Y. Balaji Vs. Karthik Desari and anr. 2023 SCC OnLine SC 645.**

x. It is further submitted that in the present case, Saurabh Sharma and another co-accused persons have also acquired the huge amount of cash and property and also indulge actively in possessing, concealing and using these properties.

xi. It is further submitted that at the time of granting bail, Court should also consider the status of the accused and gravity of the offence. In this regard, he placed reliance in the judgment delivered by the Hon'ble Supreme Court in the case of **U.P. Vs. Amarmani Tripathi (2005) 8 SCC 21 and in the case of Gurcharan Singh Vs. State (Delhi Administration) 1978 (1) SCC 118.**

xii. It is further stated that mandatory provisions of Section 17 and 18 of the Act have been complied with. It is further submitted that relevant date under PMLA, 2002 is not when schedule offence was committed but when the persons indulges in any process or activity. The criminal activity may have been committed prior to the offence being notified as schedule offence.

8. I have heard learned counsel for the parties and perused the material available on record.

9. For consideration of the bail application under PMLA, 2002 the Court need not go deep inside the merits of the case but should consider the prima facie material against the accused in the case. The Hon'ble Supreme Court in the matter of **Vijay Madanlal Chaudhary's** case (supra) has observed in para 303 of its judgment that:-

> *"303. We are in agreement with the observation made by the Court in* ***Ranjitsing Brahmajeetsing Sharma [(2005) 5 SCC 294]****. 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 the investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in* ***Nimmagadda Prasad [(2013) 7 SCC 466],*** *the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt."*

10. In the case of **"Satish Jaggi Vs. State of Chhattisgarh", (2007) 11 SCC 195**, the Hon'ble Supreme Court has held that "at the stage of granting of bail, the Court can only go into the

question of prima facie case established for granting bail, it cannot go into the question of credibility and reliability of witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during trial."

11. The Delhi High Court in its order dated 07-03-2024 passed in Bail Application No. 3807/2022 **(Sanjay Jain Vs. Enforcement Directorate)** after relying upon the observations made in the case of "Vijay Madanlal Choudhary" (Supra) has observed in para 49 that:-

> *"49. It thus, emerges that at the stage of considering a bail application under the PMLA, the Court has to bear in mind the following aspects:*
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> *i. Whether the accused possessed the requisite mens rea.*
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> *ii. 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.*
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> *iii. A positive finding that the accused had not committed an offence under the Act is not required to be recorded. A delicate balance between a judgment of acquittal/conviction and an order granting bail much before commencement of the trial is to be maintained.*
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> *iv. The evidence is not to be weighed meticulously but a finding is to be arrived at on the basis of broad probabilities with reference to the material collected during investigation. The weighing of evidence to find the guilt of the accused is the work of Trial Court.*
>
> *v. A finding is also required to be recorded as to the possibility of the bail applicant committing a crime after grant of bail. This aspect has to be considered having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence."*

12. The issue of grant or denial of bail in offences under the PML Act is regulated under Section 45 thereof, which, succinctly stating, mandates for giving an opportunity to the prosecutor to oppose the bail application and further embodies twin mandatory conditions for allowing bail to the accused: (i) that there are reasonable grounds for believing that the accused is not guilty of the offence of money laundering; and (ii) that the accused is not likely to commit any offence while on bail. However, proviso to Section 45 also confers discretion on the Special Court under the PML Act to admit on bail an accused under the

age of sixteen years, or a woman, or sick or infirm or is accused of money laundering a sum of less than one crore rupees. Remaining portion of Section 45 is not relevant for present purposes.

12.1 In the case of **Vijay Madanlal Chaudhary** (supra), the Supreme Court traversed through the laudable purpose behind enactment of the PML Act and observed thus:

> *"286. 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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> *300. Thus, it is well settled by the various decisions of this Court and policy of the State as also the view of international community that the offence of money-laundering is committed by an individual with a deliberate design with the motive to enhance his gains, disregarding the interests of nation and society as a whole and which by no stretch of imagination can be termed as offence of trivial nature. Thus, it is in the interest of the State that law enforcement agencies should be provided with a proportionate effective mechanism so as to deal with these types of offences as the wealth of the nation is to be safeguarded from these dreaded criminals. As discussed above, the conspiracy of money-laundering, which is a three-staged process, is hatched in secrecy and executed in darkness, thus, it becomes imperative for the State to frame such a stringent law, which not only punishes the offender proportionately, but also*

helps in preventing the offence and creating a deterrent effect.

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12.2 There is plethora of judicial pronouncement, not being repeated herein for brevity that existence of the twin conditions stipulated under Section 45 of the PML Act is mandatory before the court exercises discretion to release on bail a person accused of the offence of money laundering; and that the belief qua the accused being guilty of money laundering has to be tested on "reasonable grounds", which means something more than "prima facie" grounds. Equally well settled is the scope of Section 24 of the PML Act that unless contrary is proved, the Court shall presume involvement of proceeds of crime in money laundering; and that burden to prove that the proceeds of crime are not involved is on the accused.

12.3 Further, it is trite that economic offences constitute an altogether distinct class of offences. That being so, in spite of the salutary doctrine of "bail is the rule and jail is an exception", matters of bail in cases involving socio-economic offences have to be visited with a different approach, as held in State of Bihar & Anr. vs Amit Kumar (2017) 13 SCC 751.

12.4 As held by Hon'ble the Supreme Court in the case of **Y.S.Jagan Mohan Reddy vs CBI, (2013) 7 SCC 439:**

> *"34) Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
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> *35) While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

12.5 On the aspect of bail in cases involving socio-economic offences, differential treatment in consideration unlike conventional crimes has been the law of land, reiterated in a plethora of judicial pronouncement flowing from apex court. Reference, to cite a few may be drawn from **Rohit Tandon vs Directorate of Enforcement, (2018) 11 SCC 46; Serious**

Fraud Investigation Office vs Nitin Johari, (2019) 9 SCC 165; and Nimmagadda Prasad vs CBI, (2013) 7 SCC 466.

13. This Court shall now proceed to examine the present matter.

14. It is a settled position of law that statements recorded under Section 50 of the PMLA hold evidentiary value and are admissible in legal proceedings. The Honble Supreme Court, while emphasizing the legal sanctity of such statements, has time and again observed that they constitute valid material upon which reliance can be placed to sustain allegations under the PMLA. In a recent judgment, the Honble Supreme Court in **Abhishek Banerjee v. Enforcement Directorate, (2024) 9 SCC 22** has made such observations which are as under:

> *"21. ...Section 160 which falls under Ch. XII empowers the police officer making an investigation under the said chapter to require any person to attend within the limits of his own or adjoining station who, from the information given or otherwise appears to be acquainted with the facts and circumstances of the case, whereas, the process envisaged by Section 50 PMLA is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the authorities referred to in Section 48 PMLA are not the police officers as held in Vijay Madanlal [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1] .*
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> *22. It has been specifically laid down in the said decision that the statements recorded by the authorities under Section 50 PMLA are not hit by Article 20(3) or Article 21 of the Constitution, rather such statements recorded by the authority in the course of inquiry are deemed to be the judicial proceedings in terms of Section 50(4), and are admissible in evidence, whereas the statements made by any person to a police officer in the course of an investigation under Ch. XII of the Code could not be used for any purpose, except for the purpose stated in the proviso to Section 162 of the Code. In view of such glaring inconsistencies between Section 50 PMLA and Sections 160/161CrPC, the provisions of Section 50 PMLA would prevail in terms of Section 71 read with Section 65 thereof."*

15. The Honble Supreme Court in the aforementioned judgment underscored that such statements, being recorded in the course of an inquiry rather than an investigation, are not subject to the restrictions under Article 20(3) and Article 21 of the Constitution. Instead, they are deemed to be judicial proceedings under Section 50(4) of the PMLA and, therefore, admissible as evidence in proceedings under the PMLA.

16. At this stage, it is to be determined whether the applicant is exempted from the rigors of the twin conditions of bail, if not, then whether the applicant has satisfied the twin mandatory conditions under Section 45 of the PMLA. In light of the same, it is imperative to carefully examine the prosecution complaint, statements of the applicant and co-accused persons alongwith the relevant documents.

17. Accordingly, this Court has referred to the statement of the co- accused persons, relevant gist of which are as under:

Statement of Chetan Singh Gaur recorded under Section 50 of PMLA:

18. In the present case, in the statement of co-accused Chetan Singh Gaur who is friend and partner of the present applicant Saurabh Sharma was recorded under Section 50 of PMLA, 2002 in which he has disclosed that Saurabh Sharma (applicant) had offered him a job to manage the business. He used to operate following businesses of Saurabh Sharma:

a) Two petrol pumps operating in the name of style of M/S Aviral Energies (earlier Benika Auto) and M/s Banskuwar Auto.

b) A fisheries dam located in Lalitpur, Uttar Pradesh which is registered under his name.

c) M/S Aviral Building Construction Private Limited, a construction company.

19. He also disclosed that he does not have any immovable property in the name of his family members but Sourabh Sharma had purchased various properties in the name of companies in which he was made director by Saurabh Sharma and he never invested any money in firms and companies. The Fixed Deposit Receipts (FDRs) for Rs. 6 (six) crores were arranged by Saurabh Sharma in his bank accounts for providing security for the fisheries business. The cash amounting to Rs. 2.5 crores, gold and silver jewellery, and property documents seized by SPE Lokayukta Police, Bhopal from his residence at E-7/657, Arera Colony, Bhopal belongs to Saurabh Sharma only. The the Innova Car bearing no. MP-07-BA-0050 from which the cash and gold recovered and seized by Income Tax Department, Bhopal purchased by Saurabh Sharma and was used by only Saurabh Sharma; that the gold seized by Income Tax Department from Innova Car having registration no. MP07BA0050 belongs to Saurabh Sharma only; that the seized gold was purchased by Saurabh Sharma only and he can provide the details of source of money which used by him for purchasing the said gold; that one Pritam used to come at his residence at E-7/657 to handover the gold and after that Saurabh Sharma used to collect the said gold from his residence. The M/s Aviral Building Construction Pvt Ltd was incorporated around 2021 and he along with Sharad Jaiswal are the directors of the said company; that this company was opened by Saurabh Sharma and he was made director by Saurabh Sharma and the company was incorporated to deal in sale and purchase of land. He borrowed a sum of Rs.96 Lakhs as unsecured loans from Rohit Tiwari, brother-in-law of Saurabh Sharma and had been arranged by Saurabh Sharma only. He was appointed as Treasurer in the Rajmata (Bharamata) Shiksha Avam Samaj Kalyan Samiti, Bhopal by Saurabh Sharma who had started the construction of one School on the land owned by Rajmata (Bharatmata) Shiksha Avam Samaj Kalyan Samiti, Bhopal.

Statement of Smt. Uma Sharma recorded under Section 50 of PMLA:

20. Smt. Uma Sharma who is mother of the applicant has stated that her son Sourabh Sharma (applicant) had taken franchisee of Jaipuria School in the name of Rajmata (Bharatmata) Shiksha Avam Samaj Kalyan Samiti, Bhopal but she does not know other details of the society. She has become Chairman at the behest of Saurabh Sharma. It is also disclosed by her that her daughter-in-law Smt. Divya Tiwari owns a petrol pump which was look after by Saurabh Sharma (applicant).

Statement of Shri Rohit Tiwari recorded under Section 50 of PMLA:

21. Shri Rohit Tiwari has disclosed that Sourabh Sharma is the husband of his cousin sister Smt. Divya Tiwari. He stated that in the nine companies or firms he is director/partner. He knows Chetan Singh Gaur through Saurabh Sharma and he was made Additional Director in M/S Aviral Building Construction Pvt. Ltd for four months in which Sharad Jaiswal and Chetan Singh Gaur are the main directors. He has given 96 Lakhs to Chetan Singh Gaur as unsecured loans on the instructions of Saurabh Sharma and that amount was arranged from his family members, friends, partners for investments. He is the owner of the house situated at E-7/78 Arera Colony Bhopal and he had rented this house to applicant for a monthly rent of Rs.30,000/-.

Statement of Shri Vinay Haswani recorded under Section 50 of PMLA:

22. Vinay Haswani who is the cousin brother-in-law of the applicant (Saurabh Sharma) has stated that Pyarelal was serving as driver for applicant since last one year. He received a phone call from Pyare Lal on 19.12.2024 at around 2:15 PM and he told him that Saurabh Sharma told Pyare Lal to contact him regarding parking of his vehicle at some safe location as Saurabh Sharma was out of town and Saurabh Sharma will arrange to pick up vehicle once he will be back to India; that thereafter, he told Pyare Lal to reach near National Law Institute University, Bhopal campus near Kerwa Dam Road but Pyare told him that he had never went to that location and requested him to come to Pyare Lal's location; that around 2.30 PM, he reached near his location near Rohit Nagar/Bawarian Kalan and guided Pyare Lal in his Amaze car bearing No. MP-07-CD-1191 and Pyare Lal followed him in his Innova vehicle; that he took Pyare Lal near his plot situated at Village Barkhedi Kalan, Bhopal and asked Pyare Lal to park his Innova vehicle in the said plot and then dropped Pyare Lal by his car nearby where he can find auto easily. It is also stated by him that Sharad Jaiswal was introduced by Saurabh Sharma as his business partner. He has given Rs.31 Lakhs to Sharad Jaiswal as unsecured loan on the guarantee of Saurabh Sharma.

Statement of Smt. Rekha Tiwari recorded under Section 50 of PMLA:

23. Smt. Rekha Tiwari who is mother-in-law of the present applicant has disclosed that

seven properties are in her name out of which five properties were purchased by applicant Sourabh Sharma in her name and all the funds were arranged in her bank account by Sourabh Sharma. She has a bank account no.77812020000271 in Canara Bank, City Centre Branch Gwalior. At the behest of Saurabh Sharma she opened another bank account bearing no.110141891538 in her name with the above bank so that Saurabh Sharma could do his transactions separately. Chetan Singh Gaur who is a childhood friend of applicant Saurabh Sharma has transferred Rs.70 Lakhs and Rs.3,78,50,000/- in her bank account no.110141891538. She stated that she had given signed cheque book of her bank account No.110141891538 and 77812020000271 to her son-in-law, Saurabh Sharma and she was not aware to whom the payments were made by him from her bank accounts.

Statement of Smt. Divya Tiwari recorded under Section 50 of PMLA:

24. Smt. Divya Tiwari who is wife of applicant has disclosed that she was director of the M/s Skylocs Systems Private Limited. But this company has not started any business. She has no idea about the immovable property purchased in her name and in the name of M/s Aviral Enterprises Pvt. Ltd. in which she is a director as the Saurabh Sharma used to look after the immovable properties. She has only signed on the documents on the instructions of Saurabh Sharma. Saurabh Sharma can explain about the source of money used for the purchase of immovable property. Chetal Singh Gaur is business partner of her husband Saurabh Sharma and Pyarelal is the driver. She also stated that the cash seized by SPE Lokayukta Police during search at their residence at E-7/78 Arera Colony, she sated that details regarding the case is known to her husband Saurabh Sharma only.

Statement of Sharad Jaiswal recorded under Section 50 of PMLA:

25. Sharad Jaiswal has stated in his statement that he is director/partner in following companies/partnership firms:

a) M/s Aviral Building Constructions Private Limited- It is in the business of Real Estate and company main business was to purchase land and develop it and then sold it. He is director of the company along with Chetan Singh Gaur.

b) Core fit Gym- It is a partnership firm which is opened by him with his known Vijay Amma Gopalan.

26. Smt. Divya Tiwari W/o applicant Saurabh Sharma is also director of M/s Aviral Building Constructions Private Limited.

He knows Chetan Singh Gaur through Saurabh Sharma as Chetan Singh Gaur was his friend; that he and Chetan Singh Gaur incorporated a company namely M/s Aviral Building Constructions Pvt. Ltd. He borrowed an amount of Rs. 1,45,00,000/- from Chetan Singh Gaur in his bank account no. 011993600002182 maintained with Yes Bank for the purchase of 02 properties in Indore from M/s Emaar India Pvt. Ltd. for the consideration amount of Rs.7.90 crores and he had not repaid the same till date. He stated that his average annual income from all sources is Rs.10-12 lakhs for last five years. His main source of income is from construction activities, commission from real estate business, monthly rent of Rs.20,000/- etc. He met Vinay Haswani through Saurabh Sharma in the year 2023 and received Rs.31 lakhs in his bank account maintained with Yes Bank from Vinay Haswani for purchase of properties. When he was asked about Rajmata Bharat Mata Shiksha Avam Samaj Seva Samiti, he stated that he was looking after supervision of construction work of school at Shahpura, that Rs.2 to 2.5 crore were spent by Rajmata Bharat Shiksha Avam Samaj Seva Samiti as on date and construction contract was given to one M/s Sanjay Constructions, near ISBT, Bhopal. That he knows Pyare Lal Kewat as he is driver of Saurabh Sharma. That last time he spoke with Pyare Lal Kewat on 19.12.2024 regarding construction of Jiapuria School at Shahpura, Bhopal. That M/s Aviral Building Construction Pvt. Ltd had purchased a property from Jagpreet Singh Arora, Jasbir Singh Arora, Rajendra Singh Mac and Smt. Avinash Kaur Mac for a consideration of Rs.1,50,00,000/- and no cash for the purchase of this property was utilized. That Chetan Singh Gaur is the owner of Innova Car having registration no.MP-07-BA-0050. That Saurabh Sharma used this car for his office related work.

Relevant part of statement of applicant Saurabh Sharma recorded under Section 50 of PMLA:

27. Sourabh Sharma (applicant) has stated in his statement that regarding the source of funds for which movable and immovable properties amounting to Rs. 3.86 Crores(approx.) was seized by SPE Lokayukta Police Bhopal at his residence at E-7/78, Arera Colony Bhopal, he stated that Rs. 80 Lakhs in cash was seized by SPE Lokayukta Police Bhopal during their search at his residential premise E-7/78, Arera Colony, Bhopal belongs to his mother Smt. Uma Sharma and he doesn't have any idea regarding remaining amount/properties. That he knows Chetan Singh Gaur who is his school time friend: that Chetan Singh Gaur used to deal in electrical appliances in Gwalior and he used to come to Bhopal in the year 2021 for his business expansion; that Chetan Singh Gaur also started doing fisheries business and took tender of fisheries at Rajghat Dam in Lalitpur; that later on, a land was purchased in the name of his wife Smt. Divya Tiwari at Bineka and on this land a petrol pump was started in the name of Chetan Singh Gaur in the name and style of M/s Bineka, Fuels; that he does not have any financial transaction with Chetan Singh Gaur but he helped him in obtaining Rs. 86 Lakhs as unsecured loan from his brother-in-law

Rohit Tiwari for his fisheries business; that his wife Smt. Divya Tiwari had given unsecured loan of Rs. 20 lakhs to Chetan Singh Gaur for helping in getting tender of fisheries at Rajghat Dam in Lalitpur and he do not remember the source of the said Rs. 20 lakhs; that he had helped Chetan Singh Gaur to get unsecured loan of Rs. 4 crores (approx.) from Gautam Rai Rally for his fisheries business; that this amount has to be utilized for the purpose of providing security and other establishment activities at Rajghat Dam, Lalitpur, Fisheries authorities of Uttar Pradesh government. Lokesh Sadasivam is known to him since 2021 through some common friend. His wife Smt. Divya Tiwari alongwith Lokesh Sadasivam's mother Smt. S.Kanchana started a company namely M/S Skylock Systems Pvt. Ltd. After resigning form transport department, he wanted to start a trading busincess and for the same purpose. He formed a proprietorship firm namely M/s USD in which he is sole proprietor. He had executed an agreement with M/s CSG firsheries of Chetan Singh Gaur for selling of 50% of fisheries produced by M/s CSG fisheries. As M/s CSG fisheries used to sell these fishes in the local market only, he wanted to sell these fishes in better market with better packaging however, the same could not be started as he had not found any party who can brought these. Her wife Smt. Divya Tiwari had purchased an agriculture land at village-Mugliya Cot in the year 2022 for an amount of Rs.32 Lakhs and this amount was borrowned by her from Rohit Tiwari and she had not repaid the said amount till date. He has taken a house at E-7/78, Arera Colony Bhopal on rent from his brother-in-law Rohit Tiwari. Pyarelal Kewat is known to Sharad Jaiswal and used to look after his construction business and he used to call him as and when requires for any household or car driving work.

28. Upon the perusal of the requisite documents, including the statements of the applicant quoted hereinabove, co-accused and the relevant bank statements, the following inferences can be drawn with respect to the issues under consideration.

29. During the search conducted by SPE Lokayukta Police, Madhya Pradesh at the residence of applicant Saurabh Sharma at E-7/78 Arera Colony, Bhopal on 19.12.2024 a total seizure amounting to Rs.3.86 crores which includes cash of Rs.1,14,53,000/-, gold jewelry of Rs.50,37,425/- and other valuable items of Rs.2,21,12,400/-. On the same day, from Chetan Singh Gaur at E-7/657 Arera Colony, Bhopal on 19.12.2024, cash of Rs.1.687/- and silver of Rs.2.11 crores were also seized.

30 On 19.12.2024 the Income Tax Department has seized one Innova Car bearing registration No. MP07BA0050 parked in Mendori, Bhopal in which cash Rs.11.60 crores and gold bullion weighing to 51.893 kg worth of Rs.40,27,43,902/- was seized. Although the car was registered in the name of co-accused Chetan Singh Gaur but the car belongs to present applicant Saurabh Sharma and he used this vehicle.

31 During investigation it is found that 9 immovable properties were purchased in the name of M/S. Aviral Building Constructions Pvt. Ltd. from 03.10.2022 to 11.10.2023 total worth of Rs.6,44,33,000/- (detailed description of which is available in Table No.07 of complaint filed by E.D.). Sharad Jaiswal and Chetan Singh Gaur, who are co-accused in this case, are business partners of present applicant and Directors of this company. Chetan Singh Gaur and Sharad Jaiswal have no financial capability to invest huge amount in the company and to purchase property worth crores of rupees. The amount has been managed by present applicant Saurabh Sharma through his friends and relatives.

32 M/s. Aviral Building Construction Pvt. Ltd. has bank account bearing Account No.5241305831 in Central Bank of India. In this account Rs.5 crores have been transferred by Navodaya Cancer Hospital & Research Centre, Bhopal and Rs. 1.50 crores to Sharad Jaiswal in his bank account No.510341000695162.

33 During investigation, it is found that said immovable property has been purchased from total Rs.6.50 crores by aforesaid company. The said company also received Rs.2,99,95,000/- in the said bank account from Manodeep Nagarik Sahakari Patsanshtna Maryadit (a credit cooperative society based in Pune) but during search no such society was found at its registered office.

34 In the investigation, it is found that Aviral Building Constructions Pvt. Ltd. was not doing any business and filing its mandatory annual returns.

35 The applicant Saurabh Sharma has purchased/acquired five immovable properties in the name of his mother between 05.07.2019 to 02.04.2024 worth Rs.2,57,63,404/- (description of which is available in Table No.10 in complaint filed by E.D.). Although Smt. Uma Sharma is the Chairman of M/s.Rajmata Bharatmata Shiksha Avam Samaj Kalyan Samiti, Bhopal and she became Chairman at the behest of Saurabh Sharma but she does not know other details of the said society. Smt. Uma Sharma has no source of income to purchase aforesaid property.

36 It is also found that Smt. Divya Tiwari, the wife of present applicant, is the Director of M/s. Skylock Systems Pvt. Ltd. And M/s. Aviral Enterprises Pvt. Ltd. She also used to look after her husband restaurant business namely “Fagito” and fitness centre “Thump” but she has no idea about immovable property purchased on her name or in the name of company in which she is Director and she has no independent source of income to purchase the same. The said immovable property purchased from 16.09.2021 to 13.10.2023 is Total worth of Rs.3,49,50,000/- (description of which is available in Table 11 in complaint filed by E.D.).

37 It is also pertinent to mention here that Smt. Divya Tiwari, the wife of present

applicant, is also one of Directors in M/s. Aviral Enterprises Pvt. Ltd. in which co-accused Chetan Singh Gaur was also Director in the said company.

38 In the investigation, it is also found that the present applicant was constructing the school on the two immovable properties worth Rs.13,35,48,832/- belongs to M/s. Rajmata Bharatmata Shiksha Avam Samaj Kalyan Samiti, Bhopal (description of which is available in Table 12 in complaint filed by E.D.).I t is submitted that Smt. Uma Sharma, mother of present applicant, was made President and his wife Smt. Divya Tiwari, his friends/business partners/co-accused Sharad Jaiswal and Chetan Singh Gaur were appointed as Vice President, Treasurer and Secretary etc. of said society. It is also found that total amount incurred for construction of school around Rs.7 to 8 crores but payment of only Rs.20 lacs was made from the account of committee of school bearing bank account No.5296814006 maintained wiht Central Bank of India. The documents seized from the premise of co-accused Chetan Singh Gaur revealed that several payments were made in cash for the construction of school. The said committee purchased a land Plot No.33 Shakmbri Avenue, Village Revti, Tehsil Sanwer, Indore approximate of Rs.26 lakhs. The source of money for purchasing of said land was from unsecured loans which has been given to the committee of the school from friends and relatives of present applicant.

39 Smt. Uma Sharma, mother of present applicant, co-accused Sharad Jaiswal and Chetan Singh Gaur are authorized signatories of bank account No.5296814006 of Central Bank of India belongs to M/s. Rajmata Bharatmata Shiksha Avam Samaj Kalyan Samiti, Bhopal, therefore it seems that these are the beneficiaries and owners of said committee and the society was used by them for laundering the proceeds of crime acquired by present applicant.

40 It is also found that present applicant has purchased four immovable properties on the name of Smt. Rekha Tiwari who is mother-in-law of present applicant, from 25.03.2023 to 13.10.2023 total worth of Rs.2,78,21,000/- but she has no financial capacity and source of income to purchase aforesaid property. She also used her bank account No.77812020000271 maintained with Canara Bank, City Centre, Gwalior. She used to receive her pension in the said bank account. On request of present applicant, she opened a new bank account No.110141891538 in the same bank but that account was operated by present applicant. In the aforesaid bank account Rs.3,78,50,000/- has been received from Manodeep Nagarik Sahakari Patsanshtna Maryadit. It is pertinent to mention here that Manodeep Nagarik Sahakari Patsanshtna Maryadit has also transferred money to M/s. Aviral Building Construction Pvt. Ltd. which shows that all these are connected with each other.

41. During investigation, it is also revealed that two properties have been purchased on the

name of M/s. Instant U R Infrastructure Pvt. Ltd. worth of Rs.3,64,00,000/- (description of which is available in Table 15 in complaint filed by E.D.).

42. It is found that Rohit Tiwari is brother-in-law of present applicant. The wife of present applicant is cousin sister of Rohit Tiwari. Rohit Tiwari was also made Additional Director in M/s. Aviral Building Construction Pvt. Ltd. for four months and he gave Rs.86 lacs to co-accused Chetan Singh Gaur as unsexured loan on the guarantee of present applicant. This company was not doing any business.

43 In the investigation, it is also found that prior to the contact of present applicant, co-accused Chetan Singh Gaur does not have any immovable property on his own name but various properties have been purchased by present applicant in the name of M/s. Aviral Building Construction Pvt. Ltd. and M/s. Aviral Enterprises Pvt. Ltd. M/s. Chetan Singh Gaur for fisheries business. He has no independent source of income. The F.D. of Rs.6 crores were arranged by present applicant for providing security for the fisheries business. The cash amounting to Rs.2,5 crores, gold and silver jewellery and property documents seized from the residence of co-accused Chetan Singh Gaur by SPE Lokayukta Police, Bhopal belongs to present applicant. The Innova Car bearing No.MP07-BA-0050 from which cash and gold were recovered and seized by Income Tax Department, Bhopal also belongs to present applicant.

44 M/s. CSG Fisheries was also started by present applicant for allotment of tender of fisheries in Uttar Pradesh.

45 Smt. Krishna Jaiswal, who is mother of co-accused Sharad Jaiswal, was also Director in M/s. Aviral Enterprises Pvt. Ltd.

46. Vinay Haswani, who is cousin brother-in-law of present applicant had given Rs.31 lacs to co-accused Sharad Jaiswal as unsecured and interest free loan through ICICI bank account on the instructions of present applicant. The Vinay Haswani and his mother Smt. Savita Haswani has purchased immovable property of Rs.1,33,51,000/- but he has not provided any source of income regarding purchase of said property.

47. Sharad Jaiswal borrowed an amount of Rs.1,45,00,000/- from Chetan Singh Gaur in his account No.011993600002182 maintained with Yes Bank for purchase of two properties in Indore from M/s. Emaar India Pvt. Ltd., Indore for consideration of Rs.7.90 crores.

48. Having considered the legislative intent behind Section 45 and the judicial precedents interpreting its application, this Court shall now proceed to apply the established principles to the facts of the present case to assess as to whether the applicant can claim benefit of

proviso to Section 45 of the PMLA.

49. The material on record demonstrates that the accused persons operated in a highly coordinated and systematic manner, with clear understanding and collaboration among them to facilitate the offence. The evidence shows deliberate concealment of the origin of funds.

50. The respondent has provided a detailed representation of the modus operandi of the present applicant and other co-accused persons in the form of a graphic illustration:

51. In **Saumya Chaurasia v. Enforcement Directorate, (2024) 6 SCC 401**, the Honble Supreme Court has stated that the Courts should be mindful in keeping the evidence of movement of funds acquired out of the syndicate and utilization of the proceeds of crime to judge whether the individual is a part of the syndicate. The relevant part of the said judgment is herein below:

> *"19. As stated hereinabove, the supplementary complaint was filed against the appellant along with the other accused on 30- 1-2023, in which the summary of investigative findings against each of the accused persons have been recorded in Para 8 thereof. The details of the investigation conducted by the respondent ED have been stated in Para 9 and the role of each accused including the appellant in the commission of alleged offence of money laundering has been stated in Para 10 thereof, which reads as under:*
> *"10. Role of accused in the offence of money laundering*
> *A. Evidences of offence of money laundering against Smt Saumya Chaurasia-- Mrs Saumya Chaurasia is an officer of the Chhattisgarh State Civil Services who was posted as the Deputy Secretary in the Office of Chief Minister of Chhattisgarh and was working as an OSD to CM. Despite being relatively very junior in the bureaucratic hierarchy, she enjoyed unprecedented power and control because of her direct access to higher political powers. Information shared by the Income Tax Department and analysis of documents and digital devices seized during the searches conducted under Section 17 PMLA, 2002 revealed that Smt Saumya Chaurasia, Deputy Secretary working in the Chief Minister's Office, is one of the key persons increation of the syndicate headed by Shri Suryakant Tiwari. An extortion racket of this magnitude and nature was possible only when multiple State agencies fell in place and everyone supported the illegal acts of Suryakant Tiwari. This was made possible by Saumya Chaurasia so that pliant officers were posted in the coal mining districts who would listen to Suryakant Tiwari. Also, it was an unwritten rule that instructions of Suryakant Tiwari meant the voice of Saumya Chaurasia and the powers to be. The fact that Suryakant Tiwari had personal and close official dealings with her and was carrying her instructions to the officers, made it possible for Suryakant Tiwari to also command senior district level officers. This illegal authority was essential for him to run his empire of illegal extortion from coal & iron pellet transportation. Without his concurrence, no*

NOC was issued by the district machinery. All this was made possible by the fact that he was in the good books of Mrs Saumya Chaurasia. Therefore, she has directly indulged in the offence of money laundering as defined under Section 3 PMLA, 2002 being actually involved in the process of money laundering by way of possession, concealment, use, acquisition and projecting the proceeds of crime as untainted property.

As per the findings of the investigation, it can be inferred that Saumya Chaurasia has directly acquired "proceeds of crime"

as defined under Section 2(l)(u) PMLA, 2002 to an extent of more than Rs 30 crores. ED's investigation makes it evident that although all the money of extortion on coal & iron pellet transportation was collected by the syndicate of Suryakant Tiwari, he was not the final beneficiary of this scam. He did utilise large amounts of money for purchasing benami assets, but big chunks of the money were transferred to Saumya Chaurasia, spent on political funding and transferred as per the instructions of higher powers.

Mr Manish Upadhyay, a relative of Mr Suryakant Tiwari, is a close associate of both Mrs Saumya Chaurasia & Mr Suryakant Tiwari. ED investigation has established that Mr Manish Upadhyay was inserted in as an extra layer of protection for cash dealings between Mr Suryakant Tiwari and Mrs Saumya Chaurasia. He used to transport cash from Mr Suryakant Tiwari to Mrs Saumya Chaurasia.

ED investigation has established that Mrs Saumya Chaurasia and her family went on a spree of acquiring immovable assets during the period which coincided with the coal levy scam. These assets of which she is the real beneficial owner were identified and attached by issuance of provisional attachment orders(s) as detailed in succeeding paragraphs.

20. The evidence relating to strong relations between the appellant and Mr Suryakant Tiwari, between the appellant and Mr Manish Upadhyay, and between the appellant and Mr Anurag Chaurasia; the evidences of movement of funds acquired out of extortion syndicate run by Mr Suryakant Tiwari to Manish Upadhyay, proxy of the appellant; the utilisation of proceeds of crime and acquisition of properties by the appellant in the name of her mother Shanti Devi and cousin Mr Anurag Chaurasia along with the details of the said properties, etc. have been detailed in the said prosecution complaint, which leave no doubt in the mind of the Court that prima facie the appellant has been found involved in the commission of the offence of money laundering as defined in Section 3 of the said Act."

52. As the Honble Supreme Court has emphasized in a catena of judgments, the offence of money laundering must be viewed in the context of the entire criminal enterprise rather than in isolation with respect to individual roles. The collective nature of the operations, the financial interlinks between the accused persons and the fraudulent intent evidenced through sustained unlawful activity, leave no doubt that the applicant was an integral part of the broader scheme to launder proceeds of crime.

53. As per the investigation conducted by Directorate of Inforcement the applicant actively

participated in multiple stages of the laundering process, including the purchase of movable and immovable properties in the name of dummy companies, family members, relative, friends/business partners and integration of ilicit funds into the legitimate economy. Seizure of the cash amount, gold, jewelleries and other valuable items and applicants financial transactions, his association with co-accused individuals, and his involvement in acquiring the immovable properties indicate a deeper level of complicity beyond mere business dealings.

54. In the **Saumya Chaurasia (Supra)**, the Honble Supreme Court has also emphasized that although the proviso to Section 45 of the PMLA confers discretion on the Court to grant bail where the accused falls within the conditions of the proviso, it does not mean that the person specified in the said proviso should necessarily be released on bail. The relevant part of Saumya Chaurasia (Supra) is reproduced herein below:

> *"23. The use of the expression "may be" in the first proviso to Section 45 clearly indicates that the benefit of the said proviso to the category of persons mentioned therein may be extended at the discretion of the court considering the facts and circumstances of each case, and could not be construed as mandatory or obligatory on the part of the court to release them. Similar benevolent provision for granting bail to the category of persons below the age of sixteen years, women, sick or infirm has been made in Section 437CrPC and many other special enactments also, however by no stretch of imagination could such provision be construed as obligatory or mandatory in nature, otherwise all serious offences under such special Acts would be committed involving women and persons of tender age below 16 years. No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements and made scapegoats for committing such crimes, nonetheless, the courts also should not be oblivious to the fact that nowadays the educated and well placed women in the society engage themselves in the commercial ventures and enterprises, and advertently or inadvertently engage themselves in illegal activities. In essence, the courts should exercise the discretion judiciously using their prudence, while granting the benefit of the first proviso to Section 45 PMLA to the category of persons mentioned therein. The extent of involvement of the persons falling in such category in the alleged offences, the nature of evidence collected by the investigating agency, etc. would be material contradictions."*

55. Now this Court shall decide as to the applicant has successfully discharged the burden of proving that he is not guilty of the alleged offence and is unlikely to commit any offence while on bail.

56. It is well settled, as reiterated by the Honble Supreme Court in Vijay Madanlal Choudhary (Supra) and Manish Sisodia (Supra), that while the stringent twin conditions under Section 45 restrict the right to bail, they do not impose an absolute bar. The discretion of the court in granting bail remains judicial and must be exercised in accordance with the settled legal principles. The governing principle that "bail is the rule, and jail is the exception" must be harmonized with the legislative mandate that requires satisfaction of the conditions laid down under Section 45 before bail can be granted.

57. From the statements of Chetan Singh Gaur, Smt. Uma Sharma, Rohit Tiwari, Vinay Haswani, Smt. Rekha Tiwari, Smt. Divya Tiwari, Sharad Jaiswal, Sourabh Sharma and from the analysis of the cash, jewelleries and other documents recovered from the present applicant and other co-accused persons, there is sufficient prima facie evidence against the applicant that he is involved in the commission of the offence of money laundering.

58. The applicant has acquired the huge amount of cash and other properties during the posted as Constable in Transport Department and invested huge amount in other properties in the name of shell company/firm with other co-accused persons. Generating the proceeds of crime as defined under Section 2(1)(u) of PMLA, 2002. The the record and evidence available in this case and from the statements recorded under Section 50 of the PMLA, 2002 clearly establishes the link of the present applicant with the illegal income and the generation of proceeds of crime through it. The overall evidence shows the applicant's active involvement, making it difficult to satisfy the first condition that the applicant is innocent.

59. For the second condition of Section 45 of the PMLA, the pattern of transactions between the present applicant and other co-accused persons and active involvement of his family members, friends and relatives in purchasing and acquiring the properties suggest that the applicant had a well-structured setup. The involvement of multiple bank accounts, cash transactions indicate a high risk of continued engagement in similar activities if released.

60. Having considered the rival submissions made by the respective parties and also from the material produced in the present case, it is not acceptable that the present applicant did not know about the transaction. Denial by the accused itself is not sufficient to consider prima facie that there is no mens rea of the applicant for the said offence under the PMLA, 2002. Although the statement recorded under Section 50 of the PMLA, 2002 is required to be tested at the time of trial but, for the purpose of consideration of bail application the statement recorded under Section 50 of the PMLA, 2002 can be considered against the applicant.

61. Considering the nature of allegation against the present applicant and also the material collected during the investigation and further the gravity of the offence, the benefit of the judgments cited by the learned counsel for the applicant cannot be extended to him for releasing him on bail at this stage, as the facts and circumstances of the present case and the allegation against the applicant is different than the facts and circumstances of the cases cited by learned counsel for the applicant.

62. As has been discussed hereinabove, it cannot be said that there is no involvement of the applicant in the offence in question. Considering the role of the applicant in the ensuing money laundering case of proceeds of crime, it is found that there is sufficient evidence collected by the respondent/ED to prima facie show the involvement of the applicant in the offence of money laundering as defined under Section 3 of the PMLA, 2002. It is an organized crime having various facets of its complexion, therefore, further considering the provisions of Section 45 of the PMLA, 2002 this Court is satisfied that there are reasonable grounds for believing that the applicant is involved in the offence and he is likely to commit any other offence while on bail, I am not inclined to grant bail to the applicant.

63. Consequently, the present bail application filed by the applicant Saurabh Sharma is **rejected.**

64. It is made clear that any observations made herein are only for the purpose of deciding the present petition and shall not be construed as an expression on the merits of the case. The learned Trial Court shall proceed with the matter uninfluenced by any observations made by this Court and shall decide the case strictly in accordance with law.

(PRAMOD KUMAR AGRAWAL)
JUDGE

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