



2024:CGHC:32738

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 3767 of 2024

Reserved on : 16.08.2024

Delivered on : 28.08.2024

Smt. Saumya Chaurasia D/o Lt. O.N. Chaurasia Aged About 44 Years
R/o House No. A-21, Surya Residency, Junwani Road, Kohka, Bhilai,
Dist. Durg, Chhattisgarh 490023.

... Applicant

versus

Directorate Of Enforcement Goi, Raipur Zonal Office, Through Asst.
Director, 2nd Floor, A-1, Block, Pujari Chambers, Pachpedinaka,
Raipur, Chhattisgarh 492001.

... Respondent

For Applicant : Mr. Siddharth Dave, Sr. Advocate along with
Mr. Harshwardhan Parganiha, Mr. Anshul Rai,
Mr. Harshit Sharma, Ms. Saloni Verma & Mr.
Ravi Lochan, Advocates.

For Respondent : Dr. Sourbh Kumar Pande, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. This is **third** bail application filed under Section 439 of the Code of Criminal Procedure, 1973 for grant of regular bail to the applicant, who has been arrested on 02.12.2022 in connection with Crime No. ECIR/RPZO/09/2022 dated 29.09.2022

registered at Police Station- Directorate of Enforcement, Zonal Office, Raipur (C.G.) for the offence punishable under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (for short "the PMLA, 2002").

Brief facts of the case

2. On 12.07.2022, FIR No. 129/2022 was registered by Kadugodi Police Station, Whitefield, Bengaluru under Sections 186, 204, 353 & 120B of IPC against one Suryakant Tiwari & other persons on the basis of complaint filed by Deputy Director of Income Tax, Foreign Assets Investigation Unit-I Bengaluru alleging that as part of conspiracy, during course of search by Income Tax department on 30.06.2022, Suryakant Tiwari had obstructed the officials from carrying their official duties and destroyed crucial incriminating documents and digital evidence about the alleged illegal extortion on Coal Transportation, payments collected by Suryakant Tiwari and his associates.
3. It is also case of the prosecution that on 13.09.2022, OM in F. No. 22-IT was forwarded by Central Board of Direct Taxes (for short "CBDT") to the Directorate of Enforcement containing the FIR No. 1292022 Police Station- Kadugodi along with a report on the investigation conducted by the Income Tax Department on M/s Jay Ambey Group of Raipur (Suryakant Tiwari Group). In the report, it has been mentioned that during search operations on 30.06.2023 by Income Tax Department on the premises of Suryakant Tiwari and his associates, evidence was gathered relating to a syndicate being operated and coordinated by

Suryakant Tiwari whereby additional unauthorized cash to the tune of Rs. 25 per ton of coal was being collected over and above the legal amount against Coal Delivery Orders. It has also been alleged that pursuant to the Order F.No.4138-47/Sankhikiya/Coal bhandaran/N.Kra 2020 dated 15.07.2020 issued by the State Government the dispatch rules of coal mines by authorities have been changed from an online process to introduction of manual verification. The said notification was issued under the signatures of one Sameer Vishnoi, IAS who was the Director, Geology & Mining as well as MD of CMDC. It is also case of the prosecution that it is only after the said notification Suryakant Tiwari in conspiracy with certain other persons started obtaining an illegal levy of Rs. 25 per ton of coal for issuance of delivery order for coal transportation. The handwritten diaries maintained by one Rajnikant Tiwari who is brother of Suryakant Tiwari contained entries of incoming and outgoing amounts of unaccounted cash generated, *inter alia* from illegal levy on coal transport revealed profits of more than Rs. 500 crores in 16 months from different kinds of levies. On 29.09.2022, ECIR/RPZ0/09/2022 was registered by Directorate of Enforcement, Raipur Zonal Office for commission of offence under Sections 120 (B) & 384 of IPC being a part of FIR No. 129/2022.

4. The role of the present applicant is that the applicant is an officer of the Chhattisgarh State Civil Services who was posted as Deputy Secretary in the office of Hon'ble the Chief Minister of

Chhattisgarh and was working as an Officer on Special Duty (OSD) to Hon'ble the Chief Minister. She was actively associated with Mr. Suryakant Tiwari. Whatsapp chats of limited period from March, 2022 onwards establishes that she was having close, personal, financial association with Suryakant Tiwari. They discussed political development and issues relating to the official work of the State Government. Mr. Suryakant Tiwari was acting as a middleman and receiving and conveying unofficial instructions from the present applicant to the District level IAS/IPS officers. The applicant working as Deputy Secretary, CMO enjoyed powerful command over the entire State bureaucracy and could give extra-legal directions to the officer. She was the source of the influence enjoyed by Mr. Suryakant Tiwari over other bureaucrats. Mr. Suryakant Tiwari was the layer of security between her and the State bureaucrats. The fact that Suryakant Tiwari had personal & close official dealings with her and was carrying her instructions to the officers, made it possible for Suryakant Tiwari also to command senior District Level Officers. This illegal authority was essential for him to run his empire of illegal extortion from Coal & Iron Pallet transportation. Without his concurrence, no NOC was issued by the district machinery. All this was made possible by the fact that he was in the good books of the present applicant. He was employed by her to safeguard herself from consequences of unofficial dealings and actions conducted on her behalf. Investigation revealed that all illegal communication,

recommendations etc. were routed to & from the present applicant by Mr. Suryakant Tiwari. She has enjoyed the proceeds of crime generated by the crime syndicate. She is in possession and is using the tainted assets which have been prepared by layering the ill-gotten cash from extortion.

5. The reflected power enjoyed by Suryakant Tiwari through Saumya Chaurasia, made it possible for him to control the district machinery and enabled him to extort illegal levy of Rs. 25 per tonne from coal transportation and Rs 100 per tonne from iron pellet transportation. Without his concurrence, no NOC was issued by the district machinery. All this was made possible by the fact that he was in the good books of the present applicant. Therefore, she has directly indulged in the offence of Money Laundering as defined under section 3 of the PMLA, 2002 being actually involved in the process of Money Laundering by way of possession, concealment, use, acquisition and projecting the Proceeds of Crime as untainted property. The investigation reveals that the applicant was actively involved in this syndicate with Suryakant Tiwari of extortion of illegal levy on coal, iron pellets and others sectors. The applicant misused her official position and also engaged in collecting of cash from other persons/ businessmen/ bureaucrats etc. other than the coal levy. She was the main perpetrator who used to deliver powers to syndicates for extortion of illegal levy on coal and other sectors. A part of illegal levy extorted by Suryakant Tiwari through his syndicate, was paid in cash to the applicant through her

associates i.e., Manish Upadhyay & others. She also managed bureaucrats and politicians through Suryakant Tiwari. There are numerous outgoing entries in the diaries relating to payment of cash to one Manish Upadhyay, who was the man Friday of the applicant. Manish Upadhyay, a relative of Suryakant Tiwari, who was planted in a flat right opposite to the flat of the applicant, acted as a conduit & courier, who looked after all the logistics regarding movement of proceeds of crime in the form of cash for the benefit of the applicant. Further, the investigation has revealed that whenever the present applicant needed cash from Suryakant Tiwari's coal cartel, the money was sent to Manish Upadhyay and entered in the diaries against the noting as "MU", and this fact has been corroborated from the timings of the sale deeds & admissions by the employees of this coal cartel. Manish Upadhyay used to handle all kinds of cash movement for the applicant be it for purchase of lands, or to handover the same to Deepesh Taunk for farm house of the applicant or any other kind of illegal work.

6. The Enforcement Directorate has done fund trail investigation & verified the land deals done in the name of the family members of the applicant during the same matching period and recorded statements and has conclusively established that the ill-gotten cash that moved from Suryakant Tiwari to the applicant via Manish Upadhyay has been layered with small cheque amounts and used to acquire immovable properties by the present applicant and her family members. The analysis of

seized diaries, shows that the applicant had received amounts in excess of Rs. 30 crore from illegal extortion done by Suryakant Tiwari. Manish Upadhyay is living in the same guarded gated colony of Bhilai, namely Surya Residency, where present applicant is living. The residence of Manish Upadhyay i.e. A-1 Surya Residency is situated just opposite of A-21/22 of same housing society. A/21-22 is the property of the present applicant which is in the name of her husband namely Sourabh Modi and her mother Smt. Shanti Devi Chaurasia, where she lives along with her family members. The investigation further reveals that for convenience and better co-ordination with the applicant, the above house A-1 in Surya Residency was purchased for Manish Upadhyay by Suryakant Tiwari. Although Manish Upadhyay in his statement dated 12.10.2022 has stated that he has bought this property out of the unsecured loan of Rs. 40 lakhs received from M/s Ganga Construction (firm owned by Suryakant Tiwari), fund trail investigation regarding the property has established that Suryakant Tiwari himself is helping Manish Upadhyay to repay that loan by routing the ill-gotten cash to him (Manish Upadhyay) and then taking it back as "loan repayment". Thus, the loan and its repayment is not a genuine transaction and the flat of Manish Upadhyay is in fact purchased by Suryakant Tiwari to install Manish Uppadhyay in front of the applicant. One Anurag Chaurasia is cousin of the present applicant. The investigation establishes that he is a benami of present applicant. Despite being a man of limited means, he has taken

large number of unexplained undocumented unsecured loans and invested in assets which are completely under the physical control of the present applicant. On paper Anurag Chaurasia, owns Flat No. 606 and Flat No. 103 in Block-A of the same residential colony as that of Saumya Chaurasia. During the search & seizure, it was found that the maids of the applicant are living in Flat No. 606, A-Block, Surya Residency, Bhilai and further, the electric meter connection of this flat is in the name of Manish Upadhyay. Although, Anurag Chaurasia is the owner of Flat No. 606 & Flat No. 103, it can be seen that the payment for the expenses of these units is being given by Suryakant Tiwari which is evident from diary entries in one of the diaries seized by the Income Tax Department.

7. Suryakant Tiwari also used to provide expensive Apple mobile phone and watches to the applicant through Manish Upadhyay. These purchases were mainly done from M/s Ababa Prop. Many references were found in documents seized during the search by the Income Tax Department which indicates that mobiles/electronic items were regularly being purchased by the cartel of Suryakant Tiwari from this mobile shop. During the search & seizure action by the Income Tax Department, the same mobile was recovered from the premises of Saumya Chaurasia and she also accepted in her statement before the Income tax Authorities about using the said mobile, however, she was unable to provide the source of the mobile.
8. The payments for mobile phones and apple watch are made

from the illegal cash collected by Suryakant Tiwari and has been mentioned in the diaries seized by the Income Tax Department. The diary entry also shows that how Manish Upadhyay was used as a courier for all things/cash to be delivered for the benefit of the applicant. During the course of investigation, an agreement has been found which has been signed by two of the 5 persons and Manish Upadhyay. Nikhil Chandrakar, in his statements given under Section 50(2) & 50(3) of the PMLA, 2002, has, *inter alia*, stated that the expenses relating to the applicant mentioned in the screen shots were made from the cash generated out of illegal coal levy. He also disclosed the 'secret code' used and written by Rajnikant Tiwari for expenses relating to the applicant. He disclosed that Manish Upadhyay used to carry cash from safe house of Suryakant Tiwari for Saumya Chaurasia, Dy. Secretary to CM, Chhattisgarh and entry was made in the name of 'MU'. Also, a person namely Narayan who worked as chhauffer for Suryakant Tiwari used to carry cash for the applicant and such entry was maintained in the name of 'Narayan Durg'. In reply to question related to benami property of the applicant, he disclosed that a few plots were purchased in the name of a relative of the applicant in Wallfort City, Bhatagaon. He also disclosed that one Mansukh Lal Patel is the benamidar of the applicant and the properties were purchased in the name of Mansukh Lal Patel and he only had got the deals done for the purchase of these plots.

9. One Nikhil Chandrakar disclosed about various codes and

expenses done for the applicant using the cash generated out of illegal levy by Suryakant Tiwari and also use of the said cash in creation of immovable properties by the applicant. Nikhil Chandrakar explained the entries done by Rajnikant Tiwari including the expenses done for the applicant. The investigation also revealed that transporters were also pressurized by Smt. Kiran Kaushal, the then District Collector of Korba and Mr. Shiv Shankar Nag, the then Deputy Director, Mining Department, Korba for providing work to Mansukh Lal Patel, relative of the applicant. The investigation conducted so far reveals that in the seized diaries by Income Tax Department, entries of 30 crores approximately were found in the name of her associates Manish Upadhyay, Jay and other associates/relatives/family members of the applicant.

10. Suryakant Tiwari was acting as the eyes & ears of the applicant. To safeguard herself, she was using Suryakant Tiwari as a layer in the middle to receive inputs & issue instructions to District level officers. In the process, all of them were enriching themselves with the loot & passing on the benefits to the higher powers. During the course of investigation under the PMLA, 2002, most of the witnesses have raised the concern that they were scared of the applicant and Suryakant Tiwari and they also confronted that they have fear of being hurt if give deposition against them. As per the findings of the investigation, it can be inferred that the applicant has directly acquired proceeds of crime as defined under section 2(1)(u) of the PMLA, 2002 to an

extent of more than Rs. 30 crores. The investigation makes it evident that although all the money of extortion on coal & iron pellet transportation was collected by the syndicate of Suryakant Tiwari, he was not the final beneficiary of this scam. He did utilize large amounts of money for purchasing benami assets, but big chunks of the money were transferred to the present applicant, spent on political funding and transferred as per the instructions of higher powers.

11. Manish Upadhyay, a relative of Mr. Suryakant Tiwari, is a close associate of both Saumya Chaurasia & Mr. Suryakant Tiwari. The Enforcement Directorate's investigation establishes that Mr. Manish Upadhyay was inserted in as an extra layer of protection for cash dealings between Mr. Suryakant Tiwari and the applicant. He used to transport cash from Mr. Suryakant Tiwari to the applicant. The investigation establishes that the applicant and her family members went on a spree of acquiring immovable assets during the period which coincided with the coal levy scam.
12. The record of the case would show that the applicant filed an application for grant of regular bail before the learned PMLA Court, Raipur (C.G.) seeking enlargement on regular bail. Learned Special Judge vide order dated 20.01.2023, dismissed the bail application filed by the applicant. This order was assailed by the applicant before this Court by filing **first bail** application bearing **MCRC No. 1258 of 2023**. The said bail application was dismissed by the Coordinate Bench of this Court on 23.06.2023

by observing as under:-

“20. In such circumstances, the need of impartiality and fair play requires distinctive modus operandi to lift the veil off of economic offences. One way is to keep the accused parties in custody for longer period, so that there will be minimum hinderance and maximum efficiency in the investigation not just that of the applicant but also of all others who are involved in the offence. For that purpose, bail ought not be allowed in the same way as conceded in the event of regular offences.

21. Keeping all the aforesaid facts and circumstances of the case and also taking into consideration the magnitude of the offence, this Court is not inclined to grant bail to the present applicant as of now. The bail application accordingly stands rejected”.

13. The **second bail** application preferred by the applicant bearing **MCRC No. 3194 of 2024** was dismissed as withdrawn vide order dated 03.05.2024.
14. The record of the case would show that the applicant has challenged the order passed by the Coordinate Bench of this Court in **MCRC No. 1258 of 2023** before Hon’ble the Supreme Court by filing appeal bearing **Criminal Appeal No. 3840 of 2023** in case of **(Saumya Chaurasia Vs. Directorate of Enforcement)** and the same has been **dismissed** by Hon’ble the Supreme Court vide order **14.12.2023**. The operative part of the order reads as under:-

“24. The use of the expression “may be” in the first proviso to Section 45 clearly indicates that the benefit of the said proviso to the category of persons mentioned therein may be extended at the discretion of the Court considering the facts and circumstances of each case, and could not be construed as a mandatory or obligatory on the part of the Court to release them. Similar benevolent provision for granting bail to the category of persons below the age of sixteen years, women, sick or infirm has been made in Section 437 Cr.P.C. and many other special enactments

also, however by no stretch of imagination could such provision be construed as obligatory or mandatory in nature, otherwise all serious offences under such special Acts would be committed involving women and persons of tender age below 16 years. No doubt the courts need to be more sensitive and sympathetic towards the category of persons included in the first proviso to Section 45 and similar provisions in the other Acts, as the persons of tender age and women who are likely to be more vulnerable, may sometimes be misused by the unscrupulous elements and made scapegoats for committing such Crimes, nonetheless, the courts also should not be oblivious to the fact that nowadays the educated and well placed women in the society engage themselves in the commercial ventures and enterprises, and advertently or inadvertently engage themselves in the illegal activities. In essence, the courts should exercise the discretion judiciously using their prudence, while granting the benefit of the first proviso to Section 45 PMLA to the category of persons mentioned therein. The extent of involvement of the persons falling in such category in the alleged offences, the nature of evidence collected by the investigating agency etc., would be material considerations.

25. In the instant case as discussed hereinabove, there is sufficient evidence collected by the respondent Enforcement Directorate to prima facie come to the conclusion that the appellant who was Deputy Secretary and OSD in the Office of the Chief Minister, was actively involved in the offence of Money Laundering as defined in Section 3 of the PMLA. As against that there is nothing on record to satisfy the conscience of the Court that the appellant is not guilty of the said offence and the special benefit as contemplated in the proviso to Section 45 should be granted to the appellant who is a lady.

26. The Court also does not find any substance in the submission of the learned Senior Counsel Mr. Siddharth Aggarwal for the Appellant that the scheduled offences i.e. Section 384 and 120 B having been dropped from the chargesheet submitted against the accused Suryakant Tiwari in connection with the FIR No. 129 of 2022 registered at Kadugodi Police Station Bengaluru, and the ACJM Bengaluru vide the order dated 16.06.2023 having taken cognizance for the offence punishable under Section 204 and 353 IPC only, which are not the scheduled offences under the PMLA Act, no scheduled offence survived at the

time of passing of the impugned order and that the proceedings were/are without jurisdiction.

28. That apart, it is very much pertinent to note that when the FIR is registered under particular offences which include the offences mentioned in the Schedule to the PMLA, it is the court of competent jurisdiction, which would decide whether the Charge is required to be framed against the accused for the scheduled offence or not. The offences mentioned in the chargesheet by the I.O. could never be said to be the final conclusion as to whether the offences scheduled in PMLA existed or not, more particularly when the same were mentioned in the FIR registered against the accused. As held by the Three-Judge Bench in Vijay Madanlal (supra), it is only 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.”

15. Learned Senior counsel for the applicant would submit that the applicant was arrested on 02.12.2022 and a detailed supplementary prosecution complaint has been filed by the Enforcement Directorate on 30.01.2023 but the trial has not commenced yet due to laxity of the Enforcement Directorate which prolonged custody of the applicant without any reason which violates her fundamental rights. He would further submit that the scheduled offences have been dropped/closed in the charge-sheet dated 08.06.2023 filed by Police Station-Kadugodi, Bengaluru, accordingly, learned Chief Judicial Magistrate, Bengaluru vide order dated 15.06.2023 has only taken cognizance of offences under Sections 353 & 204 IPC. Thus, no proceedings survive in relation to Section 384 and 120-B IPC which were the only alleged schedule offences in the said

case.

16. He would further submit that Hon'ble the Supreme Court while considering the bail application of co-accused Sunil Kumar Agrawal vide its order dated **17.05.2024** in **SLP (Cri) No. 5890/2024 (Sunil Kumar Agrawal vs. Directorate of Enforcement)** has passed the following order:-

“3. On 17.05.2024 and 08.07.2024, the matters were heard at a considerable length and after taking notice of the relevant facts and circumstances, this Court prima facie found that the petitioners had made out a case for their enlargement on interim bail. Accordingly, they were directed to be released on interim bail, subject to their furnishing bail bonds to the satisfaction of the Special Court, Raipur, Chhattisgarh.

4. On some of the factual and legal issues, which require further consideration after the interim bail was granted, we have heard learned senior counsel/counsel for the petitioners as well as learned Additional Solicitor General representing the Directorate of Enforcement at a considerable length.

5. Keeping in view the facts and circumstances of this case, we are satisfied that the petitioners deserve to continue on bail during the pendency of the trial. Consequently, the orders dated 17.05.2024 and 08.07.2024 are made absolute.”

17. Thus he would submit that the applicant is also entitled to get bail by this Court on parity as incarceration period of the applicant is now more than 1 year and 8 months whereas maximum sentence can be imposed upon the applicant not admitting but assuming is 7 years, thus, about 1/3rd sentence has already been awarded though the applicant is under trial. He would further submit that the trial has been delayed and there is no fault of the applicant as no attempt was made by the applicant to stall the trial.

18. He would further submit that the learned Special Court (PMLA) in its order dated 16.04.2024 while rejecting the second bail application of the applicant has not given due regard to the change in circumstances and has rejected the bail application, thus committed illegality. He would further submit that the learned Special Court (PMLA) has failed to appreciate the fact that since the rejection of the first bail application of the applicant, the circumstances with respect to the alleged influencing power of the applicant are completely changed as the applicant is now suspended from the post of OSD of Hon'ble the Chief Minister of the State and the alleged political connections of the applicant will also have no role in the current circumstances as there is change in the ruling political party in the State of Chhattisgarh.
19. He would further submit that the learned Special Court (PMLA) has failed to appreciate that the applicant is a woman aged about 44 years and is a mother of 3-year-old twins and has erroneously rejected the bail despite taking on record the changed circumstances in the present case wherein the scheduled offences in the main FIR against the main accused have itself dropped by merely stating that there are other family members to take care of the wards. He would further submit that the applicant has 3 years old twins, instant maternal care is paramount for the children which is being hampered as the applicant is in judicial custody for last 1 year & 8 months even when she has readily co-operated in the investigation of the non-

applicant/Enforcement Directorate by duly attending all the summons issued to her. The prolonged incarceration of the applicant has deprived her children of appropriate maternal care due to which there is risk of severe psychological trauma for the children which will have lifelong effects for no fault of theirs. Thus, considering that the applicant is ready to co-operate with the investigation by extending all support as required by the authorities, it is requested that the instant bail Application may kindly be allowed.

20. He would further submit that the applicant has complied with the summons of the non-applicant/Enforcement Directorate, she is in jail for more than 1 year & 8 months and the investigation of Enforcement Directorate qua the applicant was completed on 30.01.2023. Moreover, the Enforcement Directorate has reserved its right to file further supplementary complaints with respect to other persons entities only (excluding applicant herein) which further fortifies the fact that the investigation qua applicant is complete in all respects. Thus, at this stage custodial interrogation of applicant is not required for the reasons that the investigation qua applicant is already complete and if any interrogation is to be done, the same can be done by issuing summons to the applicant and would pray for releasing the applicant in bail.
21. He would further submit that the applicant is a resident of State of Chhattisgarh and is having all the family members in the vicinity of State of Chhattisgarh, therefore, there is no flight risk

of the applicant. Moreover, the applicant is ready to report to the concerned investigating authority every week to ensure that she is present in the State. He would further submit that the applicant has appeared before the ED on multiple occasions and is willing to further co-operate with the investigation even after releasing on bail. He would further submit that the investigation qua the applicant has already been completed and the applicant is a suspended public servant, therefore, she does not have any control in the current administration, therefore, there is no possibility of tampering of evidences by the applicant. He would further submit that since the applicant lacks any control or power in the current administration, she cannot influence the witnesses, therefore, there is no risk of influencing of witnesses even if the applicant is released on bail. He would further submit that the applicant undertakes to abide by any condition or directions imposed by this Hon'ble Court in granting bail and also undertakes to furnish sound and reliable surety to the satisfaction of this Hon'ble Court if directed to be released on bail by this Hon'ble Court and would pray for releasing the applicant on bail.

22. He would further submit that the ad-interim bail granted to the co-accused/Sunil Kumar Agrawal all the more signifies that the applicant who is allegedly having a passive role, considering her conduct of cooperation shall be enlarged on bail and to substantiate this submission, he would rely upon the judgment rendered by Hon'ble the Supreme Court in case of **P.**

Chidambaram Vs. Directorate of Enforcement reported in **(2020) 13 SCC 791** wherein it has been held that it is not a rule that bail (with appropriate conditions) cannot be granted in cases of such offences. He would further submit that Hon'ble the Supreme Court in case of **Yash Tuteja & another Vs. Union of India & others [WP (Cri.) No. 153/2023 (decided on 28.04.2023)]** was pleased to grant ad-interim protection to the petitioners therein in the form of no coercive action on the strength of the argument that the cognizance as regards the predicate offence was not taken. He would further submit that Hon'ble the High Court of Delhi in case of **Preeti Chandra Vs. Directorate of Enforcement**, reported in **2023 SCC OnLine Del. 3622** has discussed the doctrine of triple test which provides for flight risk, influencing of witnesses and tampering of evidence and has granted bail to the accused/woman under the PMLA, 2002 and the same has been upheld by Hon'ble the Supreme Court vide order dated 7409/2023 in SPL (Cri.) No. 7409/2023 as also in **P. Chidambaram (supra)**. He would further submit that Hon'ble the Supreme Court in recent judgment dated 09.08.2024 in case of **Manish Sisodia Vs. Directorate of Enforcement** has considered that long incarceration and delayed trial entitles the applicant to release on bail. Hon'ble the Supreme Court has held as under:-

“29. A perusal of the aforesaid would reveal that this Court was concerned about the prolonged period of incarceration suffered by the appellant. After considering various earlier pronouncements, this Court emphasised that the right to speedy trial is a fundamental right within the broad scope of

Article 21 of the Constitution. Relying on *Vijay Madanlal Choudhary and Others v. Union of India and Others*, this Court observed that Section 436A Cr.P.C. should not be construed as a mandate that an accused should not be granted bail under the PMLA till he has suffered incarceration for the specified period. This Court recorded the assurance given by the prosecution that they shall conclude the trial by taking appropriate steps within next 6-8 months. This Court, after recording the said submissions, granted liberty to the appellant to move a fresh application for bail in case of change in circumstances or in case the trial was protracted and proceeded at a snail's pace in next three months. This Court observed that if any application was filed, the same would be considered by the trial court on merits without being influenced by the dismissal of the earlier bail applications including its own judgment. It further observed that the observations made regarding the right to speedy trial will be taken into consideration.

30. Since the trial proceeded at a snail's pace in the period after three months of the first order of this Court, the appellant filed the second application for bail before the trial court. The same came to be rejected by the trial court on 30th April 2024. It can thus be seen that it took a period of almost three months for the trial court to decide the said application. By the time the appellant approached the High Court, a period of more than six months had elapsed from the date on which the first order of this Court was passed.”

23. On the above factual and legal foundation, he would pray for releasing the applicant on bail.
24. On the other hand, learned counsel for the Enforcement Directorate would refer to the case of the prosecution mentioned in the ECIR and the role played by the applicant in commission of the offence. He would further submit that Hon'ble the Supreme Court has already considered important role played by the applicant in commission of offence and there is no change in circumstances. He would further submit that the incarceration period of 1 year and 8 months cannot be said to long

incarceration period, therefore, he would pray for rejection of the bail application.

25. He would further submit that the applicant is unable to fulfill the twin conditions of Section 45 of the PMLA, 2002 as from the above factual matrix, it is quite vivid that the possibility of the accused being not guilty of the offence of money laundering is highly impossible. To substantiate the submission, he would refer to paragraph 135 of the the judgment rendered by Hon'ble the Supreme Court in case of **Vijay Madanlal Choudhary (supra)**. He would further submit that the applicant with proceed of crime and having deep roots in the society, is in a position to influence witnesses. He would further submit that economic offence constitutes a separate class of offence and in the present case, the amount involved in the offence of money laundering is Rs. 540 crores approximately and in view of well settled position of law that economic offence constitutes a separate class of offence and bail should not normally be granted in such cases and would pray for rejection of bail petition.
26. I have heard learned counsel for the parties and perused the documents placed on record including ECIR with utmost satisfaction.
27. Before adverting to the facts of the case, it is expedient for this Court to extract Section 45 of the PMLA, 2002, which reads as under:-

“Section 45 of PMLA, 2002- Offences to be cognizable and non-bailable.— (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of

1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money- laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* * *] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

28. From bare perusal of ECIR as well as observation made by Hon'ble the Supreme Court in case of the present applicant wherein Hon'ble the Supreme Court while rejecting the bail of the applicant has recorded its finding that there is sufficient evidence collected by the respondent Enforcement Directorate to prima facie come to the conclusion that the applicant who was Deputy Secretary and OSD in the Office of the Chief Minister, was actively involved in the offence of Money Laundering as defined in Section 3 of the PMLA, 2002. As against that there is

nothing on record to satisfy the conscience of the Court that the applicant is not guilty of the said offence and the special benefit as contemplated in the proviso to Section 45 of the PMLA, 2002 should be granted to the applicant who is a lady.

29. Hon'ble the Supreme Court in **Criminal Appeal No...../2024** arising out of **Special Leave Petition (Criminal) No. 8167/2023** in case of **Manish Sisodia Vs. Central Bureau of Investigation [decided on 30.10.2023] [2023 INSC 956]** has held as under:-

“28. 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.”

30. Further submission of learned senior counsel for the applicant is that the trial is delayed, therefore, the applicant is entitled to get bail. To substantiate his submission, he has placed on record the order-sheet of the trial upto July, 2024. The order-sheet of the

case would demonstrate that the trial could not be proceeded on the count that other accused are not available or various applications were filed by different accused to delay the trial. The order-sheet further reflects that despite the directions issued by the trial Court seeking presence of the accused, the accused have not appeared before the trial Court causing delay in trial, therefore, various steps have been initiated for seeking their presence. On 02.03.2024, the learned Special Judge (PMLA) & Fourth Additional Sessions Judge, Raipur has issued bailable warrant of accused namely Vinod Tiwari, Ram Pratap Singh & Devendra Singh and fixed the case on 27.04.2024. The bailable warrant to other accused was unserved, therefore, the learned trial Court has again issued bailable warrant for seeking their presence on 10.06.2024. Again on 10.06.2024, the bailable warrant was unserved, therefore, the matter was adjourned to 24.07.2024. This clearly demonstrates that the other accused are not seeking their presence before the trial Court, therefore, the trial has not begun, as such it cannot be said that the trial is being delayed without any rhyme and reason. Therefore, the submission made by learned senior counsel for the applicant that there is delay in trial, therefore, the applicant is entitled to be released in bail, deserves to be rejected.

31. Considering the vital role played by the applicant, considering the judgment passed by Hon'ble the Supreme Court in case of the applicant and also considering that the applicant has remained only 1 year & 8 months whereas in case of Manish

Sosidia (supra) (decided on 09.08.2024) Hon'ble the Supreme Court has taken note of the fact that earlier also when the bail was rejected by Hon'ble the Supreme Court the prosecution agency has stated before the Hon'ble Supreme Court that the trial will be completed within 4-5 months, there is no such situation in the present case whereas in the present case, the accused are not cooperating with the trial and the applicant has not fulfilled the twin conditions for grant of bail under the PMLA, 2002. As such, I am of the view that the third bail application filed by the present applicant also deserves to be rejected and accordingly, it is rejected.

**Sd/-
(Narendra Kumar Vyas)
Judge**

Arun