

(2024) 01 JH CK 0024

In the Jharkhand High Court

Case No : Bail Application No. 10166 Of 2023

Bishnu Kumar Agarwala @ Bishnu Kumar Agarwal

APPELLANT

Vs

Union Of India Through Directorate Of Enforcement

RESPONDENT

Date of Decision : 12-01-2024

Acts Referred:

Constitution Of India, 1950 — Article 21

Prevention Of Money Laundering Act, 2002 — Section 2(u), 3, 4, 19, 19(1), 45, 45(1) (ii), 50

Indian Penal Code, 1860 — Section 34, 120B, 323, 341, 406, 420, 467, 468, 447, 471, 504, 506

Transfer Of Property Act, 1882 — Section 54

Code Of Criminal Procedure, 1973 — Section 436A, 439

Citation : (2024) 01 JH CK 0024

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : S.D. Sanjay, Indrajeet Sinha, Sumeet Gadodia, Anshuman Sinha, Arpan Mishra, Vinay Prakash, Yash Badkar, Anil Kumar, Chandana Kumari

Judgement

Deepak Roshan, J

1. The instant application has been preferred by the petitioner for the grant of regular bail for the offences registered under Sections 3 and Section 4 of the Prevention of Money Laundering Act, 2002 (herein after to be referred as PMLA).

2. Ms. S.D. Sanjay, Sr. Advocate, assisted by Mr. Anshuman Sinha and Indrajit Sinha, Advocates, while arguing on behalf of the Petitioner, invited attention of this Court to an F.I.R. being Sadar P.S. Case No. 399/2022 dated 08.09.2022 registered at the instance of one Umesh Gope for alleged offences under Sections 406, 420, 467, 468, 447, 504, 506, 341, 323 & 34 of the Indian Penal Code, 1860 against various individuals including the petitioner. In the said F.I.R., Umesh Gope has alleged, inter alia, that various individuals including petitioner fraudulently acquired Plot of land having an area of 1.00 Acre (One Acre) situated at Plot No. 28, Khata No. 27 at Village Gari, Chesire Home Road, Sadar,

Ranchi.

In respect of aforesaid F.I.R., investigation was carried out by Sadar Police Station and Final Form No. 10 of 2023 dated 25.01.2023 was filed, wherein it was concluded by the Investigating Officer that none of the accused persons were required to be sent up for trial, as the concerned case was a civil dispute. The said Final Form was taken on record by Chief Judicial Magistrate, Ranchi and appropriate notice was issued to the Informant for his response. It has been submitted that in spite of the fact that in respect of aforesaid F.I.R., being F.I.R. No. 399 of 2022, Investigating Agency has submitted Final Form stating, inter alia, that as no case is made out, the Enforcement Directorate, on the basis of F.I.R. No. 399/2022 treating it to be a predicate offence registered an ECIR/ RNZO/10/2023 dated 07.03.2023.

It has been further submitted that the Petitioner, after registration of the aforesaid ECIR case, was summoned by Enforcement Directorate and he duly cooperated with the investigation. The Petitioner was summoned on several dates i.e. on 16.04.2023, 26.04.2023, 28.04.2023 and 08.05.2023 and even a search was conducted at the office and residential premises of the Petitioner. By placing reliance upon the Judgment of Hon'ble Supreme Court in the case of 'Pankaj

Bansal Vs. Union of India, reported in (2023) SCC OnLine 1244, it has been submitted that Petitioner all along cooperated with the investigation and, merely because Petitioner did not give reply in the manner as it suited the Enforcement Directorate (for short 'ED'), it cannot be said that Petitioner did not cooperate with the investigation.

3. It has been further submitted that despite the fact that Petitioner fully cooperated throughout the investigation, ED on 31.07.2023, arrested the Petitioner and, at the time of arrest, ED in contravention of Section 19(1) of PMLA Act, did not provide any written grounds of arrest to the Petitioner.

It has been further submitted that on 01.09.2023, Respondent-ED filed prosecution complaint in ECIR No. RNZO/10/2023 before Special Judge, PMLA, Ranchi and Petitioner was arrayed as Accused No.9. At the time of filing of prosecution complaint, ED also merged another F.I.R. bearing No. 137 of 2023 registered with Hare Street Police Station, Kolkata under Sections 120-B, 465, 467, 468 and 471 of IPC. It has been vehemently submitted that the Petitioner has not been named as an accused and/or summoned in the said F.I.R.

4. By referring to Prosecution Complaint, it has been submitted that from bare perusal of the prosecution complaint, it would be evident that allegation against the Petitioner primarily pertains to charges of three landed properties, for which the prosecution alleges that Petitioner could not have purchased said three landed properties, which have been described in the Prosecution Complaint as under:-

- (1) Cheshire Home Road Land;
- (2) Siram Mauza Land; and
- (3) Pugru Mauza Land.

It has been submitted that after submission of prosecution complaint, learned Special Judge, PMLA, Ranchi took cognizance of the prosecution complaint on 04.09.2023 and, at present, said complaint is pending for appearance of accused persons.

It has been submitted that Petitioner is a Businessman engaged in the business of Real Estate and Wholesale Trade since last 24 years in the State of Jharkhand and State of West Bengal and about 5000 people are gainfully employed in various companies owned and operated by Petitioner. On the strength of the above, it has been submitted that Petitioner, admittedly, is not at flight risk and since the prosecution complaint has already been filed and there is no allegation against the Petitioner of tampering with any evidence and/or trying to influence any witness etc., no purpose would be served in keeping the Petitioner in judicial custody and, even otherwise, Petitioner's participation in trial is duly secured, as he is not at flight risk.

5. With regard to hardships being faced by the Petitioner while in judicial custody, it has been submitted that Petitioner has availed various financial facilities for residential and commercial projects being undertaken by him and equal monthly installment (EMI) of over Rs. 8.00 crores per month is being paid to various Banks and financial institutions and, as yet, Petitioner has neither defaulted in repayment of loans nor any complaint has been filed by any of the financial institutions for wrongful utilization of the loans availed. It has been emphatically submitted that due to judicial custody of the Petitioner,

Petitioner's business is immensely suffering.

The counsel for the Petitioner further highlighted medical condition of the Petitioner by stating, inter alia, that Petitioner is aged about 56 years of age and has undergone Hernia Surgery on 24.04.2023 due to which Petitioner is suffering from High Blood Pressure and Sugar and strictly directed by his Doctor to comply with substantial diet restriction. It has been further stated that Petitioner also has heart issue wherein one of his arteries has over 70% blockage and it has been further submitted that Petitioner, since the date of his arrest, is under continuous medical treatment either in Jail Hospital or in Government Hospital at RIMS, Ranchi, which itself clearly demonstrates that medical condition of the Petitioner is not good.

6. Ld. Counsel for the Petitioner further invited attention of this Court to the allegation levelled in the prosecution complaint and has advanced detailed arguments on merits of the case. In respect of Cheshire Home Road Land, by referring to Para 10.6.1 of the Complaint it has been submitted that in respect of said land, it has been alleged that same was acquired in a deceitful manner by

conspiracy and criminal activity of the accused persons including the Petitioner, who were indulged in fabrication of documents and forging records.

In respect of the aforesaid allegation, it has been submitted that from bare perusal of the complaint itself, it would be evident that allegation regarding creation of forged document is upon the accused Rajesh Rai in connivance with Bharat Prasad, Md. Sadam Hussain, Afsar Ali and Imtiaz Ahmad. By drawing the attention of the prosecution complaint, it has been stated that alleged forged Deed being Deed No. 184 of 1948, which is alleged to have been created regarding ownership of the aforesaid land is a creation of other accused persons, stated above and in the prosecution complaint, it is nowhere alleged that Petitioner was instrumental in creation of aforesaid forged document in respect of the land in question.

It has been submitted that vide two separate Sale Deeds being Sale Deed Nos. 2784 and 2483 both dated 1. 04.2021, Petitioner purchased aforesaid piece of land through his companies, namely, Adarsh Heights Pvt. Ltd. and Chalice Real Estate LLP for an amount of Rs. 1.80 crore which has been paid through banking channels.

It has been emphatically contended that it is the Petitioner who has been cheated by other accused persons who have created forged documents for selling the aforesaid land to the Petitioner and. In this regard, it has been further submitted that the petitioner being a bonafide purchaser no offence can be said to have been committed by him and in support of such submission, the Learned Senior Counsel for the petitioner has placed reliance upon the Judgment of 'Md. Ibrahim & Ors. Vs. State of Bihar & Ors.', reported in (2009) 8 SCC 751 (Para-23).

7. While referring to the definition of 'proceeds of crime, as defined under Section 2(u) of PMLA Act, 2002, it has been submitted that proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. In this regard, it has been submitted that Petitioner, out of his own legal sources, purchased the land in question and the payment made by Petitioner in respect of the said land cannot be treated to be 'proceeds of crime'. Extensive reliance has been made to the decision of Hon'ble Apex Court in the case of 'Vijay Madan Lal Choudhary Vs. Union of India & Ors.' reported in (2022) SCC OnLine SC 929, more particularly paragraphs 251, 253, 269, 271, 280, 281, 282, 283, 284, 290 and 295, to contend, inter alia, that merely because Petitioner purchased the property by paying valuable consideration which has been sold to him by certain persons by creating forged and fabricated documents, would not make the payment made by the Petitioner in respect of the said property as a 'proceeds of crime' as payment made by

Petitioner was out of his legal and valid sources and not derived or obtained, directly or indirectly, as a result of criminal activity.

8. It has been further argued by placing reliance upon the Judgment in 'Vijay Madan Lal Choudhary' (supra) that an offence under Section 3 of PMLA Act is dependent on the illegal gain of property as a result of criminal activity relating to a scheduled offence. It has been submitted that Enforcement Directorate cannot prosecute the Petitioner merely on a 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 criminal complaint before a competent forum.

The second allegation against the Petitioner which pertains to purchase of Siram Mauza land vide Sale Deed dated 07.02.2018 from Mahua Mitra and Sanjay Ghosh at a valuation of Rs. 15.00 crores. By referring to prosecution complaint, it has been submitted that aforesaid property pertaining to Siram Mauza land, in the prosecution complaint, it has been described to be the land acquired by Army and it has been stated that Petitioner, knowing fully well that aforesaid land was acquired by Army, purchased the said land from its owners Mahua Mitra and Sanjay Ghosh.

In respect of Siram Mauza land, Petitioner vehemently submitted that there is no criminal proceeding pending before any court of law in respect of the said land, where Petitioner is an accused and in absence of any predicate offence and/or any FIR, etc. relating to a scheduled offence, no investigation could have been carried out by ED for allegedly unearthing the offence in respect of Siram Mauza land. Reference, in this regard has been made to the Judgment of Hon'ble Supreme Court in the case of Vijay Madan Lal Choudhary (supra).

9. With regard to Pugru Mauza land, attention of this Court has been drawn to the allegation made in the prosecution complaint, wherein it has been alleged that Petitioner purchased Pugru Mauza land in the year 2019 from Ashish Kumar Ganguli and 16 others for a total consideration of Rs. 5.00 crores, out of which only a sum of Rs. 2.5 crore was paid. It has been further alleged in the prosecution complaint that said land is 'Khas Mahal' land i.e. the land owned by State of Jharkhand, but Petitioner, despite knowing the aforesaid fact, purchased the said land in question.

Refuting to aforesaid allegation levelled in the prosecution complaint, it has been argued that in respect of Pugru Mauza land also, there is no criminal proceeding before any court of law in which Petitioner is an accused and it has been submitted that ED cannot conduct any investigation of scheduled offence, but it is only required to conduct investigation as to whether any proceeds of crime has been generated on commission of a scheduled offence. With regard to nature of land being Khas Mahal land, Mr. S.D. Sanjay, learned Sr. Counsel vehemently relied upon an order passed by a Coordinate Bench of this Court in M.A. No. 631 of 2017, being order dated 03.01.2023, though he fairly submitted that the said order has been stayed in a petition to Special Leave by the Hon'ble Supreme Court of India.

It was further submitted that in respect of the land at Pugru, a Special Investigating Team (SIT) was constituted by State of Jharkhand and SIT gave its clear opinion that the land in question is not a 'Khas Mahal' land. It has been submitted that although the land in question was not a 'Khas Mahal' land, the same was being included in the list of Khas Mahal land, prepared by Circle Officer, Namkum and, under the said circumstances, Petitioner filed an Interlocutory application in aforesaid Pending Appeal being M.A. No. 631 of 2017, wherein this Court was dealing with illegal sale and purchase of Khas Mahal land in the State of Jharkhand. In the said Interlocutory application, Petitioner prayed for exclusion of the land pertaining to Pugru Mauza land from the list of 'Khas Mahal' land prepared by the office of the Circle Officer, Namkum and, in response to said Interlocutory application filed by the Petitioner, an Affidavit was filed by the Chief Secretary, Govt. of Jharkhand relying upon a report of Special Investigating Team dated 01.04.2021, wherein SIT has held that the land in question is not a 'Khas Mahal' land.

On the basis of aforesaid submissions, prayer has been made for grant of regular bail to the Petitioner.

10. Per contra, Mr. Anil Kumar, Ld. Sr. Advocate cum ASGI has vehemently opposed the prayer for bail of the Petitioner. He has submitted that Petitioner has been involved in purchase of disputed lands and investigation has revealed that Petitioner was aware about the nature of the land including forgery committed by other co-accused persons in order to transfer the land in favour of the Petitioner, and, with willful connivance with accused persons, Petitioner purchased the lands in question.

Ld. ASGI while referring to the definition of 'proceeds of crime' as defined under Section 2(u) of the PMLA Act, 2002, has contended that the lands purchased by Petitioner are the properties derived and obtained by him directly or indirectly as a result of criminal activity relating to a scheduled offence and, thus, prima facie case is made out against the Petitioner under Section 3 of the PMLA Act. Mr. Kumar has painstakingly invited attention of this Court to the statements made in the prosecution complaint and has submitted that in the prosecution complaint, elaborate details have been given of the mode and manner in which Petitioner has been benefitted by dealing in lands which were disputed and is a creation on the basis of forged and fabricated documents.

11. In respect of Cheshire Home Road land, reference was made to Para 9.4 and 9.5 of the prosecution complaint by stating, inter alia, that one Rajesh Rai, son of Jagdish Rai, illegally and fraudulently made Power of Attorney in the name of Imtiaz Ahmad and Bharat Prasad and, on the basis of said Power of Attorney, he prepared forged Sale Deed and sold the above-mentioned parcel of land admeasuring an area of 1.00 Acre to one Punit Bhargav and, thereafter, Punit Bhargav sold the land to Bishnu Kumar Agarwal vide two Sale Deeds. While referring to aforesaid paragraphs, it has been submitted that the land admeasuring an area of 1.00 Acre at Cheshire Home Road was acquired in

fraudulent manner by above persons including the Petitioner, who indulged in fabricating documents and forging records, on the basis of which, Power of Attorney was fraudulently executed and land was, subsequently, transferred to Punit Bhargav who immediately sold the land to Bishnu Kumar Agarwal.

12. With respect to Pugru Mauza land, reference was made to Para 9.11 onwards of the prosecution complaint, to contend, inter alia, that in the investigation, it has been established that the property situated at Khata No.93, Plot No. 543, 544, 546, 547, having total area of 9.30 Acres, which was acquired by Petitioner-Bishnu Kumar Agarwal, was a government property i.e. 'Khas Mahal' land. It has been submitted that although said land was Khas Mahal land, the other co-accused person, assisted the Petitioner for acquisition of the said land by suppressing material facts and official records.

13. With respect to Siram Mauza land, reliance has been placed to Para 9.12 of the prosecution complaint wherein it has been stated that the land admeasuring an area of 5.883 Acres was acquired by the Army in the year 1949 itself vide Gazette Notification dated 03.08.1949 and Petitioner was aware about the said Notification, but despite the said fact, Petitioner purchased the said land from the so-called owners Mahua Mitra and Sanjay Ghosh, whereas the land never belonged to them.

14. Learned ASGI has invited attention of this Court to the provisions of Section 45 of PMLA Act including twin conditions enumerated under Section 45(1)(ii) of the said Act and has emphasized that the materials available in the prosecution complaint clearly demonstrate that there exists reasonable grounds for believing that Petitioner is guilty of the offences alleged and privilege of bail should not be extended to the Petitioner.

It has been vehemently argued that Petitioner is, prima facie, guilty of commission of economic offence and it has been submitted that parameters for grant of bail pertaining to economic offences are quite different than any other offences, and, having regard to the fact that Petitioner is guilty of commission of economic offences, he does not deserve the privilege of bail. On the strength of the above arguments, prayer has been made for rejecting the application for grant of bail to the Petitioner.

15. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the records of the case it appears that the Petitioner is a resident of Ranchi, Jharkhand and claims that he has been engaged in the business of real estate and wholesale trade, for the last 24 years in the state of Jharkhand and West Bengal. A further claim has been made that 5000 people are gainfully employed in various companies owned and operated by the Petitioner. The Petitioner was summoned by the investigating officer during the investigation and accordingly the Petitioner appeared on the following dates: 09.11.2022, 11.11.2022, 27.01.2023, 08.05.2023, 21.06.2023, and 31.07.2023 to 13.08.2023 (refer remand period). The Petitioner was

arrested on 31.07.2023 and his statement was recorded during the period of remand from 31.07.2023 to 13.08.2023. The investigating agency filed the prosecution complaint in ECIR No. ENZO/10/2023 making the petitioner accused before the Special Judge, PMLA, Ranchi on 01.09.2023. The special judge PMLA Ranchi took cognizance on 04.09.2023. The Petitioner applied for Bail which was rejected by PMLA Special Judge on 18.09.2023.

16. At the outset it is observed that this Court is not persuaded to consider the prayer for bail on the Medical grounds for two reasons: Firstly, the learned Senior Counsel for the Petitioner did not press this point at the time of arguments though the same has been averred in some detail in the application and briefly in the written submissions filed by the petitioner; and secondly, the PMLA does not provide for Bail, as a matter of right, solely on health grounds. As such, the prayer for Bail on medical grounds is not being considered. Further, the Directorate of Enforcement may be correct in stating in its affidavit that the ailments are not life threatening and are not of such a nature which would call for release on bail solely on health grounds.

Further, this Court is also not impressed with the arguments of the petitioner for grant of bail on the ground of non-compliance of the requirement of section 19 of PMLA in view of the recent decision rendered in the Case of Ram Kishor Arora v. Directorate of Enforcement, 2023 INSC 1082, which is squarely applicable to the present case.

17. Now coming to the merits of the matter it is seen that the allegations pertain to the acquisition of three immovable properties by the petitioner. The First property is situated on Cheshire Home Road Land, which was purchased through two Sale Deeds executed on 01.04.2021 by two companies alleged to be controlled by this petitioner. It has been further alleged that co-accused Rajesh Rai in connivance with Bharat Prasad, Md Saddam Hussain, Afsar Ali, Imtiaz Ahmad and others created forged deed no. 184 of 1948 and on that basis executed Power of Attorney in favour of Imtiaz Ahmad and Bharat Prasad with one Lakhan Singh as confirming party, executed Sale Deed dated 06.02.2021 in favour of Punit Bhargav for an amount of Rs 1.78 Cr approx and Punit Bhargav further sold the land to this petitioner vide two sale deeds dated 01.04.2021 for an amount of Rs 1.80 Cr approx.. The petitioner is charged with the offence of money laundering for acquiring, possessing, concealing, using and projecting and claiming the said Proceed of Crime, in the form of land, as untainted by purchasing the land from Punit Bhargav (Refer Para 10. 6.1 & Para 13.2 of the Complaint).

18. With regards to the aforesaid allegation, it transpires from the record that the Petitioner purchased the said piece of land vide two registered Sale Deed No. 2784 and 2483 dated 01.04.2021 through two companies (a) Adarsh Heights Private Limited (AHPL) and (b) Chalice Real Estate LLP (CRE LLP) for an amount of Rs 1.80 Cr approx. from co-accused Punit Bhargav.

On behalf of the petitioner it was submitted that at the time of negotiation Punit Bhargav had given the impression that due to COVID he wanted to sell the aforesaid property and shift to his hometown Sasaram, Bihar. The land was sold, and the sale consideration of Rs 1.80 Cr has been duly received by the seller Punit Bhargav in his bank account. It has been submitted on behalf of the petitioner that the sale consideration paid by AHPL (i.e. Rs.1,02,60,000/-) and CRELLP (i.e. Rs. 77,40,000/-) were above the prevailing circle rate. The Petitioner has also provided to the investigating agency (ED) the sources from which the amount was earned by AHPL and CRELLP. It has been contended on behalf of the petitioner that the said amounts were duly reflected in the books of accounts of AHPL as well as CRELLP and also featured in the respective audited balance sheets of both the companies.

Admittedly, there is no cash transaction involved in the said sale of the property. Prior to the purchase of the aforesaid property, the Petitioner claims to have caused a due diligence to be carried out in respect of this property by getting the sale deeds/documents, mutation papers, possession etc. verified and cross checked, which is normally done by any prospective purchaser. No ordinary citizen can be expected to get a forensic investigation done with respect to a deed which is found in the records of Registrar. There is nothing to show that the petitioner was instrumental in getting the forged deed of 1948 prepared rather on the contrary it has been submitted on behalf of the petitioner that one Bharat Prasad in his statement recorded under section 50 PMLA has described that modus operandi for preparing the forged documents and has named the people involved in the process, which does not include the petitioner. It has been urged that in this regard, the statements of Afsar Ali (Para 8.12), Imtiaz Ahmed (Para 8.13), and Saddam Hussain (Para 8.15) are also relevant.

An FIR was registered with the Hare Street Police Station, Kolkata bearing FIR No. 137 of 2023 on 10.05.2023 especially with respect to the creation of the forged deed of 1948. In the said FIR the Petitioner is not named as an accused. This also shows that there are no materials to connect this petitioner with the forgery of the deed of 1948.

Having noticed that there are no materials indicating that the petitioner was involved in the preparation of forged documents, the next issue which arises for consideration is whether the petitioner was aware that the land was disputed and despite such knowledge he agreed to purchase it. The Enforcement Directorate to highlight the above has relied upon the statement of Afshar Ali who has stated that the petitioner had knowledge about the disputes involved in the land for which he first asked Prem Prakash to fence the above land with boundary walls. In response to this the learned Senior Counsel for the petitioner had submitted that on a holistic reading of the statements made by the other person such as Bharat Prasad, Afsar Ali, Imtiyaz Ahmed, Rajdeep Kumar, Saddam Hussain and Lakhan Singh it would be clear that the petitioner was neither involved nor had knowledge of the forged document. It has been sought to be contended on

behalf of the petitioner that the "dispute" referred to by Afsar Ali in his statement refers to the dispute arising out of the Title Suit instituted by Umesh Gope and not to the forged document. On behalf of the petitioner, it has been further argued that Prem Prakash in his statement has denied having discussed about the land deal with anyone except Puneet Bhargav which also establishes that the petitioner had no means to know about the forged document. It cannot be said that by purchasing a property under litigation any crime has been committed. At best such a purchase would be hit by the doctrine of lis pendens.

Thus, prima-facie it appears that the Petitioner was neither involved in the creation of the forged deed nor had any knowledge of the alleged forged Deed No. 184 of 1948. The element of mens rea appears to be absent qua this petitioner. The contention of the petitioner that he is a bonafide purchaser seems to be plausible.

In respect of this land an FIR No. 399 of 2022 was registered by jurisdictional State Police for investigating the alleged cheating and forgery upon the complaint of one Umesh Kumar Gope. On the basis of FIR No. 399 of 2022 ED registered the ECIR No. RNZO/10/2023 on 07.03.2023. The police after investigation filed Final Form in FIR No 399 of 2022 on 25.01.2023 inter alia stating that the same is a civil dispute. However further investigation is presently going on and ED in its investigation in Para 10.6.6 @Pg. 79 of Prosecution Complain has concluded that the said land does not even belong to the informant of FIR No 399 of 2022 i.e. Umesh Kumar Gope. The Learned Senior Counsel appearing on behalf of the petitioner further argued that the allegations made in the First Information Report lodged by Umesh Gope lacks substance and in the light of the judgment rendered in the case of Md. Ibrahim, (Supra) it can easily be inferred that the allegations therein do not constitute any offence. In effect the Senior Counsel for the petitioner seeks to contend that the very basis of the present prosecution being the above first information report, by itself does not disclose commission of any cognizable offence or for that matter any offence and hence to allege that the petitioner is guilty of money laundering would be an abuse of law. He would further urge that since the no predicate offence is made out it cannot be said that the petitioner has committed an offence under the provisions of PMLA.

19. In so far as the FIR registered with Hare Street Police Station is concerned, the Enforcement Directorate is right in submitting that investigation into a scheduled offence is underway and hence it cannot be contended that there is lack of jurisdiction. It is trite that existence of jurisdiction is different from exercising jurisdiction and merely because power exists it is not necessary to exercise the same. In this case in absence of any material on record which would suggest that petitioner had the requisite intention to commit an offence of money laundering, merely because an investigating is pending into an alleged scheduled offence would by no means justify the incarceration of the petitioner. This by itself will not give rise to reasons to believe that the petitioner has committed an offence of money laundering.

However, the Enforcement Directorate in its Complaint as well as in the affidavit and written submissions has contended that evidences such as the statement of Circle Officer, Manoj Kumar regarding the pressure exerted by Co accused Chhavi Ranjan, the then Deputy Commissioner of Ranchi for mutation in favour of the purchaser by overlooking the contention of Umesh Kumar Gope that too in one day are some of the circumstances which go against the petitioner. Having gone through the such material it is observed that such circumstance /evidence have no relevance in so far as the petitioner is concerned because the said acts relate to a period prior to the execution of the sale deed in favour of the petitioner. So far as the mutation in the name of the companies with which the petitioner is concerned, it is observed that on a plain reading of the statement of Manoj Kumar in its entirety would reveal that he had stated in detail the reasons as to why mutation was done in favour of those companies and that he had no reasons, at that relevant point of time, to doubt the transaction which was backed by sale deeds duly registered with the office of Sub Registrar at Ranchi.

Another contention was raised by the Directorate of Enforcement with respect to the payment of consideration amount by the companies of the petitioner to Puneet Bhargav in lieu of execution of the sale deed being belated. It was argued that the two sale deeds were executed and registered on 1 April 2021 whereas payments were made subsequently on 05 April 2021 and 24 June 2021 by M/s Chalice Real Estate (Rs. 56,62,600/-) and Adarsh Heights Pvt Ltd (Rs. 1,01,57,400). Though such an allegation is not a part of the prosecution complaint, nor any statement has been brought through the notice of this court which makes such an allegation, suffice would it be to mention that such acts of commission and omission would by itself not attract the provisions of the Prevention of Money Laundering Act, 2002 and therefore according to this Court, these accusations are of no relevance and consequence. Having said that, it may be pertinent to refer to section 54 of the Transfer of Property Act, 1882 which defines sale as a transfer of ownership in exchange for a price paid or promised or part- paid and part- promised. Subsequent payment of the consideration amount therefore would not make the sale bad if it is otherwise valid and as long as there exists a promise to pay. No criminality can be found in making the payment of consideration amount at a later point of time. The records do not disclose that the vendor of the petitioner has raised any grievance at any point of time for the late payment of the consideration amount.

20. In so far as the other two properties are concerned that is the land situated at Pugru and Siram, it is an admitted position that no schedule offence has been reported to be committed in respect of these lands and further it has not brought to the notice of this Court that as a result of such commission of an offence any investigation or enquiry is pending. The Hon'ble Supreme Court in the case of Vijay Madanlal Choudhry (Supra) at paragraph 253 has held that the authorities under the 2002 Act cannot resort to action against any person for a money laundering on an assumption that the property recovered by them must be proceeds of crime and the schedule offence has been committed unless the same

is registered with the jurisdictional police or pending enquiry by way of a complaint before the competent forum. It was further held that the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Both parties have extensively argued on the merits and otherwise of the title with respect to these properties but having regard to the fact that there is no investigation or inquiry pending with respect to any scheduled offence allegedly committed qua these two properties and in view of the clear enunciation of law by the

Hon'ble Supreme Court, as noted above, it would be pointless to deal with all the contentions and render a finding or make an observation at this stage when the same does not appear to be of any worth. At present having regard to the nature of allegations levelled against the petitioner with respect to these two properties the only thing which can be deciphered is that the petitioner has purchased properties from persons who are alleged to be incompetent to sell the same. The rival contentions with respect to title over these lands cannot form a subject matter of the present application. However, it is not in dispute that the petitioner has paid or partly paid consideration amount for purchase of these properties and the people who have sold these properties to the petitioner have not been made accused in the present prosecution complaint. Both the properties are subject matter of litigation pending before this Court and the Hon'ble Supreme Court. It is important to note that the Hon'ble Supreme Court has consistently held starting from *Vijay Madanlal Choudhary* (Supra) that an acquittal, discharge from or quashment of the proceedings relating to the predicate offence will automatically result in dropping of the proceedings under PMLA and hence in absence of any predicate offence will result in denial of opportunity to the petitioner or other accused to prove their innocence in respect of the hypothetical predicate offence and thus the continuation of the proceedings in respect of these two properties appear to cause grave miscarriage of justice. This touches upon the jurisdiction of the Enforcement Directorate to investigate and prosecute the petitioner qua these two properties. Be that as it may. In view of the clear legal position, as set out above, this issue is not being dilated further.

21. In view of the discussions made above, it is now to be examined whether the petitioner has met the twin conditions laid down by section 45 of the PMLA.

Section 45(1)(ii) of the PMLA Act stipulates that where the public prosecutor opposes the application, then the Court on being satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail can order release of an accused on bail. In the case of *Vijay Madanlal Choudhary* (Supra) it was held that no meticulous examination is required and only prima facie satisfaction that the accused is not guilty is to be invoked by the Court.

From the facts of the present case, it transpires that the petitioner has satisfied both the conditions engrafted in Section 45(1)(ii) of the PMLA Act.

Briefly put, in absence of any cogent material that the petitioner despite knowledge that a forged sale deed is involved in the claim supporting the title of the property situated at Chesire Home Road had purchased the same as a part of a larger conspiracy to launder proceeds of crime and that the petitioner had no role in the creation of the false document, this Court is satisfied that there are reasons to believe that the petitioner is not guilty of an offence punishable under the PMLA. It needs to be iterated that materials on record do not establish, even prima facie, that the petitioner had the intention to commit an offence punishable under the PMLA.

Likewise in view of the fact that with respect to lands situated at Mouza Pugru and Siram no scheduled offence has been reportedly committed and the criminal law has not been set in motion, in view of the judgment of the Supreme Court of India in Vijay Madanlal Choudhary (supra) no offence punishable under section 4 PMLA can be said to have been committed by the petitioner. Viewed thus, it can be held without any hesitation that the allegations qua the land situated at Pugru and Siram prima facie do not make out an offence of money laundering and thus this Court is satisfied that there are reasons to believe that the petitioner is not guilty of an offence punishable under the PMLA.

Coming to the second of the twin condition it is held that prima facie with the available records it does not transpire that the petitioner has committed crime under the Act and / or is likely to commit any offence while on bail, as the prosecution has not produced any material which would make apparent that the petitioner might commit a similar offence. The petitioner does not have any criminal antecedent save and except Sadar P.S. Case No. 399 of 2022. Since it is difficult to predict the future conduct of the petitioner, the Court must necessarily consider this aspect of the matter having regard to the antecedent of the petitioner, its propensities and the nature and manner in which the petitioner has alleged to have committed the offence. Reliance is placed on the judgment of Ranjit Singh Brahmajeetsing Sharma vs. State of Maharashtra and Another reported in (2005) 5 SCC 294, which was also noted in the Vijay Madanlal Choudhary (supra).

22. The petitioner is in custody from 31.07.2023. The trial is yet to commence. There are 34 witnesses and more than 6000 of documentary evidence. The scheduled offence in respect of Chesire Home Road property is still at the stage of investigation; whereas in respect of the other two properties no FIR / Complaint alleging commission of scheduled offence has been registered till date. Prolonged detention will not serve any purpose. No material has been brought to the attention of this Court that the petitioner will hamper the trial in any manner and why his custody is important for the disposal of the trial. Reference may be made to the judgment dated 30.10.2023 of the Hon'ble Apex Court of India rendered in the case of Manish Sisodia v. Central Bureau of Investigation, reported in 2023 SCC online SC 1393, wherein at paragraphs 27 and 29 it was held as under:

"27. However, we are also concerned about the prolonged period of incarceration suffered by the appellant - Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement*, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in *Shri Gurbaksh Singh Sibbia v. State of Punjab*, and *Sanjay Chandra v. Central Bureau of Investigation*, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in *Satender Kumar Antil v. Central Bureau of Investigation*, this Court referred to *Surinder Singh Alias Shingara Singh v. State of Punjab* and *Kashmira Singh v. State of Punjab*, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In *Vijay Madanlal Choudhary (supra)*, this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. *Vijay Madanlal Choudhary (supra)*, also held that Section 436A of the Code can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in *Arnab Manoranjan Goswami v. State of Maharashtra*, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.

29. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons

not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years.”

Another aspect which cannot be lost sight of is that the prosecution pertains to sale and purchase of a piece of land measuring one acre and the accusations do not pertain to wrong aimed to harm the public at large or defraud the government exchequer.

23. Accordingly, in view of the discussions made above the petitioner is directed to be released on bail on furnishing bail bond of Rs. 100,000/- (One Lakh Only) with two sureties of the like amount each to the satisfaction of learned Additional Judicial Commissioner-I-Cum-Special Judge, PMLA, Ranchi, in connection with ECIR Case No. 5 of 2023 [arising out of ECIR No. RNZO/10/2023 dated 7.03.2023].

However, the grant of bail is subject to following conditions:-

(i) The petitioner shall surrender his passport before the learned trial court and if he wishes for release of the same, he shall make proper application before the concerned court who shall decide the application for release of passport on its merits.

(ii) The petitioner will not tamper with any evidence and/or will not threaten any of the witnesses.

(iii) The petitioner shall appear before the Ld. Special Judge on each and every date unless exempted by the learned Trial court on being satisfied with the causes shown by the petitioner in this regard.

24. It goes without saying that the findings recorded by this court are tentative in nature and will not have any bearing on the merits of the case and the learned Trial court would be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced by the findings given hereinabove.