

(2024) 09 JH CK 0060

In the Jharkhand High Court

Case No : Bail Application No. 4766 Of 2024

Md. Ezhar Ansari

APPELLANT

Vs

Union of India `

RESPONDENT

Date of Decision : 13-09-2024

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 468, 469, 471
Prevention of Money Laundering Act, 2002 — Section 2(1)(u), 2(1)(v), 3, 4, 17, 19, 24, 45, 50, 66(2)
Coal Mines (Nationalisation) Act, 1973 — Section 30(2)

Citation : (2024) 09 JH CK 0060

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Anshuman Sinha, L.C.N. Shahdeo, Yash Raj Gupta, Prashant Vidyarthi, Romit Kumar

Final Decision : Allowed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Anshuman Sinha, learned counsel appearing for the petitioner and Mr. Prashant Vidyarthi, learned C.G.C. for the Directorate of Enforcement (in short ED).
2. The petitioner is seeking regular bail in connection with ECIR Case No. 01 of 2024, registered for the alleged offences under Sections 3/4 of the Prevention of Money Laundering Act, 2002 [herein in after referred to as PML Act], pending in the court of learned Special Judge, PMLA, Ranchi.
3. Mr. Anshuman Sinha, learned counsel appearing for the petitioner has submitted that the ECIR case was registered, in which, the present petitioner was not named as accused, however, the Enforcement Directorate (ED) has conducted search and seizure operation at the premises of the petitioner on 03.03.2023 in relation to the 2012 ECIR and thereafter the petitioner has been

summoned since 09.03.2023 in connection with the ECIR, being No. ECIR/14/PAT/2012 and the petitioner duly appeared on all such dates and answered all such questions put to him with best of his knowledge and capabilities. He submitted that the ED further registered ECIR case, being ECIR/RNZO/34/2023 dated 12.12.2023 on the basis of the FIR No. 10 of 2019 dated 20.01.2019, P.S.-Mandu, in the District of Ramgarh (Jharkhand) under Sections 420, 468, 469, 471, 120-B of the Indian Penal Code. He then submitted that the first summon was received by the petitioner in relation to the ECIR of 2023 for his appearance on 04.01.2024 at 10.30 A.M., but the said summon was received by him in the evening of 04.01.2024 through speed post and thereafter another summon was received on 09.03.2024 at 03.30 PM for his appearance on the same date before the Investigating Agency at 10.30 A.M., which has already expired.

4. Mr. Sinha, learned counsel has submitted the Investigating officer along with his team conducted a search and seizure operation at the residential premises of the Petitioner/ accused in Hazaribagh on 16.01.2024 and after conducting the search, the petitioner was arrested at 19:50 hours on 16.01.2024 under the allegation that he is involved and guilty of the offence of PML Act. He further submitted that pursuant to the investigation, the ED has filed a prosecution complaint dated 15.03.2024 under Section 45 of the PML Act, 2002, in ECIR Case No. 01 of 2024 in ECIR/RNZO/34/2023 dated 12.12.2023 before the learned court against the petitioner and other two accused.

5. Learned counsel appearing for the petitioner has further elaborated his argument by way of submitting that predicate offence forming the basis of the present ECIR, pursuant to the FIR bearing No. 10 of 2019 dated 20.01.2019 of Mandu Police Station, in the district of Ramgarh, Jharkhand, in which, it was alleged that the truck driver Sayyad Salmani of Truck No. JH02AR-6640 and the truck owner Md. Ezhar Ansari, a chargesheet has been submitted in the FIR for the commission of the offence under Sections 420, 468, 469, 471 and 120B of IPC and Section 30(2) of the Coal Mines (Nationalisation) Act, 1973. He submitted that in the chargesheet, it has been alleged that 19.560 MT of coal was loaded from Topa Colliery of Jharkhand and it was consigned to M/s OM Coke Industries, Bharechnagar, Jharkhand, but instead, the coal was being transported to Varanasi Mandi (Uttar Pradesh) and the Cognizance against the petitioner was taken by the Learned court on 04.12.2020. He further submitted that the petitioner is engaged in the business of manufacturing of coke since 2003-04 and belongs to a renowned family of Hazaribagh and is involved in multiple businesses of manufacturing of Coke Coal, Transportation, Construction, Restaurant as well as Educational institution etc. He further submitted that several companies were operating in the name of the petitioner and his family members and they used to operate in compliance of applicable Rules, Regulations, Guidelines, Notifications and Circulars. He then submitted that the coal processing factories/entities used to obtain its raw coal under the New Coal Distribution Policy, 2007 which classified the consumers into different categories for allotting coal, on the basis of their nature and requirement, which is dealt

with in the complaint filed by the prosecution Agency.

6. Learned counsel appearing for the petitioner has submitted that the various FIRs were registered against Ram Binod Sinha in the year 2010-11 and the scheduled offence of 2nd ECIR is FIR No. 10 of 2019 dated 20.01.2019. He submits that on the basis of the scheduled offence of 1st ECIR, several FIRs were registered against Ram Binod Sinha, the first one is ECIR/PAT/14/2012 dated 18.05.2012, in which, upon summon, he appeared eight times from 09.03.2023 to 05.07.2023. The first search under Section 17 was conducted in ECIR/PAT/14/2012 dated 18.05.2012 at 13 premises /units on 03.03.2023. He submits that 2nd ECIR/RNZO/34/2023 dated 12.12.2023, seven persons were named, in which, it has been alleged that the coal on truck (JH 02AR 6640) was to be delivered to M/s Om Coke Industry, Ramgarh Jharkhand. Proprietor- Ishtiaq Ahmad. The Truck driver namely Saiyyad Sulamani- taking 19.56 MT Coal and that coal was taken from Toppa Colliery to Varanasi Mandi. The truck was intercepted at Hesargarha (100 mts. from Hesargarha Petrol Pump) which is approx. 4.5 Kms. from Toppa Colliery, however, Varanasi is at a distance of 326 Kms. from the intercepted point and Ramgarh is 11km away from intercepted point. He further submitted that the second search under Section 17 of the PML Act, was conducted in 2nd ECIR/RNZO/34/2023 dated 16.01.2024, in which, allegation against all 13 firms are made, which are non-operational/non-functional and despite the allocation of coal for captive consumption at a subsidized rate, it was sold in the open market to get maximum benefit and further allegation is made for giving commission for getting coal at a subsidized rate. He then submitted that the first summon in 2nd ECIR/RNZO/34/2023 was issued on 25.12.2023 for appearance on 04.01.2024 and the said summon was received on 04.01.2024 at 3:30 PM. He submitted that the second summon was issued on 04.01.2024 for an appearance on 09.01.2024, however, the same was received by the petitioner on 09.01.2024 at 3:25 PM. He further submitted that the search was conducted on 16.01.2024 and the petitioner was arrested on that date.

7. Learned counsel appearing for the petitioner submitted that the prosecution on the basis of 2nd prosecution has gathered certain materials which forms the part of the prosecution complaint. In sum and substance, the agency has concluded that the accused person is running 13 bogus firm/ companies/ entities since the year 2009. The accused is further alleged to have been receiving subsidized coal from time to time and contrary to the terms and conditions of the agreement selling the said coal in the open market. The agency further alleges that in this entire process of purchase of subsidized coal and its sale in the open market through 13 entities, these accused entities has generated Proceeds of Crime to the tune of Rs 71 Cr.

8. He further submitted that the case of the petitioner is that the petitioner is into the business of Coke manufacturing from the year 2003-04 and in this regard various small manufacturing units have been established from the year

2009 till 2021. In the year 2009 manufacturing units namely M/s Rajhans Pvt Ispat Ltd, Kahkasha, GN Industries, Tanjil Refractories, Ota Coke Industry, NA Udyog- were established and started operations. In the year 2011-Okasa Coke Industry, Okasa Coke Industry Division, SN Coal Briquette, were established and started operations. That in the year 2018-2023 an agreement to sell was executed with JSMD C for purchase of coal for the abovementioned manufacturing units. Further, in the year 2021 manufacturing units namely Kahkasa Enterprises. Akar Fuels, Falak Fuels, Romaan Fuels were established and started operations. He further submitted that the allegations are made that the entities are non-functional / dummy entities and on conducting a filed enquiry of 13 companies, it was allegedly found that these companies are not operational or merely paper companies or found not functioning for many years, however, in reply to that the petitioner has stated that the aforesaid 13 entities were opened after obtaining valid licenses which were being renewed every year on the basis of various documents, reports and the inspections being carried out by different agencies from time to time. Following are the Steps involved in the establishment/ functioning of companies, which are as under:-

- i. Steps taken for compliance (PAN card, Aadhar, consent to establish. consent to operate, NOC from forest dept. Mining registration form, GST, Mining Registration, factory registration, Udyam portal, IT Return, Audit reports, monthly etc).
- ii. Documents submitted to JSMD C along with the application.
- iii. A committee under the supervision of the Mining chairman and JSMD C- verifies and approves yearly allotted quantity [Pg 12 of BA
- iv. Allotment quantity communicated through JSMD C to make security deposit.
- v. Fuel Supply Agreement (FSA) signed between JSMD C and purchaser entity.
- vi. After obtaining payment, a delivery order issued through authorized handling agent
- vii. Each colliery has handling agent authorized by the applicant who is responsible for loading of allotted coal in the trucks.
- viii. Quota dispatch plan issued by CCL/ BCCL containing details of trucks.

9. Learned counsel appearing for the petitioner has submitted that the prosecution has further failed to examine the process of lifting coal from Colliery by trucks and documentation done for the aforesaid purpose:-

- a. Sale challan issued by JSMD C
- b. Tax Invoice-CCL/BCCL to JSMD C
- c. Tax Invoice from JSMD C to Coal purchasing entity.
- d. Forest Challan.

e. Transport challan.

f. Weighment slip

g. E-way Bill

10. He further submitted that the prosecution has also ignored the documents, required to be maintained after the truck reaches to the destination, which are as under:-

a. Purchase register: - containing details of truck when truck was loaded, sale order no, Challan No, Mining no truck no, quantity, rate, amount, input CGS, input SGST, GST Cess, Total amount payable.

b. Fright Register maintained at factory containing details of :- date of transportation of coal, sale order number, colliery name. challan number, truck number, quantity, rate and amount.

c. Stock Register/ Consumption Register:-contains date, opening stock, raw coal received, Total coal, coal consumed, closing stock.

d. In addition consumption/ production, stock of raw coal. Labour and wages register are also maintained.

e. By Products also sold in market and records maintained.

f. Relevant docs to be filed with various govt dept on a monthly/yearly basis like GST Return, Mining Return. Tax Audits. IT Return, ROC Compliance, DIC Status report Mining Reports. State Govt reports GST Drive.

g. Random inspection by govt authorities.

h. More than 3000 trucks used in the transportation in last 5 years.

11. Learned counsel appearing for the petitioner has further submitted that taking into consideration the above-mentioned procedure adopted in the establishment of the various manufacturing units and the supporting documents which has already before the investigating agency submitted by the petitioner. It is clear that all the manufacturing units were not only established from time to time following the various compliance required under law by different departments but also has been running. The documents referred above include inspections done by different departments in different period of time. The Investigating Agency has not verified the authenticity and correctness of the documents.

12. Learned counsel has submitted that the present scheduled offence i.e. FIR No 10/2019 dated 20.01.2019 on the basis of which the 2nd ECIR bearing number ECIR/RNZO/34/2923 dated 12.12.2023 is confined to seizure of one truck of coal being transported for M/s Om Coke Industries only During the course of investigation, if the investigating agency has come across certain materials from where in its opinion a cognizable offence is made out, then in terms of the

judgements passed in Prakash Industries Limited & Anr. Versus Enforcement of Directorate (2023 SCC OnLine Del 336) the said materials are required to be forwarded to the scheduled offence agency and to be investigated in terms of the scheduled offence committed. The relevant extract of the aforesaid judgement is quoted as under-

"91. Section 66(2) thus fortifies the conclusion of the Court that ED does not stand conferred with any independent power to try offences that may be evidenced or may stand chronicled as offences under any other law What the Court seeks to highlight is that the jurisdiction and authority of the ED stands confined to considering whether an offence of money laundering stands evidenced. If in the course of its enquiry and investigation, it were to come to the conclusion that the material in its possession evidences the commission of an offence created under any other enactment it would be obliged to furnish requisite information in respect thereof to the concerned agency for necessary action."

13. Learned counsel further submitted that in para-8.2 of the prosecution complaint, the Prosecution has quantified the PoC as Rs 71.32 Cr. approx. The Prosecution has alleged that between the period of Oct 2018 to March 2023 the 13 entities had purchased coal for an amount of approx. Rs 29.5 Cr and subsequently sold the same in the open market for 4 years at market rate totalling to an amount of approx. Rs 41.81 Cr. It is further alleged that Rs 29.5 Cr Rs 41.81 Cr Rs 71.32 Cr approx. is the Proceeds of Crime and has been handled by the present accused through the 13 entities. Learned counsel in reply to that has submitted that even according to the prosecution case all the 13 entities had purchased coal in the preceding 5 years for an amount of Rs 29 Cr. There is no allegation in the complaint that the said amount of Rs 29 Cr is PoC. On the contrary, this Rs 29 Cr is the business income of the 13 entities from time to time ranging for more than 5 years. Hence, by no stretch of imagination the said amount of Rs 29 Cr can be termed as proceeds of crime under Section 2(1) (u) of PML Act. Once the coal is purchased at a certain price, ancillary expenses are to be met by the buyer in terms of loading, unloading, commission of handling agent, transportation, salary. GST Returns, Income Tax. Fees for various compliances, labour payment and other ancillary expenses including the establishment cost and the running cost involved in the functioning of the manufacturing units. These expenses have not been calculated as they have already been spent during relevant time of consideration by the manufacturing units. The complainant has calculated the sale price on the basis of market rate arrived at during the investigation. No authentic evidence in this regard has been brought on record related to this. The attempt by the complainant to add the purchase price with the sale price instead of subtracting the same to arrive at the alleged proceeds of crime is not understandable. Even according to the Prosecution, taking their figures to be correct to be arguments sake, the alleged PoC cannot be more than Rs 11 Cr. for 13 entities for the period of 5 years. In case the above-mentioned costing is added there cannot be any profits and

hence no Proceeds of crime.

14. It has been further submitted that the prosecution has seized the documents and examined them for a period of 15 years and found 6 discrepancies in registers and vouchers as alleged in Para 7.5.2 of the Prosecution Complaint. The prosecution alleges that the entries in the registers were manipulated as the registration number of the vehicles used for transportation were of two-wheelers and response there, it has been stated in para-19 of the bail application that and a few of the relevant documents have also been brought on record through Additional Rejoinder Affidavit filed on behalf of the Petitioner. The said affidavit contains the details of the correct truck numbers along with the official government documents related to it, such as the sale challan issued by the JSMD, document issued by the Department of Forest, Environment and Climate Change, GST Delivery Challan issued by the CCL, weighment slip issued by the CCL. Learned counsel for the petitioner submitted that the vehicle bearing registration no.JH02A-7322 was mistakenly written in the register, whereas, the correct vehicle number is another one and submitted that it is an human error in writing in register. Further, it has been pointed out that the vehicle bearing registration no.JH02T-7366 was mistakenly written in the register, whereas, the correct vehicle number is JH02T-7336 and submitted that it was an error in writing while entering in the sale register of the petitioner's company and in the E-way bill chalan and tax invoice for the truck number is mentioned as JH02T-7336. It has also been pointed out that the vehicle bearing registration no.JH02W-1520 was mistakenly written in the register, whereas, the correct vehicle number is another one and submitted that the vehicle number is not mentioned in the sale register of M/s Tanjil Refectory. Further, the vehicle bearing registration no.JH02AR-6603 was mistakenly written in the register, whereas, the correct vehicle number is JH02AQ-6603 and submitted that it was an error in writing while entering in the sale register of the petitioner's company and in the E-way bill chalan and tax invoice for the truck number is mentioned as JH02AQ-6603. Further, the vehicle bearing registration no.JH19A-6768 was mistakenly written in the register, whereas, the correct vehicle number is another one and submitted that the correct number was also mentioned in the e-way chalan at the CCL loading point and, hence, the petitioner could not be changing the vehicle number in his register. Lastly, the vehicle bearing registration no.JH01AX-5533 was mistakenly written in the register, whereas, the correct vehicle number is JH01AX-5133 and submitted that it was an error in writing while entering in the sale register of the petitioner's company and in the E-way bill chalan and tax invoice for the truck number is mentioned as JH01AX-5133. It was submitted that in E-way challan and tax invoice truck numbers are correct and human error only in the Register.

15. Learned counsel has submitted that Rizwan Ansari, Arun Pandey, Md Salim and others have clearly evidenced the establishment and running of various manufacturing units.

16. Mr. Sinha, learned counsel appearing for the petitioner has relied upon the several judgments, which are as under:-

i. Anil Tuteja and Ors. Vs. The Director, Directorate of Enforcement and Ors. (MANU/CG/0463/2020)-according to section 24 of PMLA. the burden of proof will be on the applicants only after framing of the charge against them."

ii. Pankaj Bansal vs Union of India & Ors. (2023 SCC OnLine SC 1244)- Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19 of the Act.

iii. M/s Bharathi Cement Corporation Private Limited vs Directorate of Enforcement (Criminal Revision Case No: 87 of 2021)- "the Special Court trying the offence of money laundering while independently proceeding with the trial, may, however take a pause and await the ultimate pronouncement/decision of the Special Court trying the scheduled offence....."

iv. Prakash Industries Limited & Anr. vs ED (2033 SCC OnLine Del 336) ED does not stand conferred with any independent power to try offences obliged to furnish requisite information in respect thereof to the concerned agency for necessary action. In any case and independent of Section 66(2)'

V. Hemant Soren Vs ED MANU/JH/0906/2024- The said statements are to be meticulously appreciated only by the Trial Court during the course of the trial and there cannot be a mini-trial at the stage of bail....."

vi. Pushpendra Singh Vs. Director of Enforcement MANU/MP/2372/2024-"Arrest is to be made, when custodial investigation regarding proceeds of crime is to be made or where there are chances that applicant, if remains at large, will disappear the evidence or threaten witnesses or is in a position to hide proceeds of crime to be unearthed during investigation...."

vii. Pavana Dibbur Vs ED (MANU/SC/1271/2023) The conditions precedent for attracting the offence Under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in Clause (u) of Sub-section(1) of Section 3 of the PMLA....."

viii. Pradeep Kumar and Ors. Vs. Deputy Director, Directorate of Enforcement and Ors. Citation 2023 (5) ALT 108-23.1. Authorities under PMLA cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police.."

ix. K. Govindaraj Vs. Union of India and Ors., Citation (MANU/TN/3531/2024)-strictly..." 'proceeds of crime has to be construed strictly...."

x. Lakhwinder Singh Vs. ED, Gol (MANU/HP/1202/2022)-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..."

xi. Yash Tuteja and Ors. Vs. Union of India and Ors. (MANU/SC/0306/2024)- "...no scheduled offence is made out the basis of the complaint as the offences relied upon therein are not scheduled offences. Therefore, there cannot be any proceeds of crime..."

xii. Pankaj Bansal Vs Union of India & Ors. (2023 INSC 866) The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness...

xiii. Babubhai and Ors. Vs. State of Gujarat and Ors. (MANU/SC/0643/2010)- "... where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible...."

xiv. Chandra Prakash Khandelwal vs Directorate of Enforcement (Bail Application No 2470/2022- Delhi High Court)- "... What weigh the statements under Section 50 of PMLA would carry at the end of trial cannot be tested at the stage of bail....."

xv. Preeti Chandra Vs Directorate of Enforcement (Delhi High Court- Bail Application No. 3494/2022) "... Hence, prima facie not much reliance can be placed on section 50 statements in view of inconsistency in the statements of Indrajit Zaveri, Amj Malik and Pranav Kumar...."

xvi. Vijay Agarwal Through Parokar Vs Directorate of Enforcement (Delhi High Court Bail Application No. 1762/2022.) "...If the liberty of an individual is concerned, the Court cannot proceed merely on the basis of assumptions and presumptions. The evidentiary value of the statement recorded under Section 50 of PMLA has to be tested at the end of the trial and not at the stage of bail...."

xvii. Dipakbhai Jagdish chandra Patel Vs. State of Gujarat & Another (Supreme Court) (2019) 16 SCC 547-Para 48-50-Statement of co accused not substantive evidence. Only can be used for assurance for conclusion of guilt based on other evidence.

xviii. Sanjay Jain Vs Directorate of Enforcement (2022 SCC OnLine Del 325)- "...the statements under Section 50 of the PMLA have to be taken at their face value, but in case any such statement is patently self-contradictory then such contradictions and inconsistencies will be one of the factors that will ensure to the benefit of the bail applicant whilst ascertaining the brood probabilities..."

xix. Chitra Ramkrishna Vs Directorate Enforcement (Delhi High Court-Bail Appl. No. 2919/2022)- no scheduled offences against the Applicant are established, the provisions of PMLA cannot be attracted to the present case...."

xx. Prem Prakash vs Union of India through Directorate of Enforcement (SLP (Crl. No 5416/2024))-".....where the accused has already been in custody for a considerable number of months and there being no likelihood of conclusion of trial within a short span, the rigours of Section 45 of PMLA can be suitably relaxed to afford conditional liberty....."

17. Learned counsel appearing for the petitioner has placed much reliance in the case of Vijay Madanlal Choudhary & Ors. Versus Union of India & Ors., reported in 2022 SCC OnLine SC 929, wherein the Hon'ble Supreme Court in paras, 251, 252 and 253 has held as follows:-

"251. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the

definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

18. Per contra Mr. Prashant Vidyarthi, learned CGC appearing for the Enforcement Directorate has opposed the prayer of the regular bail of the petitioner by way of drawing the attention of the court to the prosecution complaint and submitted that in para-7.3.3., it has come that the coal purchased by the petitioner through his other entities directly from CCL from financial year 2018-19 to financial year 2022-23 is disclosed in table Nos. 3 and 4. He further submitted that in para-7.4.4, it has been stated that from the agreement to sell, it was revealed that the coal supplied by the JSMDC at subsidized rates to the

MSME units to be used as raw material only to manufacture the desired goods, not to be used otherwise, not be traded, not to be diverted for any use other than that of the end use, not be diverted in the open market and undertake to furnish periodical certificates certifying the end use of coal.

19. Learned counsel appearing for the ED has further drawn the attention of the court to para-7.5.1. of the prosecution complaint, wherein the statement of the driver was recorded and submits that they have supported the case of the prosecution. He further submitted that the manipulation of records and tainted business has been recorded in para-7.5.2. of the complaint. He submitted that some registers were seized from the premises of the petitioner during search conducted under Section 17 of PML Act on 03.03.2023. On examination few of such seized records such as (a) "Sales register" for the period 2021-22 prepared for M/s GN Industries and M/s Tanjil Refactory and (b) the "Casa Vouchers showing payment of freight in cash to all the drivers for transportation of coal maintained for the year 2020-21 for M/s Oka ha Coke Division and for the year 2021-22 for M/s Romaan fuels, it revealed that the registration number of some of the trucks used for the transportation of coal were found forged and on examination of the registration details of these trucks on Car info application, it was found that the same are the registration number of two wheelers, which established that no such actual coal was purchased and such entries made in registers were manipulated and to project the tainted proceeds of crime as untainted and he referred to table No. 7.

20. By way of referring Table No. 9 of the complaint, he submitted that from the said table, it is clearly revealed that the coal purchased by M/s Ola Coke Industries from JSMDC was sold/supplied on the very same day of purchase, in the same quantity and transported by the same truck which means the said coal was not used either as a raw material to processed further into some goods or as a fuel to manufacture something, as same cannot be done on the same day. He submitted that M/s Ola Coke Industries after procuring the subsidized coal from JSMDC to use the same as fuel/ raw material, diverted/supplied the coal in the open market and violated the agreement executed between M/s Ola Coke Industries and M/s JSMDC. He then submitted that in Para-7.5.4 the entities engaged in purchasing coal by the petitioner from JSMDC was found to be non-operational / dummy entities. Low electricity consumption was found in para-7.5.6 of the prosecution complaint and the monthly consumption of the electricity was found to be unbelievably low that also strengthen the case of the Enforcement Directorate. He further submitted that the petitioner has provided forged / manipulated manually maintained bills issued by the petrol pumps as the dates are in increasing order, however, the bill numbers are not in increasing order.

21. Learned counsel for the ED has submitted that the generation of proceeds of crime was made out, as the coal being purchased from JSMDC by entities of the petitioner is being sold in the open market. During the course of the

investigation, e- auction price was called for from CCL and BCCL and the difference of the average price of coal purchased by entities of the petitioner from JSMDC and the average price of the same coal sold in e-auction at the same time are being treated as proceeds of crime in the present case. He submitted that in the investigation, it was found that the actual price at which the coal was sold in the open market is around 20% more than the price at which the coal was procured from the CCL and the BCCL through e-auction.

22. By way of inviting para-8.2 of the prosecution complaint, he submitted that in view of the above fact the total amount paid by the 13 small and medium enterprises of petitioner for purchase of the said coal from JSMDE from October 2018 to March 2023 is calculated to be Rs. 29,50,36,622.79/- and the same is the property used in the commission of the offence under the PML Act, 2002 in terms of Section 2(1)(v) of PML Act, 2002 and are thus proceeds of crime in terms of Section 2(1)(u) of PMLA. He further submits that the said coal was sold in the open market and by the commission of this offence, the petitioner obtained further proceeds of Rs. 41,81,92,136.38/- and the same are also proceeds of crime in terms of Section 2(1)(u) of PML Act, therefore, the total proceeds of crime is calculated to be Rs. 71,32,28,759.17.

23. Learned counsel appearing for the ED has further submitted that the coal was purchased from JSMDC through 13 entities and the proceeds of crime obtained by each of these entities by selling the coal in the open market from October, 2018 till March, 2023 is disclosed in Table No. 16 of para-12.2.2 of the prosecution complaint, which comes to Rs. 71,32,28,759.17.

24. On the above grounds, he submitted that the petitioner does not deserve the bail and in view of that, this bail application may kindly be rejected.

25. In view of the above submissions of learned counsel appearing for the petitioner as well as the Enforcement Directorate, the court has gone through the materials available on record and finds that admittedly there are various FIRs against Ram Binod Sinha in the year 2010-11, in which for the scheduled offence so far as the second ECIR is concerned, the FIR No. 10 of 2019 dated 20.01.2019. In the first ECIR, the petitioner was called upon and he has appeared on 18.05.2012 and on 09.03.2023 to 05.07.2023 i.e. eight times and the first search in light of Section 17 of the PML Act in the first ECIR was made on 03.03.2023. Second ECIR was registered on 12.12.2023, in which, 7 persons are named. The coal on truck bearing number JH-02-AR-6640 was to be delivered to M/s Om Coke Industry, Ramgarh, Jharkhand, however, the said truck was intercepted at Hesargarha on the allegation that Saiyyad Sulamani was taking the quantity of 19.56 MT coal from Toppa Colliery to Varanasi Mandi. It was pointed out that Varanasi is at the distance of 326 kms from the intercepted point and the Ramgarh is 11 Kms from the intercepted point. The second search was made on 16.01.2024 and allegations are made that 13 firms are non-operational / non-functional and further allegations are made that even the commission for getting the coal was at the subsidized rate. The search was

conducted on 16.01.2024 and the petitioner was arrested on 07.50 PM on the same day.

26. In the bail application, it has been disclosed that the companies were opened after meeting all the requirements, which are as under:-

"i. Steps taken for compliance (PAN card, Aadhar, consent to establish. consent to operate, NOC from forest dept. Mining registration form, GST, Mining Registration, factory registration, Udyam portal, IT Return, Audit reports, monthly etc).

ii. Documents submitted to JSMDC along with the application.

iii. A committee under the supervision of the Mining chairman and JSMDC-verifies and approves yearly allotted quantity [Pg 12 of BA]

iv. Allotment quantity communicated through JSMDC to make security deposit.

v. Fuel Supply Agreement (FSA) signed between JSMDC and purchaser entity.

vi. After obtaining payment, a delivery order issued through authorized handling agent

vii. Each colliery has handling agent authorized by the applicant who is responsible for loading of allotted coal in the trucks.

viii. Quota dispatch plan issued by CCL/ BCCL containing details of trucks.

27. The sale challan issued by the JSMDC has been brought on record at page-14, tax invoice from CCL/BCCL to JSMDC at page-15, tax invoice from JSMDC to the coal purchasing entity at page-15, forest challan at page-15, transport challan at page-16, weighment slip at page-17 and also the e-way bill at page-17. On page-18 at para-(xv) of the bail application, it is disclosed that the petitioner maintained the purchase register, freight register, stock register/ consumption register. In addition it has also been stated that the GST Return, Mining Return. Tax Audits. IT Return, ROC Compliance, DIC Status report Mining Reports. State Govt reports GST Drive are also maintained. Apart from that random inspection by the Government authorities are made. It has been pointed by the learned counsel appearing for the petitioner that the said documents have not been taken care of and more than 3000 trucks are used in the transportation of the coal in last five years.

28. The present ECIR is confined to seizure of one truck of coal, being transported to M/s Om Coke Industry, Ramgarh and in light of the judgment of Hon'ble Supreme Court in the case of Prakash Industries Limited & Anr. Versus Directorate of Enforcement, reported in 2023 SCC OnLine Del 336, as relied by the learned counsel appearing for the petitioner, if during the course of investigation, he has come across certain materials from where in its opinion a cognizable offence is made out, then in terms of the said judgement, the said materials are required to be forwarded to the scheduled offence agency and to

be investigated in terms of the scheduled offence committed, as has been held in para-91 of the said judgment, which reads as under:-

"91 Turning then to the facts of the present case the Court finds that till date the ED has failed to take any steps as are envisaged under Section 66 (2) of the PMLA. As would be manifest from a reading of sub-section (2) of Section 66 if the Director or other authority on the basis of material in its possession comes to form the opinion that the provisions of any other law in force are contravened, it is obliged to share that information with the concerned agency for necessary action. Section 66(2) thus fortifies the conclusion of the Court that ED does not stand conferred with any independent power to try offences that may be evidenced or may stand chronicled as offences under any other law. What the Court seeks to highlight is that the jurisdiction and authority of the ED stands confined to considering whether an offence of money laundering stands evidenced. If in the course of its enquiry and investigation, it were to come to the conclusion that the material in its possession evidences the commission of an offence created under any other enactment, it would be obliged to furnish requisite information in respect thereof to the concerned agency for necessary action. In any case and independent of Section 66(2), the Court finds itself unable to recognize ED as being statutorily empowered to either try or examine whether an offence under any other statute stands committed nor can it and more importantly pass a PAO on a mere assumption that an offence Independently created under any other statute is established to have been committed."

29. In para-8.2 of the prosecution complaint, it has been alleged as under:-

"8.2. In view of the above facts, the total amount paid by the 13 small and medium enterprises of Ezhar Ansari for purchase of the said coal from JSMDE from October 2018 to March 2023 is calculated to be Rs. 29,50,36,622.79/- and the same is the property used in the commission of the offence under the PML Act, 2002 in terms of Section 2(1)(v) of PML Act, 2002 and are thus proceeds of crime in terms of Section 2(1)(u) of PMLA. Further, the said coal is sold in the open market and by the commission of this offence, Md. Ezhar Ansari obtained further proceeds of Rs.41,81,92,136.38/- and the same are also proceeds of crime in terms of Section 2(1)(u) of PML Act, therefore, the total proceeds of crime is calculated to be Rs.71,32,28,759.17/- and details of the same are shown in Table -13, as under:

TABLE NO.-13

Total quantity of coal purchased by 13 small and medium enterprises of Ezhar Ansari by JSMD from October 2018 to March 2023 (in tons)

Total amount paid by these 13 small and medium enterprises of Ezhar Ansari for the purchase of the said coal (in Rs.)

Illegal gain (in Rs.)

Minimum amount at which, this coal is sold in the open market (price of coal sold through e-auction) at the relevant period is being considered for calculating proceeds of crime) (in Rs.)

X

Y

Z

Y+Z

86,568.22

Rs. 29,50,36,622.79/-

Rs. 41,81,92,136.38/-

Rs. 71,32,28,759.17

30. During the course of the argument, it has come on the record that total quantity of coal purchased by 13 small and medium enterprises of Ezhar Ansari by JSMDC from October 2018 to March 2023 is 86,568.22 tons and the total amount paid by these 13 small and medium enterprises of Ezhar Ansari for the purchase of the said coal is Rs.29,50,36,622.79/- and illegal gain is Rs.41,81,92,136.38/- and it has been alleged that the minimum amount at which, this coal is sold in the open market (price of coal sold through e-auction) at the relevant period is being considered for calculating proceeds of crime) is Rs.71,32,28,759.17/-.

31. In view of the above, it transpires that the allegations are made that between the period from October, 2018 to March, 2023, 13 entities have purchased the coal for amount of approx. Rs. 29.5 crores and odd and subsequently, the same have been sold in the open market for four years at the market rate, which comes to Rs. 41,81,92,136.38/-. It is further alleged that Rs. 29,50,36,622.79/- and Rs. 41,81,92,136.38/- comes to Rs. Rs. 71,32,28,759.17 approx. and that is the proceeds of crime from the 13 entities. In the said para-8.2, it is clearly stated that the petitioner has paid and purchased the coal and after investing Rs. 29,50,36,622.79/- and if the words 'Paid and Purchase' for that coal is there, Rs. 29,50,36,622.79/- cannot be termed as proceeds of crime under Section 2(1)(u) of the PML Act and the amount of Rs. 29,50,36,622.79/- is minuses from Rs. 41,81,92,136.38/-, then it comes to Rs. 11 cores and odd, where in the said paragraph, the investment is also said to be the proceeds of crime and that is how the figure has come to Rs. 71,32,28,759.17.

32. It was pointed out that in the register, the vehicle number was wrongly mentioned as JH-02-T-7366, wherein the correct number is JH-02-T-7336, however, in the e-way bill and tax invoice, the truck number is mentioned as JH-02-T-7336. Further vehicle number was wrongly mentioned as JH-02-

AR-6603, wherein the correct number is JH-02-AQ-6603, however, in the e-way bill and tax invoice, the truck number is mentioned as JH-02-AQ-6603. Further vehicle number was wrongly mentioned as JH-01-AX-5533, wherein the correct number is JH-01-AX-5133, however, in the e-way bill and tax invoice, the truck number is mentioned as JH-01-AX-5133, which, prima facie suggests that the same are the human errors.

33. In para-251 of the judgment of Vijay Madanlal Choudhary (supra), the Hon'ble Supreme Court has explained the proceeds of crime saying that the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. It is further disclosed in the said judgment that the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act.

34. In view of this judgment, the property associated with the schedule offence must be derived or obtained by a person, as a result of criminal activity, relating to a scheduled offence. In para-8.2 of the prosecution complaint, it is clearly stated that the petitioner after investing Rs. 29,50,36,622.79/-, wherein the words 'Paid and Purchase' have been used, thus, prima facie it appears that that amount cannot be said to be the subject matter of amount used for the proceeds of crime.

35. Socio economic offences constituted a class apart and need to be visited with different approach in the matter of bail since socio economic offences have deep-rooted conspiracies affecting more fibre of society and causing irreparable harm. Moreover, investing agency was in process of expediting the trial. The reference may be made to the case of Christian Michel James Versus Directorate of Enforcement, reported in 2022 SCC OnLine Del 731, wherein paras-37 and 38 of the said judgment, two judgments of the Hon'ble Supreme Court were considered by the Delhi High Court, which is reproduced hereinbelow:-

"37. In respect of the considerations relevant to the grant of bail, this Court deems it profitable to advert to the decision in Anil Kumar Yadav (Supra), where it has been observed as follows:-

"17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always

calls for judicious exercise of discretion by the Court."

38. Recently, the principles governing grant of bail were considered by the Supreme Court in *P. Chidambaram v. Central of Investigation* reported as (2020) 13 SCC 337. Relevant extract from the decision is reproduced hereunder:-

"21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations.

22. There is no hard-and-fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that "flight risk" of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straitjacket formula so as to deny bail to the one who is before the court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to "flight risk" is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved."

36. In view of the above, I am inclined to grant bail to the petitioner, named above.

37. Accordingly, the petitioner, named above, is directed to be released on regular bail, on furnishing bail bond of Rs.50,000/-(Rupees Fifty Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, PMLA, Ranchi, in connection with ECIR Case No. 01 of 2024.

38. However, the bail granted by this Court 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 on merit.

(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 learned 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.”

39. With the above observation, this bail application stands allowed and disposed of.