

Mr. Alok Anand, learned counsel appearing for the petitioner, submits that the brief facts of the case is that the petitioner was director of M/s Sanjeevani Buildcon Pvt. Ltd. and during the course of investigation of the case, it was revealed that the petitioner directly received the proceeds of the crime to the tune of Rs. 20,73,749/- which was transferred to his account from the account of M/s SBPL and the transferred amount was the money of proceeds of crime in connection with the R.C. case no. R.C. 4 (S)/ 2014-R in which case, the charge-sheet has been submitted by CBI (ACB), Ranchi of the offences punishable under Sections 120B read with the Sections 420, 468, 471 of Indian Penal Code and the allegation against the petitioner is that the petitioner laundered the said money which was collected by the said company M/s Sanjeevani Buildcon Pvt. Ltd. by cheating

large number of investors of Jharkhand by dishonestly inducing them to purchase plots of land and during check period of 15.07.2008 to 30.04.2012, proceeds of crime to the tune of Rs. 65,45,09,876/- was received in the accounts of M/s Sanjeevani Buildcon Pvt. Ltd. by way of cheating the investors. It is also alleged that the gullible investors were dishonestly induced *inter alia* by the petitioner being the director of the said builder-company. It is further alleged that the proceeds of crime was duly confirmed by the adjudicating authority under Section 8 of Prevention of Money Laundering Act, 2002. It is next alleged that the salary account of the petitioner was opened only for the purpose of laundering the proceeds of the crime which were received in the accounts of M/s SBPL and the same was used as untainted after withdrawing in cash. The evidence of handing over the proceeds of crime to the directors of the company including the petitioner could not be justified by the petitioner, therefore, transferring of the proceeds of the crime to the said account by the co-account Jayant Dayal Nandi and Anamika Nandi was deliberate strategy to mask the nature of transactions and using them after withdrawal in cash, therefore the petitioner is the recipient of crime to the tune of Rs. 20,73,749/-.

It is then submitted that the allegations against the petitioner are all false. It is next submitted by learned counsel for the petitioner that the petitioner all along co-operated with the authorities of the Directorate of Enforcement as even has been observed by the adjudicating authority in his order dated 16.07.2019 in OC 1099 / 2018. It is next submitted that the co-accused Jayant Dayal Nandi and Anamika Nandi are the main conspirators and the co-accused Shyam Kumar Gupta has been released on regular bail provisionally by the order of Hon'ble Supreme Court of India. Mr. Alok Anand, learned counsel for the petitioner also relied upon the judgment of Hon'ble Supreme Court of India in the case of *Ashok Munilal Jain & Anr. v. Assistant Director, Directorate of Enforcement* reported in (2018) 16 SCC 158 at page 159, paragraph 3 of which reads as under :

*“ 3. We have gone through the orders passed by the trial court as well as by the High Court. We may state at the outset that insofar as the High Court is concerned, it has not given any reasons in support of its aforesaid view except endorsing the view of the trial court to the effect that the provisions of Section 167(2) CrPC are not applicable to the cases under the PMLA Act. This position in law stated by the trial court does not appear to be correct and even the learned Attorney General appearing for the respondent could not dispute the same. We may record that as per the provisions of Section 4(2) CrPC, the procedure contained therein applies in respect of special statutes as well unless the applicability of the provisions is expressly barred. Moreover, Sections 44 to 46 of the PMLA Act specifically incorporate the provisions of CrPC to the trials under the PMLA Act. Thus, not only that there is no provision in the PMLA Act excluding the applicability of CrPC, on the contrary, provisions of CrPC are incorporated by specific inclusion. Even Section 65 of the PMLA Act itself settles the controversy beyond any doubt in this behalf which reads as under:*

*“65. Code of Criminal Procedure, 1973 to apply. – The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”*

and submits that the enforcement directorate was under an obligation to forward the Enforcement Case Information Report (ECIR) to the Special court in terms of chapter XII and section 157 of Cr.P.C. but the same having not been done, the petitioner was deprived of the opportunity to get himself remanded in this case as he was in custody in connection with the predicate offence of this case for a considerable period of time after institution of the Enforcement Case Information Report, in connection with this case as had the Enforcement Directorate forwarded the copy of ECIR to learned magistrate, the petitioner could have got himself remanded in this case and only because of laches on the part of the Enforcement Directorate regarding in not sending the copy of ECIR to the learned Magistrate, the petitioner has been deprived of valuable right, hence, the petitioner be given the privileges of anticipatory bail.

Learned counsel for the Enforcement Directorate, Mr. Amit Kumar Das, vehemently opposes the prayer for anticipatory bail of the petitioner and submits that the contention of learned counsel for the petitioner that the ECIR is required to

be sent to learned Magistrate just like an FIR, is fallacious because in section 65 of Prevention of Money Laundering Act, 2002 itself, which reads as under :

**65. Code of Criminal Procedure, 1973 to apply.** – *The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.*

It has been categorically mentioned that provisions of the Code of Criminal procedure shall apply in so far they are not inconsistent with the provisions of Prevention of Money Laundering Act, 2002. Drawing attention of the court to Section 45 of Prevention of Money Laundering Act, 2002, which reads as under:

**45. 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 a 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.*

*[(1A) 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.*

*[Explanation. – For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an*

*accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.]*  
“(Emphasis supplied)

learned counsel for the Enforcement Directorate submits that in the second proviso, it has been mentioned that the Special Court shall not take cognizance for the offence punishable under section 4 except upon a complaint in writing his made, which in other words means that filing of a complaint in writing is a sine qua non for cognizance of the offence been taken by the special court. It is next submitted by learned counsel for the Enforcement Directorate that had it been the intention of the legislature that the ECIR is to be forwarded to learned Magistrate just like an FIR or for that matter ECIR stands in the same footing as an FIR, upon going through of which, learned Magistrate can take cognizance in terms of provisions of Code of Criminal Procedure, the legislature would not have made this mandatory provision that the Special Court shall not take cognizance offer any offence punishable under section 4 of Prevention of Money Laundering Act, 2002 unless the complaint in writing is made. It is then submitted by Mr. Das that as second proviso of Section 45 makes departure from the scheme of the Code of Criminal Procedure, hence, it is submitted that it is not a requirement of law that the ECIR is to be forwarded to learned Magistrate just like an FIR more so because Enforcement Director is not an officer in-charge of a Police Station as envisaged under the Code of Criminal Procedure.

It is next submitted by Mr. Das that Section 45 of Prevention of Money Laundering Act, 2002 envisages that where the Public Prosecutor opposes the application like this case, then, an accused shall be released on bail or on his own bond, only after the Court is satisfied that there are reasonable grounds for believing that the accused is not guilty for the offence alleged and he is not likely to commit any offence while on bail but in this case as the petitioner along with the other co-accused, are accused of money laundering of a sum more than Rs.

1,00,00,000/-, hence, in the absence of any material to suggest that any reasonable ground for believing that the petitioner is not guilty of the offence and that he is not likely to commit any offence, while on bail, the petitioner ought not be given the privilege of anticipatory bail. It is further submitted by Mr. Das that only a miniscule minority of Rs. 1475/- of the laundered money of Rs. 20,73,749/- has been attached, hence, custodial interrogation of the petitioner is required for attachment of further laundered money, hence, the petitioner ought not be given the privilege of anticipatory bail.

Considering the serious allegations against the petitioner and in the absence of any material to suggest that the petitioner is not guilty of the offence and that he is not likely to commit any offence, while on bail, this Court is of the considered view that this is not a fit case, where the privilege of anticipatory bail be given to the petitioner. Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

**(ANIL KUMAR CHOUDHARY, J.)**

Smita/-