

IN THE HIGH COURT OF JHARKHAND, RANCHI

B.A. No. 8937 of 2022

Pooja Singhal, aged about 44 years, wife of Shri Abhishek Jha, resident of Flat No.3, Officers Bungalow, Near Governor House, Morabadi, P.O.Morabadi, P.S.Bariatu, District-Ranchi Petitioner

-- Versus --

Directorate of Enforcement, Government of India represented by its Assistant Director (PMLA), having its office at Pee Pee Compound, Kaushalya Chambers-II, P.O.-Main Road, P.S.Doranda, District-Ranchi

..... Opposite Party

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Indrajit Sinha, Advocate

Mr. Bibhash Sinha, Advocate

Mr. Ashok Gahlot, Advocate

Mr. Sudhansu Singh, Advocate

For the E.D. :- Mr. Amit Kumar Das, Advocate

Mr. Saurav Kumar, Advocate

Mr. Shivam Utkarsh Sahay, Advocate

Mrs. Swati Shalini, Advocate

Mr. Sahay Gaurav Piyush, Advocate

6/03.11.2022 Heard Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioner and Mr. Amit Kumar Das, the learned counsel appearing on behalf of the respondent-Enforcement Directorate (hereinafter to be referred to as 'E.D.').

The petitioner is seeking regular bail in connection with ECIR 03 of 2018 (in ECIR/14/PAT/2012 dated 18.05.2012) lodged for the offence punishable under section 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the Act of 2002'), pending in the court of learned Special Judge, PML Act, Ranchi.

The prosecution was lodged alleging therein that the petitioner was posted as Deputy Commissioner in Khunti district during the period 16.02.2009 to 19.07.2010 where she was the principal authority for sanctioning of fund for different development projects. The

co-accused Ram Binod Prasad Sinha was posted as Junior Engineer during that period in Special Division as well as District Board, Khunti and has stated in his statement recorded under section 50 of PMLA that he used to pay 5% of the disbursed amount as commission to DRDA and Deputy Commissioner Office and extra commission of 5% to the Executive Engineer and Asst. Engineer. He has also stated that the commission was paid for smooth functioning from beginning i.e. allocation of work to till end i.e. payment of final instalment. It is alleged that in the prosecution case that the petitioner being the principal authority for sanctioning of fund for different development projects, in connivance with co-accused Jai Kishore Chaudhary,. Executive Engineer, Special Division, Shashi Prakash, Executive Engineer, District Board, Rajendra Kumar Jain, Assistant Engineer, and Ram Binod Prasad Sinha, Junior Engineer, managed to do defalcation of funds in different development projects. In lieu of the same, she used to obtain the illegal commission from Ram Binod Prasad Sinha in cash and ignored all the irregularities and misdeeds by him. Her successor in the office constituted various inspection teams to assess the value of different works executed by Ram Binod Prasad Sinha, during his tenure as Junior Engineer in Special Division, Rural Works Department and as Junior Engineer in District Board, Khunti, Jharkhand. The reports submitted by the inspection teams constituted by the successor Deputy Commissioner, Khunti, established that there were huge differences in the quantum of funds released to Ram Binod Prasad Sinha and quantity of the completed work in respective projects. In many cases, it was seen that the construction work of nominal value was done against withdrawal of substantial amount allocated for the given project. Consequent to audit of the work executed by Ram Binod Prasad Sinha at different locations, a combined embezzlement of Rs.18.06 crores was alleged and in this

regard sixteen FIRs have registered in different police stations of Khunti District and further after due investigation, the charge sheets were filed in all the aforesaid sixteen FIRs before the competent court. The accused Ram Binod Prasad Sinha was suspended by the Rural Development Department, Government of Jharkhand, however, despite his suspension, he continued working for the department. On the basis of complaints filed by Shri Dhaneswar Ram and Shri Krishan Mohan Lal, Vigilance Bureau registered an FIR/complaint vide FIR No.06/2011 dated 23.03.2011 and FIR No.07/2011 dated 23.03.2011 against Ram Binod Prasad Sinha (A-1) for commission of offences punishable under sections 406, 409, 420, 467, 468 and 471, 477(A) and 120-B of the Indian Penal Code read with section 13(1) (c) & (d) of Prevention of Corruption Act for embezzlement of government fund which are also scheduled offences under the provision of Prevention of Money Laundering Act, 2002. It also transpires that the petitioner Pooja Singhal was found to be depositing huge amount of cash deposits during the said period. The supplementary prosecution complaint/charge-sheet reveals that the petitioner has several accounts in different banks and is keeping two PAN numbers in her name i.e. (1) ARZPS2447R and (2)AMQPS9964B. It further transpires that she used to deposit cash in those accounts and convert the cash to demand draft and then purchased insurance policies for long tenures and pre-maturely close the policies and utilize the proceeds towards several investments including Pulse Super-speciality Hospital beneficially owned by her and her family. The materials submitted by the prosecution reveals that the search proceedings were conducted at different locations/premises related to the petitioner and her associates and it is stated that during the course of search huge cash amounting to Rs.19.76 crores (approx.) was recovered and seized. Apart from that documents/records/digital devices etc. related to the matter were also

found and seized. Some movable properties in the form of high end vehicles were also found during the course of search from the premises of Suman Kumar who is a C.A. by profession and associated with the petitioner and her husband. The legitimate source of such income/money could not be explained by the accused Suman Kumar, the same were seized. He disclosed in his statement before E.D that most of the cash seized from his premises belongs to Pooja Singhal (petitioner), which was kept in his house and office, on her behalf. Further, the accused Suman Kumar was also beneficiary of closure proceeds received by the petitioner Pooja Singhal, which were purchased from the cash deposited in her account during her tenure as Deputy Commissioner in Khunti district. They also utilized the proceeds of crime to purchase on land in the name of Radhey Shyam Fireworks LLP where Pawan Kumar, who is brother of the accused C.A and the petitioner's mother Kamlesh Singhal were partners and Rs.1.33 crore was given in cash for it which was part of proceeds of crime collected and accumulated on behalf of the petitioner. The co-accused Suman Kumar was filing IT returns of petitioner, since 2012 and managing her finance. He was also auditor for M/s Pulse Sanjeevani Healthcare Pvt. Ltd. And he was collecting proceeds of crime on the instruction of the petitioner, in the form of cash from several individuals and entities, and further on instructions of the petitioner, he handed over cash to different individuals, such as he gave Rs.3 crore in cash to a builder Alok Sarawgi of Panchwati Builder for purchasing land for Pulse Hospital owned by petitioner Pooja Singhal and her family. He was investing proceeds of crime generated by the petitioner in various properties. Thus, he knowingly and willingly helped her to manage her ill-gotten proceed of crime and to get its taint removed, so that she can project the same as untainted money. The prosecution complainant reveals that the petitioner married Abhishek Jha

in the year 2011, and it is observed that after marriage, Abhishek Jha made substantial cash deposits in his accounts, which were, in fact, the part of proceeds of crime generated by his wife Pooja Singhal during her tenure as Deputy Commissioner of Khunti and Palamau. The total amount of cash deposited in the accounts of petitioner and her husband Abhishek Jha combined together is Rs.1.43 crore, which is much more than the income declared by them in their Income Tax Returns for the respective financial years. Her husband further laundered the said proceeds of crime deposited in the account by making a payment of Rs.43,00,000/- to M/s Usha Construction to purchase first floor of Orchid Building and where he later started Pulse Diagnostic and Imaging Centre. He further used the proceeds of crime generated by his wife Pooja Singhal, the petitioner in furnishing and starting Pulse Diagnostic and Imaging Centre. It is apparent from the prosecution complaint that by depositing huge cash, much beyond the sources of his income, and by incorporating M/s Pulse Sanjeevani Healthcare Pvt. Ltd. assisted the activity of money laundering by involving himself in the concealment, possession, acquisition, use, projection as well as claiming the untainted money. Hence, the prosecution complaint has been filed against the petitioner and others.

Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioner at the outset draws the attention of the Court to the directions of Hon'ble Supreme Court in the case of *Vijay Madanlal Choudhary and Others v. Union of India and Others*, 2022 SCC OnLine SC 929, particularly, the conclusion paragraph no.187(d) of the said judgment that the Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint

before the competent forum. He submits that there are sixteen FIRs against four Engineers in the district of Khunti. He submits that this petitioner was posted as Deputy Commissioner, Khunti in the year 2009-2010. According to him, on the basis of these sixteen FIRs, the E.D has implicated the petitioner and no case has been lodged against this petitioner. He submits that the petitioner is a responsible I.A.S officer and was topper in her batch and she is having the highest integrity towards public service. He submits that the offence was of the year 2009-2010 and now the E.D has arrested this petitioner and she is languishing in jail with effect from 11.05.2022. By way of referring to Annexure -2 he submits that the petitioner was also departmentally proceeded on various charges by way of issuing Prapatra-K and enquiry officer has submitted enquiry report and the petitioner has been exonerated. He submits that once on the same facts of charge the departmental proceeding as well as criminal proceeding are instituted and if in departmental proceeding there is exoneration, the criminal proceeding is bad in law. To buttress his argument, he relied in the case of ***Ashoo Surendranath Tewari v. C.B.I., (2020) 9 SCC 636***, paragraph nos.8 to 13 of the said judgment are quoted hereinbelow:

“8. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt. In P.S. Rajya v. State of Bihar [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897], the question before the Court was posed as follows: (SCC pp. 2-3, para 3)

“3. The short question that arises for our consideration in this appeal is whether the respondent is justified in pursuing the prosecution against the appellant under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act, 1947 notwithstanding the fact that on an identical charge the appellant was exonerated in the departmental proceedings in the light of a report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission.”

9. This Court then went on to state: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 5, para 17)

“17. At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it.”

10. This being the case, the Court then held: (P.S. Rajya case [P.S. Rajya v. State of Bihar, (1996) 9 SCC 1 : 1996 SCC (Cri) 897] , SCC p. 9, para 23)

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view [Prabhu Saran Rajya v. State of Bihar, Criminal Miscellaneous No. 5212 of 1992, order dated 3-8-1993 (Pat)] that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

11. In Radheshyam Kejriwal v. State of W.B. [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721] , this Court held as follows: (SCC pp. 594-96, paras 26, 29 & 31)

“26. We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap [B.N. Kashyap v. Crown, 1944 SCC OnLine Lah 46 : AIR 1945 Lah 23] the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (SCC OnLine Lah: AIR p. 27)

‘... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in

personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined.'

29. We do not have the slightest hesitation in accepting the broad submission of Mr Malhotra that the finding in an adjudication proceeding is not binding in the proceeding for criminal prosecution. A person held liable to pay penalty in adjudication proceedings cannot necessarily be held guilty in a criminal trial. Adjudication proceedings are decided on the basis of preponderance of evidence of a little higher degree whereas in a criminal case the entire burden to prove beyond all reasonable doubt lies on the prosecution.

31. It is trite that the standard of proof required in criminal proceedings is higher than that required before the adjudicating authority and in case the accused is exonerated before the adjudicating authority whether his prosecution on the same set of facts can be allowed or not is the precise question which falls for determination in this case."

12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721], SCC p. 598)

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person

held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.”

13. *It finally concluded: (Radheshyam Kejriwal case [Radheshyam Kejriwal v. State of W.B., (2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721], SCC p. 598, para 39)*

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

Relying on this judgment, he submits that the petitioner was already exonerated in the departmental proceeding and the investigation in the said case has already been completed so far the petitioner is concerned, she may kindly be allowed regular bail. He took the Court to several paragraphs of the complaint annexed with the bail petition and by way of referring paragraph no.1.5, he submits that final form has been submitted against four accused persons and the petitioner was not there. He submits that at paragraph no.1.6, the details of the charge sheet has been disclosed in the complaint. By way of referring paragraph no.2.1 of the complaint, he submits that the petitioner was posted as Deputy Commissioner, Khunti during period 16.02.2009 to 19.07.2010 and the allegation is made that she managed to defalcation in different development projects and the amount of defalcation is shown as rupees 18.06 crores which is not correct. According to him, only a sum of Rs.61 lakhs was found in the bank account of the petitioner when she was the Deputy Commissioner, Khunti. By way of drawing the attention of the Court at paragraph 9.3 of the complaint, he submits that no modus operandi has been disclosed by the E.D that the petitioner used to purchase insurance policies and prematurely close that policies and withdrew the amount, that does not show that the investment made in

the insurance policy are the money from the proceeds of crime. He further draws the attention of the court to paragraph no.11 of the complaint and submits that the role of the accused in the offence of money laundering has been disclosed and the points raised against this petitioner is not correct. He submits that this petitioner herself has constituted the committee when the irregularity has been brought to the knowledge of this petitioner. He draws the attention of the Court to section 45 of the Act particularly the proviso to sub-section 2 of the Act and by way of referring the proviso he submits that the rigors of section 45 of the Act is not coming in the way of granting bail to the petitioner as the petitioner is a lady and she is suffering from several ailments. He submits that on this ground recently the Delhi High Court granted bail to one Devki Nandan Garg by order dated 26.09.2022 in the case of *Devki Nandan Garg v. Directorate of Enforcement, 2022 SCC OnLine Del.3086*. He further submits that looking into the ailments of Mr. P. Chidambaram, the Hon'ble Supreme Court has also granted bail in the case of ***P.Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791*** and he refers to paragraph no.23 of the said judgment, which is as under:

23. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of grave offence and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One

of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.

On these grounds, he submits that the petitioner deserves regular bail, who is languishing in jail from 11.05.2022.

Per contra, Mr. Amit Kumar Das, the learned counsel appearing on behalf of the respondent Enforcement Directorate(E.D) submits that the petitioner is a senior I.A.S officer of the State of Jharkhand and once she is granted bail, there is every likelihood that she will temper with the evidence. He further submits that on the last occasion the co-ordinate Bench of this Court has directed the E.D. to disclose as to by what time further investigation will be concluded and pursuant to that he has taken instruction and it has been informed that within further six months time the investigation shall be concluded. He submits that atleast till completion of the investigation she may not be allowed regular bail. Mr. Das, the learned counsel appearing for the respondent E.D. draws the attention of the Court to paragraph no.6.1 of the complaint and submits that brother of her C.A., Suman Kumar, namely Pawan Singh and mother of this petitioner, namely, Kamlesh Singhal were partners in a firm in which a huge amount of Rs.1.33 crore was invested in cash which has come in the said paragraph. He further

draws the attention of the Court to paragraph no.7.3 which is statement of one Vijay Goel who was the contractor of the building for Pulse Hospital which is owned by Abhishek Jha who is the husband of this petitioner. He submits that Alok Sarawgi has disclosed in paragraph no.7.5 that he has received an amount of Rs.3 crores in cash in the year 2016 from Suman Kumar on the instruction of Abhishek Jha for the purpose of selling the land. By way of referring to paragraph no.7.6 he submits that Sidharth Singhal who is brother of this petitioner has also confessed about receiving of cash statement from Suman Kumar – accused no.7 on one occasion. He further submits that this petitioner has not filed Income Tax Return for the year 2008-09, 2009-10 and 2010-11. He submits that cash deposited in different financial years and they were over and above the salary of this petitioner and other legitimate income and those were not declared by her in her Income Tax return for the respective periods. By way of drawing attention of the Court to paragraph no.9.1 of the complaint, he submits that this petitioner has opened different bank for specific purpose of depositing the cash and after depositing the cash she used to close the bank accounts after withdrawing the amount. He submits that in paragraph no.9.1 the date of opening of the bank account and closing of bank account has been disclosed and the cash deposit are also there which comes to Rs.84,64,098/- total seven accounts and 13 policies. By way of drawing attention of this Court to paragraph no.7.2.3, he submits that total credit in the bank account Pulse Sanjeevni Health Care Pvt. Ltd. comes to more than total turn-over of the company in respective financial yeas which has come in the investigation. He submits that even a departmental enquiry was also initiated against her for the said allegations, however, the enquiry on her part was delayed due to her powerful position and designation. Mr. Jay Kishore Choudhary (accused no.4) has stated in his

statement that Investigating Officer (Jharkhand Police) of Khunti case has also written in the case diary that there is specific evidence of involvement of the Deputy Commissioner–petitioner in the defalcation of Govt. funds, and her role would be investigated after consulting the higher officials. He further submits that a huge cash amount has also been deposited in the bank account of Abhishek Jha who happened to be the husband of this petitioner. He submits that he is having instruction that maneuvering were being made of having a false medical certificate of Angiography of this petitioner, however, that has not been happened due to presence of officers of the respondent-E.D. He draws the attention of the Court to page 306 of regular bail petition dated 18.05.2022 and submits that she was examined by Medical Officer of the State and she was found well oriented stable and she was not having any medical issue. She was found healthy. He submits that the case relied by Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioner in the case of ***Ashoo Surendra Nath Tiwary(supra)*** is not helping this petitioner as in the case in hand the charges in departmental proceeding and this proceeding are completely different. He submits that the *modus operandi* was adopted by this petitioner by way of purchasing the insurance policy and to fraudulently close the same, withdrew the amount and invest it to another place. He draws the attention of the Court to paragraph no.280, 281 and 282 of the case in the matter of ***Vijay Madanlal Choudhary(supra)*** and he submits that the Hon'ble Supreme Court has also held that if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court

would be obliged to direct return of such property as belonging to him. He submits that stage will come once the trial is concluded. He referred to paragraph 282 of the said judgment, the Hon'ble Supreme Court has observed that even the offence is reported to be of scheduled offence only in that eventuality the property recovered by the authorized officer would partake the colour of proceeds of crime under section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

In reply Mr. Indrajit Sinha, the learned counsel appearing for the petitioner submits that Abhishek Jha who is husband of the petitioner was staying at Australia before the marriage with the petitioner which has taken place in the year 2011. He submits that Abhishek Jha is concerned it is for him to disclose his income as he is also one of the accused and on that ground the bail of the petitioner may not be rejected.

In view of the above submission of the learned counsels appearing on behalf of the parties, the Court has gone through the contents of the complaint case which is annexed with the regular bail petition. In reading the entire complaint case there are allegations against this petitioner who happened to be a senior I.A.S officer of the State of Jharkhand to deposit a huge cash amount. A sum of Rs.01.33 crore has been in the form of cash in the name of brother of her Chartered Accountant and mother of this petitioner has been also found to be invested which has come in the investigation. Thus, it cannot be said that the petitioner was not using the proceeds of crime in light of section 2(1)(u) of the Act. There is no doubt that even if the allegation is one of the grave economic offence it is not a rule that the bail should be denied in every case since there is no such bar under the relevant enactment passed by the Legislature nor does the bail jurisprudence

provides so as has been discussed by the Hon'ble Supreme Court in the case of ***P.Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***, but at the same time the consideration will have to be on case to case basis on the facts involved therein and seeking the presence of the accused to stand trial. The bail are being granted on certain conditions in appropriate cases and the object of putting such conditions should be to avoid possibility by the person hampering the investigation. Section 45 of the Act is no more *res-integra*. In recent decision by the Hon'ble Supreme Court in the case of ***Gautam Kundu v. Directorate of Enforcement, (2015) 16 SCC 1*** the Hon'ble Supreme Court has occasioned to examine paragraph nos.28 to 30, which reads as under:

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

29. Section 45 of PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 of PMLA imposes the following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule to PMLA:

(i) That the prosecutor must be given an opportunity to oppose the application for bail; and

(ii) That the court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.

30. The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is

further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.

Therefore, the conditions as embodied under section 45 of the Act will have to be complied even in respect of application for bail made under section 439 of the Cr.P.C. There are allegations against this petitioner of laundering a huge amount of money which has come in the investigation and it has been elaborately discussed therein. The Hon'ble Supreme Court has considered the economic offence in the case of '***Subrata Chattoraj v. Union of India***', reported in **(2014) 8 SCC 768**, ***Y.S. Jagan Mohan Reddy v.C.B.I.***, reported in **(2013) 7 SCC 439** and ***Union of India v. Hassan Ali Khan***, reported in **(2011) 10 SCC 235** and gist of those judgments speak of that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. The allegation *prima facie* suggest that it has direct link with the "proceeds of crime". In that, the property derived or obtained as a result of criminal activity relating to notified offences, termed as scheduled offence, is regarded as tainted property and dealing with such property in any manner is an offence of money-laundering. The *modus operandi* as adopted by the petitioner disclosed

that she first open bank accounts for short duration, then deposited huge cash into it, then converted those cash into demand drafts to purchase insurance policies of longer durations and prematurely closed those policies to bring back liquidity in her accounts for further investment. She used to invest the same either in the form of capital infusion by her brother Siddharth Singhal and her husband Abhishek Jha who is also an accused in their company M/s Pulse Sanjeevani Healthcare Private Ltd. Huge amount of cash amounting to Rs.73.81 lakhs was deposited in her various ICICI bank accounts.

It has also been submitted that false certificate was tried to be obtained on the medical ground to obtain the benefit of medical certificate as has been submitted by Mr. Das, the learned counsel and she has not been able to succeed due to presence of the authority of the Enforcement Directorate). At page 306, the medical report suggest that she was well oriented stable and fit medically and psychologically.

Admittedly, the petitioner is a senior I.A.S officer of the State of Jharkhand. In the departmental proceeding she has been exonerated. The Court does not want to make any comment on that exoneration as this Court is only considering the regular bail application of the petitioner.

In view of the influence of this petitioner, the apprehension of the Enforcement Directorate-E.D with regard to tempering with the evidence cannot be ruled out. In view of the above reasons and analysis, the Court is not inclined to grant regular bail to the petitioner at this stage.

Accordingly, this bail petition being B.A.No.8937 of 2022 is dismissed.

(Sanjay Kumar Dwivedi, J.)

SI/