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

Reserved on: 22.05.2024
Pronounced on: 28.05.2024

\+ **CRL.M.C. 4332/2022 & CRL.M.As. 17738/2022, 26989/2022, 32398/2023**

DIRECTORATE OF ENFORCEMENT THR. ASSISTANT DIRECTOR ..... Petitioner

Through: Mr.Anupam S Sharma, SPP with Mr.Prakarsh Airan, Ms.Harpreet Kalsi, Mr.Abhishek Batra & Mr.Ripudaman Sharma, Advs.

versus

AMIT KUMAR RAUT @ AMISH RAVAL ..... Respondent

Through: Dr.Manish Aggarwal, Ms.Namrata Sharma, Ms.Rambha Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

1. This petition has been filed under Section 482 read with Section 439(2) of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.') challenging the Order dated 22.08.2022 (hereinafter referred to as the 'Impugned Order') passed by the learned Additional Sessions Judge–03, West-District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Trial Court') in Complaint Case No.02/2022, titled as ***Directorate***

of Enforcement v. Amit Kumar Raut @ Amish Raval, whereby the learned Trial Court has granted bail to the respondent herein.

The Complaint filed by the petitioner:

2. The above complaint has been filed by the petitioner under Section 44 read with Section 45 of the Prevention of Money-Laundering Act, 2002 (in short, 'PMLA'), alleging the commission of Offence defined under Section 3 and punishable under Section 4 of the PMLA.

3. In the Complaint, it is alleged that at Police Station: Doivala, Dehradun, Uttarakhand Police registered an FIR No. 223/2017 dated 11.09.2017 (Case Crime No. 256/2017) against the respondent herein and other co-accused for commission of offence punishable under Sections 420/120-B/342/370(i) of the Indian Penal Code, 1860 (in short, 'IPC') and Sections 18, 19, and 20 of the Transplantation of Human Organs and Tissues Act, 1994 (in short, 'TOHO Act'). As Sections 420 and 120-B of the IPC and Sections 18, 19, and 20 of TOHO Act mentioned in the said FIR are Scheduled Offences under the PMLA, ECIR No. ECIR/04/DZ-II/2017 dated 03.10.2017 was recorded to investigate the offence of Money Laundering under Section 3 of the PMLA punishable under Section 4 of the said Act and to trace the proceeds of crime.

4. On 09.12.2017, Police Station: Doivala, Dehradun, Uttarakhand filed the charge-sheet arraying, *inter alia*, the respondent herein as an accused to face trial for the offence under Sections 420/120-B/342/370(i) of the IPC and Sections 18, 19, and 20 of the TOHO Act.

5. In the Complaint, it is alleged that the abovementioned charge-sheet has been filed alleging that the respondent herein along with the co-accused hatched a well-planned conspiracy by taking *'Century Gangotri Charitable Hospital'* on rent and by pressurizing or alluring/inducing innocent and poor people into illegal kidney transplantation. It is alleged that the said hospital did not have the license for conducting Human Organ Transplantation and none of the accused persons possessed a valid medical degree for carrying out the procedure of kidney transplantation. It is alleged that poor people from all over the country were brought to the hospital by alluring/inducing them on some pretext or the other, and were pressurized into selling their kidneys.

6. In the complaint, it is further alleged that, from the investigation conducted so far, by doing illegal kidney transplantation, an amount of Rs.89 lakhs was acquired by the respondent as proceeds of crime generated due to criminal activities relating to the Scheduled Offence.

7. As far as the role of the respondent herein in the Offence of Money Laundering is concerned, in the Complaint, it is alleged as under:-

> "***Amit Kumar:*** *The accused Amit Kumar is a habitual offender and various cases were registered against him under TOHO as well as PMLA. He has been sentenced for 5 years by the Hon'ble CBI Court, Panchkula, Haryana. The accused Amit Kumar did kidney transplantation operation by endangering the life of kidney recipient as well as of the persons whose kidney was removed. During investigation, it is established that Amit Kumar Raut@ Amish Raval had conducted various*

illegal kidney transplantation surgeries at newly setup hospital namely "Gangotri Charitable Hospital" at Dehradun. By conducting kidney transplantation operation of Late Mahendra Kumar Jain, Mrs. Archana Dogra and Mrs. Sarita illegally, he acquired proceeds of crime to the tune of Rs. 40 Lacs from them in cash as well as in bank account opened by him with Punjab National Bank by impersonating as "Amish Raval". Further, he also earned an amount to the tune of Rs. 49 Lacs as advance from Wazid Ali and Hardeep Mathur for conducting kidney transplantation operation illegally. Thus, he had acquired amount totaling to Rs. 89 Lacs by the act of illegal kidney transplantation and out of the said amount of Rs. 89 Lacs, he had utilized Rs. 60 Lacs by booking immovable in his name as well as in the name of Pooja Sarin. The payment of Rs. 60 Lacs was made from his aforesaid bank account where the proceeds of crime was acquired by him by criminal activity relating to scheduled offence and projected the aforesaid property as untainted. Therefore, the accused Amit Kumar Raut @ Amish Raval is knowingly and directly involved in acquisition, utilization and projection of proceeds of crime as untainted property and thereby he has committed the offence of money laundering as defined under Section 3 of the PMLA,2002 and the accused Amit Kumar Raut @ Amish Raval is liable to be prosecuted and punished under Section 4 of the act and aforesaid attached property is liable to be confiscated in terms of Section 8(5) of the PMLA,2002. Further quantification of proceeds of crime is under progress."

Proceedings before the learned Trial Court and this Court:

8. The respondent thereafter, on 18.08.2022, preferred an application under Section 439 of the Cr.P.C. in the subject complaint

case before the learned Trial Court, and by the Impugned Order, he has been granted bail in the abovementioned complaint case.

9. Being aggrieved of the above Impugned Order passed by the learned Trial Court, the petitioner has filed the present petition seeking cancellation of Bail granted to the respondent.

10. This Court, *vide* its Order dated 05.09.2022, has directed that if the respondent has not been released from the Dehradun jail, he shall not be released till further Orders of this Court.

11. Arguments on this petition were heard and the judgment was reserved on 02.04.2024. However, while the judgment was being prepared, the Supreme Court passed the judgment in ***Tarsem Lal v. Directorate of Enforcement, Jalandhar Zonal Office***, 2024 SCC OnLine SC 971 on 15.05.2024, and as the same would have a bearing on the decision in the present petition, this Court therefore re-listed the matter for further hearing/clarification on 22.05.2024 and the judgment was then finally reserved.

Submissions of the learned SPP for the Petitioner:

12. The learned SPP appearing for the petitioner submits that the respondent, in his application under Section 439 of the Cr.P.C. before the learned Trial Court, had concealed his previous involvements in the criminal cases and the past antecedents. He submits that the learned Trial Court has erred in granting bail to the respondent without giving an appropriate opportunity to the petitioner to oppose the Bail application / file its reply to the Bail application of the respondent. He submits that, had this opportunity been granted to the petitioner, the

petitioner would have shown to the learned Trial Court as to why the respondent should not have been released on Bail.

13. As far as the criminal antecedents of the respondents are concerned, he submits that on 29.04.2008, an FIR/RC, being RC-1(E) 08/CBI/EDO/VII, was registered by the Central Bureau of Investigation (in short, 'CBI') alleging the commission of Offence under Section 120B read with Sections 326/342/417/465/473/307/406 of the IPC read with Sections 18/19/20 of the TOHO Act by the respondent herein and the co-accused. It was alleged that the respondent along with the co-accused hatched a criminal conspiracy and in pursuance thereof, set-up an unauthorized hospital at Palam Vihar, Gurugram for illegal transplantation of kidneys from 1999 to 2008. He submits that the respondent established a network into India as well as abroad through touts for bringing innocent victims and deceitfully removing their kidneys and transplanting the same to Indians and foreign patients. Since Section 307 of the IPC and Sections 18/19/20 of the TOHO Act, being Scheduled Offences, were invoked, ECIR/7/DZ/2008 dated 12.05.2008 (hereinafter referred to as the '1st PMLA Case') was registered against the respondent.

14. He submits that upon completion of the investigation, a complaint under Section 44 read with Section 45 of the PMLA was filed by the petitioner on 28.01.2011 before the Court of the learned Special Judge, PMLA, Karkardooma Courts, Delhi against the respondent and the same is pending trial.

15. He submits that the respondent has been convicted by the judgment dated 22.03.2013 passed by the learned Additional District

Judge (Special Judge CBI), Panchkula District, Haryana in CBI Case No.07/2008 titled ***CBI v. Dr.Upender Dubesh & Ors.***, for Offence under Section 120-B read with Sections 465/471/473/506 of the IPC and Sections 18/19/20 of the TOHO Act and sentenced to undergo Rigorous Imprisonment for 7 years along with a fine of a sum of Rs. 55 lakhs.

16. He submits that on suspension of his sentence and after his release, the respondent had absconded to Dehradun and assumed a false identity, and again engaged in similar criminal acts of illegal kidney transplantation, for which acts, the abovementioned FIR, that is, FIR No. 223/2017 was registered at Police Station: Doivala, Dehradun, Uttarakhand.

17. The learned SPP further submits that even prior to the abovementioned FIRs, in the year 1994, the respondent had initially started his business of illegal transplantation of kidneys in Mumbai, Maharashtra on his own in 1994. He submits that in the year 1995, cases relating to illegal kidney transplantations were registered against him and others by the Mumbai Police. He submits that one case relating to the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (in short, 'COFEPOSA Act') was also registered against him.

18. He submits that the respondent, thereafter, fled from Mumbai and reached Jaipur, Rajasthan in the year 1995, where he restarted his illegal kidney transplantation in one Shyam Nursing Home. He submits that then the FIR No(s).664/1995, 659/1995, and 673/1995

were registered at Police Station: Sodala, Jaipur, Rajasthan against him and other accused persons. These cases are also pending trial.

19. He submits that apart from this, another FIR, being FIR No.176/2000 at Police Station: Nizamuddin Railway Station, New Delhi, and FIR No.18/2000 at Police Station: Guntur, Andhra Pradesh, pertaining to illegal kidney transplantations have also been registered against the respondent and the other co-accused persons.

20. The learned SPP submits that the respondent then shifted his base to Delhi and continued his illegal activities of kidney transplantations.

21. He submits that the respondent, along with his brother, who is also one of the co-accused, opened a hospital at Palam Vihar and allured many innocent and poor persons to their hospital and fraudulently removed their kidneys and illegally transplanted them into the bodies of the recipients for huge monetary considerations. He submits that in order to conceal his identity, the respondent changed his name from '*Santosh Rameshwar Raut*' to '*Amit Kumar*'. He submits that the respondent used different dates of birth in different documents. The respondent is also stated to have changed his place of birth from Paturnadurbar in Akola District, Maharashtra to Delhi.

22. The learned SPP submits that the above criminal antecedents of the respondent were important to be considered by the learned Trial Court before granting Bail to him, however, have not been considered in the Impugned Order.

23. He submits that the respondent had earlier also absconded from the process of law, and on 07.02.2008, was apprehended by the Nepal

Police. He submits that the respondent had again absconded and assumed a new identity, before being apprehended by the Dehradun Police. He submits that the respondent has also been threatening and intimidating witnesses. He submits that the respondent has also been shifting his base from Mumbai to Jaipur, then from Jaipur to Delhi, and finally from Delhi to Dehradun. He submits that there is, therefore, a reasonable apprehension that if the respondent is released on Bail, he shall abscond from the process of law.

24. He submits that, in spite of his conviction, the respondent has continued the illegal activities, therefore, there is reasonable apprehension that if the respondent is released on Bail, he shall again continue with the same illegal activities.

25. The learned SPP submits that the learned Trial Court has erred in applying the judgment of the Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation & Anr.***, (2022) 10 SCC 51 to the facts of the present case. He submits that though in the present case, the respondent has not been arrested during the course of the investigation, the complaint being under PMLA and for an economic offence, the general principles laid down in ***Satender Kumar Antil*** (supra) were not applicable and the case, in fact, had to be governed by Section 45 of the PMLA.

26. He further submits that the learned Trial Court has also failed to appreciate that the release of the accused on accepting bond under Section 88 of the Cr.P.C. was not mandatory. In support, he places reliance on the judgment of the Supreme Court in ***Pankaj Jain v. Union of India,*** AIR 2018 SC 1155. He submits that, in fact, the

respondent was in custody in relation to the FIR lodged at Dehradun, Uttarakhand, and therefore, cannot be said to have been produced while not being in custody.

27. He submits that the judgment of the Supreme Court in ***Tarsem Lal*** (Supra), is not applicable to the facts of the present case. He submits that the judgment of the Supreme Court in ***Pankaj Jain*** (supra) would apply to the facts of the present case as well, as the principles enunciated therein are generally applicable and there is embargo on releasing the accused on bail unless the accused satisfies the test of Section 45 of the PMLA. He submits that the respondent was not produced before the learned Trial Court as a free bird. He was already in custody in the case at Dehradun. He submits that there is also a risk of the respondent fleeing away from the process of the Court.

28. He submits that even if Section 45 of the PMLA is not attracted, it does not mean that the accused must be released on Bail. The general principles governing the release of the Applicant/Accused on Bail are still to be applied. He submits that, in the present case, the learned Trial Court has erred in not applying these general principles.

29. He submits that for the above reasons, as the Bail has been granted to the respondent by the learned Trial Court without considering the relevant factors, it is liable to be cancelled by this Court. In support, he placed reliance on the following judgments of the Supreme Court:

i) ***Jaibunisha v. Meharban & Anr.***, (2022) 5 SCC 465;

ii) ***Neeru Yadav v. State of UP & Anr.***, (2016) 15 SCC 422;
iii) ***Brijmani Devi v. Pappu Kumar & Anr.***, (2022) 4 SCC 497;
iv) ***Bhoopendra Singh v. State of Rajasthan & Anr.***, (2021) 17 SCC 220;
v) ***Ash Mohammad v. Shiv Raj Singh & Anr.***, (2012) 9 SCC 446;
vi) ***Mahipal v. Rajesh Kumar & Anr.***, (2020) 2 SCC 118; and,
vii) ***Pooran v. Rambilas & Anr.***, (2001) 6 SCC 338

Submissions of the learned counsel for the Respondent:

30. The learned counsel for the respondent submits that there is no infirmity in the Order passed by the learned Trial Court granting bail to the respondent.

31. He submits that as far as the case pending against the respondent in Mumbai, that is, FIR No.95/1995 registered at Police Station: Khar, Mumbai is concerned, the learned Trial Court therein has not framed charges till now and the respondent has been granted Bail. As far as the case, that is, PW/1900087/1996 is concerned, the same has been disposed of and the respondent has been acquitted in the said case.

32. He submits that as regards the FIR No.176/2000 registered at Police Station: Nizamuddin Railway Station, Delhi, the trial in the said case is pending, and the charges are yet to be framed, and the respondent has been granted Bail in the said case.

33. He submits that as far as FIR No.18/2000 registered at Police Station: Guntur, Andhra Pradesh is concerned, the respondent has also been granted Bail.

34. He submits that the respondent has been acquitted in the FIR No.17/2016 registered at Police Station: Petlad, Gujarat by the learned Trial Court therein.

35. He submits that as regards the three FIR(s) registered against the respondent in Jaipur, Rajasthan, two cases arising out of the FIR(s) being 664/1995 and 675/1995 have been disposed of, and as far as the third FIR No.659/1995 is concerned, the respondent has been granted Bail.

36. He submits that as regards the three cases pending in Doivala, Dehradun, Uttarakhand, the respondent has been released on Bail in two of them, being Case No.5967/2018 and Case No.518/2018, and has been granted *interim* bail in the case arising out of the FIR No.256/2017.

37. He submits that the case against the respondent by the CBI, being CBI/RC/4E//2008, has been disposed of, and in RC/8/CBI/SC/2011, the respondent had been convicted, and an appeal/revision has been preferred against the same by the respondent before the Punjab and Haryana High Court and the same is pending.

38. He submits that as regards the case in Delhi, being ECIR/7/DZ/2008, the respondent has been granted Bail.

39. He submits that the learned Trial Court has rightly relied upon the judgment of the Supreme Court in ***Satinder Kumar Antil*** (supra) to grant Bail to the respondent. He submits that the ECIR resulting

from the complaint in question was registered in the year 2017. He submits that the petitioner did not deem it necessary to arrest the respondent during the course of the investigation and proceeded to file the subject complaint in the year 2022, without arresting the respondent.

40. He submits that the amount stated to be involved as the alleged proceeds of crime is only to the extent of Rs.89 lakhs, therefore, the rigours of Section 45 of the PMLA will not apply.

41. He submits that in ***Satender Kumar Antil*** (supra), the Supreme Court, in fact, has stated that the general principles would govern the grant of Bail even where such special provisions are applicable. He also places reliance on the judgment of the Supreme Court in ***Aman Preet Singh v. Central Bureau of Investigation,*** (2022) 13 SCC 764.

42. He further submits that had the respondent been taken into custody when the ECIR was registered, he would have been entitled to the benefit of Section 436A of the Cr.P.C. The petitioner, therefore, by not arresting the respondent, as the respondent was in custody in another case, cannot deny the benefit of said provision to the respondent.

43. While refuting the submissions made by the learned SPP with regard to the judgment of the Supreme Court in ***Tarsem Lal*** (supra), he submits that the said judgment would be clearly applicable to the facts of the present case and therefore, there is no infirmity in the Impugned Order passed by the learned Trial Court.

Analysis and Findings:

44. I have considered the submissions made by the learned counsels for the parties.

45. As the present petition seeks cancellation of Bail granted to the accused, it is to be kept in view that the Bail granted to the accused can primarily be challenged and be cancelled on the ground that either the Court granting Bail has failed to consider the relevant facts and law applicable to the grant of Bail, or has taken into account irrelevant facts and considerations, or where while granting Bail to the accused or due to supervening circumstances, the Bail granted to the accused deserves to be quashed. The Supreme Court in ***Deepak Yadav v. State of U.P.,*** (2022) 8 SCC 559, reiterated the principles governing the cancellation of bail and held as under: -

> *"31. This Court has reiterated in several instances that bail once granted, should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during trial. Having said that, in case of cancellation of bail, very cogent and overwhelming circumstances are necessary for an order directing cancellation of bail (which was already granted).*
> *32. A two-Judge Bench of this Court in Dolat Ram v. State of Haryana, (1995) 1 SCC 349 laid down the grounds for cancellation of bail which are:*
>
> *(i) interference or attempt to interfere with the due course of administration of justice;*
>
> *(ii) evasion or attempt to evade the due course of justice;*

(iii) abuse of the concession granted to the accused in any manner;

(iv) possibility of the accused absconding;

(v) likelihood of/actual misuse of bail;

(vi) likelihood of the accused tampering with the evidence or threatening witnesses.

33. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled:

33.1. Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.

33.2. Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim.

33.3. Where the past criminal record and conduct of the accused is completely ignored while granting bail.

33.4. Where bail has been granted on untenable grounds.

33.5. Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

33.6. Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

33.7. When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

34. In Neeru Yadav v. State of U.P., (2014) 16 SCC 508, the accused was granted bail by the

High Court. In an appeal against the order of the High Court, a two-Judge Bench of this Court examined the precedents on the principles that guide grant of bail and observed as under:

> *"12. ... It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail have not been taken note of or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the court."*
>
> *(emphasis supplied)*

35. This Court in Mahipal, (2020) 2 SCC 118 held that:

> *"17. Where a court considering an application for bail fails to consider relevant factors, an appellate court may justifiably set aside the order granting bail. An appellate court is thus required to consider whether the order granting bail suffers from a non-application of mind or is not borne out from a prima facie view of the evidence on record. It is thus necessary for this Court to assess*

whether, on the basis of the evidentiary record, there existed a prima facie or reasonable ground to believe that the e accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."
accused had committed the crime, also taking into account the seriousness of the crime and the severity of the punishment."

36. A two-Judge Bench of this Court in Prakash Kadam v. Ramprasad Vishwanath Gupta, (2011) 6 SCC 189, held that:

"18. In considering whether to cancel the bail, the court has also to consider the gravity and nature of the offence, prima facie case against the accused, the position and standing of the accused, etc. If there are very serious allegations against the accused, his bail may be cancelled even if he has not misused the bail granted to him. ...
19. In our opinion, there is no absolute rule that once bail is granted to the accused then it can only be cancelled if there is likelihood of misuse of bail. That factor, though no doubt important, is not the only factor. There are several other factors also which may be seen while deciding to cancel the bail."

46. The learned Trial Court in the Impugned Order, while granting Bail to the respondent, has given the following reasons:

"3. The Court finds that the ECIR of this case was registered in the year 2017. The Directorate of Enforcement took more than four and half years to investigate the case. The IO consciously did not arrest applicant/accused Amit Kumar Raut during investigation but attached his property i.e. Villa No.49, Tatvam Villa, Vipul World,

Sector-48, Gurugram, as well as his bank account maintained in PNB, Dehradun. The present complaint was filed on 14/03/2022 in the Court.

4. The judgment of Hon'ble Supreme Court in ***Satender Kumar Antil*** *(supra) seems applicable in the facts and circumstances of present case. The rigour of Section 45 of the Act does not seem applicable to this case. The observations of Hon'ble Supreme Court in paragraph no.65 of the judgment pertaining to procedure under Section 170 CrPC seems equally applicable to the charge sheet filed by police and complaint case filed by ED.*

5. In addition, the total laundered amount in this case being less than rupees one crore, the proviso to Section 45 of the Act shall take effect and the Court shall not be required to reach satisfaction mentioned in Section 45(1) of the Act.

6. The Court observes that applicant/accused Amit Kumar Raut has already spent more than seven years in judicial custody in cases connected to present case. It shall not be fair to the applicant/accused to count his custody afresh in present case, whereas, he could have availed of benefit under Section 436A r/w Section 428 CrPC if he were arrested in this case at the outset, in the year 2017."

47. In ***Satinder Kumar Antil v. CBI,*** (2021) 10 SCC 773, the Supreme Court laid down the general guidelines for grant of Bail, without fettering the discretion of the Courts concerned:

*"**2.** We have been provided assistance both by Mr S.V. Raju, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior Counsel and there is broad unanimity in terms of the suggestions made by the learned ASG. In terms of the suggestions, the offences have been categorised and guidelines*

are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

3. *We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:*

*"**Categories/Types of Offences***

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

Requisite Conditions

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet Siddharth v. State of U.P., (2022) 1 SCC 676)

Category A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

Category B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

Category C

Same as Categories B and D with the additional condition of compliance of the provisions of bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, Pocso, etc."

4. *Needless to say that the Category A deals with both police cases and complaint cases.*

5. *The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation nor appeared before the investigating officers, nor answered summons when the court feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid*

approach cannot give them benefit, something we agree with.

6. *We may also notice an aspect submitted by Mr Luthra that while issuing notice to consider bail, the trial court is not precluded from granting interim bail taking into consideration the conduct of the accused during the investigation which has not warranted arrest. On this aspect also we would give our imprimatur and naturally the bail application to be ultimately considered, would be guided by the statutory provisions.*

7. *The suggestions of the learned ASG which we have adopted have categorised a separate set of offences as "economic offences" not covered by the special Acts. In this behalf, suffice to say on the submission of Mr Luthra that this Court in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:*

(a) seriousness of the charge, and

(b) severity of punishment.

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor."

48. In its subsequent judgment in ***Satinder Kumar Antil*** (supra-2022), the Supreme Court, while reiterating the general guidelines governing an accused presented before the Court under Section 170 of the Cr.P.C., has, *inter alia*, held as under:

> *"**43.** The scope and ambit of Section 170 has already been dealt with by this Court in Siddharth v. State of U.P., (2022) 1 SCC 676 This is a power which is to be exercised by the court after the completion of the investigation by the agency concerned. Therefore, this is a procedural compliance from the point of view of the court alone, and thus the investigating agency has got a limited role to play. In a case where the prosecution does not require custody of the accused, there is no need for an arrest when a case is sent to the Magistrate under Section 170 of the Code. There is not even a need for filing a bail application, as the accused is merely forwarded to the court for the framing of charges and issuance of process for trial. If the court is of the view that there is no need for any remand, then the court can fall back upon Section 88 of the Code and complete the formalities required to secure the presence of the accused for the commencement of the trial. Of course, there may be a situation where a remand may be required, it is only in such cases that the accused will have to be heard. Therefore, in such a situation, an opportunity will have to be given to the accused persons, if the court is of the prima facie view that the remand would be required. We make it clear that we have not said anything on the cases in which the accused persons are already in custody, for which, the bail application has to be decided on its own merits. Suffice it to state that for due compliance of Section 170 of the Code, there is no need for filing of a bail application."*

49. Therefore, where an accused, who had not been arrested during the period of investigation, is brought before the Court on the filing of the Charge-Sheet/Complaint, the Court is to apply its judicial mind on whether the accused is to be remanded into custody; such judicial exercise has to be conducted after considering the relevant factors and

on a case-to-case basis, for example, where the accused had not cooperated in the investigation and had not appeared before the Investigating Officer, or where the court feels that judicial custody of the accused is necessary for the completion of the trial, or where further investigation including a possible recovery is needed, the Court may remand the accused to custody. Although, as a general rule such accused will not be remanded into custody and shall be released on bail/bond.

50. As far as the Special Acts, including PMLA, are concerned, the Supreme Court held as under:

> *"**Special Acts (Category C)***
> ***86.** Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.*
>
> *xxxx*
>
> ***89.** We may clarify on one aspect which is on the interpretation of Section 170 of the Code. Our discussion made for the other offences would apply to these cases also. To clarify this*

> *position, we may hold that if an accused is already under incarceration, then the same would continue, and therefore, it is needless to say that the provision of the Special Act would get applied thereafter. It is only in a case where the accused is either not arrested consciously by the prosecution or arrested and enlarged on bail, there is no need for further arrest at the instance of the court. Similarly, we would also add that the existence of a pari materia or a similar provision like Section 167(2) of the Code available under the Special Act would have the same effect entitling the accused for a default bail. Even here the court will have to consider the satisfaction under Section 440 of the Code."*

51. It is, therefore, clear that the general directions given in the judgment of ***Satinder Kumar Antil*** (supra-2022) in relation to the process to be followed on production of the accused, who has not been arrested during the period of investigation, on filing of the Charge-Sheet/Complaint post the completion of investigation, remain the same and is also applicable to Special Acts, including PMLA, and, therefore, to the facts of the present case.

52. In the same judgment, for the category of Economic Offences, the Supreme Court emphasized that the gravity of the offence, the object of the Special Act, and the attending circumstances would also be taken note of along with the period of sentence involved. I may quote from the judgment as under: -

> *"**Economic offences (Category D)***
> ***90.** What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in P. Chidambaram v. Directorate of Enforcement,*

> *(2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgments, will govern the field:"*

53. The Supreme Court had then referred to the judgments in ***P.Chidambaram v. Directorate of Enforcement,*** (2020) 13 SCC 791; and ***Sanjay Chandra v. CBI,*** (2012) 1 SCC 40, as the precedents on the general guidelines applicable to Economic Offences. The same, however, does not detract from the general principles enunciated by the Supreme Court as being applicable at the stage of production/appearance of the accused on the filing of the Charge-Sheet, as have been referred hereinabove.

54. Recently, the Supreme Court in ***Tarsem Lal*** (supra), has reiterated that a complaint under Section 44(1)(b) of the PMLA will be governed by Sections 200 to 204 of the Cr.P.C. Therefore, while the Court has the discretion to issue either a warrant or summons, as held in ***Inder Mohan Goswami v. State of Uttaranchal,*** (2007) 12 SCC 1, as a general rule, the Court should direct issuance of summons and not warrants on the complaint to the accused who was not arrested till the filing of the complaint. It was further held that Section 437 of the Cr.P.C. will not apply when an accused appears before the Special

Court after a summon is issued on a complaint under Section 44(1)(b) of the PMLA.

55. Considering Section 88 of the Cr.P.C., the Supreme Court held that the same shall apply after filing of the complaint under Section 44(1)(b) of the PMLA. It confers a discretionary power on the Special Court to call upon the accused to furnish bonds for his appearance before the Court. The object of Section 88 of the Cr.P.C. is to ensure that the accused regularly appears before the Court. When an accused appears before the Special Court on summons issued on the complaint, and offers to submit bonds in terms of Section 88 of the Cr.P.C., therefore, there is no reason for the Special Court to refuse or decline to accept the bonds. The Supreme Court further held that if an accused appears pursuant to a summon issued on the complaint, he is not in custody and, therefore, there is no question of granting him Bail, and an order accepting bonds under Section 88 of the Cr.P.C. from the accused does not amount to a grant of Bail.

56. The Supreme Court denounced the practice of some of the Special Courts under the PMLA of taking the accused into custody after they appear pursuant to the summons issued on the complaint. The Court held that where, before the filing of the complaint, the accused is not arrested, after the filing of the complaint and after he appears in compliance with the summons, he cannot be taken into custody or forced to apply for Bail. If the petitioner wants the custody of such accused, it must apply for the same to the Special Court and the Special Court, after hearing the accused, and on being satisfied that custodial interrogation at that stage is required, may permit

custody even though the accused was never arrested under Section 19 of the PMLA. The Supreme Court held as under:

> *"**21.** We are informed across the Bar by the learned counsel of the appellants that some of the Special Courts under the PMLA are following the practice of taking the accused into custody after they appear pursuant to the summons issued on the complaint. Therefore, the accused are compelled to apply for bail or for anticipatory bail apprehending arrest upon issuance of summons. We cannot countenance a situation where, before the filing of the complaint, the accused is not arrested; after the filing of the complaint, after he appears in compliance with the summons, he is taken into custody and forced to apply for bail. Hence, such a practice, if followed by some Special Courts, is completely illegal. Such a practice may offend the right to liberty guaranteed by Article 21 of the Constitution of India. If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled."*

57. The Supreme Court summarised the above principles, as under:-

> ***"23.** Now, we summarise our conclusions as under:*

a) *Once a complaint under Section 44 (1)(b) of the PMLA is filed, it will be governed by Sections 200 to 205 of the CrPC as none of the said provisions are inconsistent with any of the provisions of the PMLA;*

b) *If the accused was not arrested by the ED till filing of the complaint, while taking cognizance on a complaint under Section 44(1)(b), as a normal rule, the Court should issue a summons to the accused and not a warrant. Even in a case where the accused is on bail, a summons must be issued;*

c) *After a summons is issued under Section 204 of the CrPC on taking cognizance of the offence punishable under Section 4 of the PMLA on a complaint, if the accused appears before the Special Court pursuant to the summons, he shall not be treated as if he is in custody. Therefore, it is not necessary for him to apply for bail. However, the Special Court can direct the accused to furnish bond in terms of Section 88 of the CrPC;*

d) *In a case where the accused appears pursuant to a summons before the Special Court, on a sufficient cause being shown, the Special Court can grant exemption from personal appearance to the accused by exercising power under Section 205 of the CrPC;*

e) *If the accused does not appear after a summons is served or does not appear on a subsequent date, the Special Court will be well within its powers to issue a warrant in terms of Section 70 of the CrPC. Initially, the Special Court should issue a bailable warrant. If it is not possible to effect service of the bailable warrant, then the recourse can be taken to issue a non-bailable warrant;*

f) *A bond furnished according to Section 88 is only an undertaking by an accused who is not in custody to appear before the Court on the date fixed. Thus, an order accepting bonds*

under Section 88 from the accused does not amount to a grant of bail;

g) *In a case where the accused has furnished bonds under Section 88 of the CrPC, if he fails to appear on subsequent dates, the Special Court has the powers under Section 89 read with Sections 70 of the CrPC to issue a warrant directing that the accused shall be arrested and produced before the Special Court; If such a warrant is issued, it will always be open for the accused to apply for cancellation of the warrant by giving an undertaking to the Special Court to appear before the said Court on all the dates fixed by it. While cancelling the warrant, the Court can always take an undertaking from the accused to appear before the Court on every date unless appearance is specifically exempted. When the ED has not taken the custody of the accused during the investigation, usually, the Special Court will exercise the power of cancellation of the warrant without insisting on taking the accused in custody provided an undertaking is furnished by the accused to appear regularly before the Court. When the Special Court deals with an application for cancellation of a warrant, the Special Court is not dealing with an application for bail. Hence, Section 45(1) will have no application to such an application;*

h) *When an accused appears pursuant to a summons, the Special Court is empowered to take bonds under Section 88 of the CrPC in a given case. However, it is not mandatory in every case to direct furnishing of bonds. However, if a warrant of arrest has been issued on account of non-appearance or proceedings under Section 82 and/or Section 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88 of the CrPC, and the accused will have to apply for cancellation of the warrant;*

> ***i)*** *After cognizance is taken of the offence punishable under Section 4 of the PMLA based on a complaint under Section 44 (1)(b), the ED and its officers are powerless to exercise power under Section 19 to arrest a person shown as an accused in the complaint; and*
>
> ***j)*** *If the ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, the ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the Court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19. However, when the ED wants to conduct a further investigation concerning the same offence, it may arrest a person not shown as an accused in the complaint already filed under Section 44(1)(b), provided the requirements of Section 19 are fulfilled.*
>
> ***24.*** *We are making it clear that we are dealing with a fact situation where the accused shown in the complaint under Section 44(1)(b) of the PMLA was not arrested by the ED by the exercise of power under Section 19 of the PMLA till the complaint was filed."*

58. The Supreme Court in ***Tarsem Lal*** (supra) held that the proposition of law propounded in the judgment in ***Pankaj Jain*** (supra) is applicable to a case where a warrant of arrest has been issued and proceedings under Section 82 and/or 83 of the Cr.P.C. have been issued against an accused, and therefore, the said accused cannot be let off by taking a bond under Section 88 of the Cr.P.C. The Court further held that, however, the said proposition will not be applicable to a

case where an accused in a case under the PMLA is not arrested by the ED till the filing of the complaint. I may quote from the judgment as under:

> *"14. ... Therefore, if a warrant of arrest has been issued and proceedings under Section 82 and/or 83 of the CrPC have been issued against an accused, he cannot be let off by taking a bond under Section 88. Section 88 is indeed discretionary. But this proposition will not apply to a case where an accused in a case under the PMLA is not arrested by the ED till the filing of the complaint. The reason is that, in such cases, as a rule, a summons must be issued while taking cognizance of a complaint. In such a case, the Special Court may direct the accused to furnish bonds in accordance with Section 88 of the CrPC."*

59. In the present case, the learned Trial Court has taken cognizance of the fact though the ECIR was registered in the year 2017; the petitioner took more than four and a half years to investigate the case; and, the petitioner consciously did not arrest the respondent during the investigation. Applying the principles of ***Satender Kumar Antil*** (supra), the learned Trial Court, therefore, held that the rigours of Section 45 of the Act do not apply. In fact, after the judgment of the Supreme Court in ***Tarsem Lal*** (supra), no fault can be found in the above view of the learned Trial Court.

60. The learned Trial Court has also observed that as the total amount alleged to be laundered in the case is Rs. 89 lakhs, that is, less than Rs. 1 crore, the proviso to Section 45 of the PMLA shall take effect, and act as an exception to the Court being satisfied with the

conditions contained in Section 45(1)(ii) of the PMLA. Again, no fault can be found in the said observation of the learned Trial Court.

61. The learned counsel for the petitioner has submitted that even if Section 45(1)(ii) of the PMLA would not apply, the general principles governing the grant of Bail shall still have to be considered. There can be no caveat to the submission of the learned counsel for the petitioner, however, in the facts of the present case, and applying the principles enunciated by the Supreme Court in ***Satender Kumar Antil*** (supra-2022) and ***Tarsem Lal*** (supra), the Impugned Order cannot be faulted as the respondent was, in fact, not required to apply for Bail, having been not arrested during the course of the investigation.

62. As far as Section 436A and Section 428 of the Cr.P.C. are concerned, though again the learned counsel for the petitioner is right in his submission that these provisions were not applicable to the facts of the present case and, at the present stage, however, the learned Trial Court has merely used these provisions, their object, and the principles governing them, to supplement force to its decision to release the respondent on bond. The Impugned Order cannot be faulted on this account as well.

63. As far as the other cases against the respondent are concerned, in the peculiar facts of the present case, as considered hereinabove, they cannot influence the grant of bail to the respondent in the case in hand. However, this order shall have no effect in case the petitioner was to apply for cancellation of bail granted to the respondent in those other cases, or if the respondent was to apply for bail in the case where he is yet not on bail.

Conclusion & Directions:

64. For the above reasons, I do not find any merits in the challenge of the petitioner to the Impugned Order.

65. The petition is, accordingly, dismissed.

66. Subject to the conditions imposed by the learned Trial Court, the respondent may be released forthwith, if not required in any other case.

67. It is, however, clarified that this judgment shall not, in any manner, affect the adjudication of any application that the petitioner may file before the learned Trial Court seeking custody of the respondent or on the Bail application, if any, filed by the respondent or pending, before the learned Trial Court at Dehradun, Uttarakhand where the case arising from FIR No. 223/2017 (Case Crime No. 256/2017) is pending, or if the petitioner applies for cancellation of bail granted to the respondent in any other case pending against him.

68. It is also made clear that the observations made hereinabove are only for the purpose of deciding the question of cancellation of Bail and shall not, in any manner, be construed as an expression on the merits of the case pending before the learned Trial Court.

69. The pending applications are also dismissed being rendered infructuous.

NAVIN CHAWLA, J

MAY 28, 2024/Arya/ss/AS

Click here to check corrigendum, if any