IN THE COURT OF MS. GEETANJLI GOEL
ADDITIONAL SESSIONS JUDGE / SPECIAL JUDGE (PC ACT) CBI-24,
ROUSE AVENUE DISTRICT COURT, NEW DELHI

CNR No.DLCT11-000082-2021
Bail Application No.04/2021
CT Case No.02/2021
ECIR/09/DLZO-I/2018

IN THE MATTER OF:
Bikram Bhattacharya v. ED

O R D E R

1. Vide this order I shall dispose of the application for bail under Section 439 Cr.P.C. filed on behalf of accused No.8 Bikram Bhattacharya. It is submitted that the applicant/ accused No.8 has already rendered his appearance before the court through Video Conferencing. He is a senior citizen aged around 68 years and is suffering from various age related ailments which have virtually incapacitated him to carry out ordinary pursuits of life including Parkinson disease. It is stated that though the applicant/ accused No.8 had been a Director of some of the companies of the Alchemist Group of Companies which are primarily the subject matter of the present investigation including M/s. Alchemist Limited, however, no deliberate or intentional act of omission and commission is attributable to him that may tantamount to contravening the provisions of Section 3 of the Prevention of Money Laundering Act (hereinafter referred to as the PMLA).

2. It is submitted that the scheduled/ predicate offences based upon which the present ECIR was registered were yet pending investigation as the matter was before the Hon'ble High Court of Calcutta where a one-man committee had been formed and

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no charge sheet had been filed in the scheduled/ predicate offences. It is averred that during the course of investigation, the applicant/ accused No.8 was not arrested in exercise of powers under Section 19 of PMLA as he rendered all due assistance before the ED and appeared before the complainant ED on various occasions i.e. 19.09.2019, 23.09.2019, 23.10.2019, 11.11.2019 and 12.02.2020 when his statements were recorded in terms of Section 50 PMLA. The applicant/ accused No.8 had rendered all assistance and cooperation during the course of investigation and his conduct had remained above board. It is averred that it was settled law that a person who was not arrested during investigation and rendered due co-operation and appeared before the court upon issuance of process had a vested right to be released on bail as his case was to be viewed differently from those qua whom power to arrest was exercised. Reliance is placed on various judgments, namely:

a) **Siddharth** v. **State of Uttar Pradesh & Anr.** 2021 SCC Online SC 615.

b) **Amanpreet Singh** v. **CBI** 2021 SCC Online SC 941, Order dated 02.09.2021 passed in SLP (Crl.) 5234 of 2021**;**

c) **Satender Kumar Antil** v. **Central Bureau of Investigation & Anr.** Order dated 28.07.2021 passed in SLP (Crl.) 5191 of 2021**;**

d) **Satender Kumar Antil** v. **Central Bureau of Investigation & Anr.** 2021 SCC Online SC 922, Order dated 07.10.2021 passed in SLP (Crl.) 5191 of 2021;

e) **Satender Kumar Antil** v. **Central Bureau of Investigation & Anr.** Order dated 16.12.2021 passed in M.A. No.1849/2021 in SLP (Crl) No. 5191/2021.

3. It is submitted that by virtue of Section 44 of PMLA, both the trials have to be held together before this court and in the absence of any charge sheet having been

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filed in the main scheduled/ predicate offence, the proceedings are likely to take a long time. Even otherwise, the complainant ED claims to carry on further investigation and thus, the trial is not likely to commence much less conclude in the near future. It is stated that the twin conditions for bail under Section 45 of PMLA have already been struck down as unconstitutional by the Hon'ble Supreme Court in **Nikesh Tarachand Shah** v. **Union of India & Anr.** (2018) 11 SCC 1**.** Even the subsequent amendment had not revived the said twin conditions despite the claim of the ED. It is submitted that the issue of applicability of the twin conditions to a person who was not arrested in exercise of powers under Section 19 of PMLA had been laid to rest in **Nikesh Tarachand Shah's** case and the same had been consistently followed.

4. It is stated that co-accused Kanwar Deep Singh (who is stated to be the main accused and was arrested by the ED in exercise of powers under Section 19 of PMLA on 12.01.2021) had already been released on bail by this court vide order dated 06.04.2021. It is averred that the applicant/ accused No.8 is a senior citizen and is neither a flight-risk, nor can he ever be in a position to tamper with evidence as the complaint already stands filed. The previous conduct of the applicant/ accused No.8 is unblemished as he had rendered full assistance in the ongoing investigation. It is averred that the gravity of the allegations is the subject matter of trial and the applicant/ accused No.8 is ready to abide by any condition that the court may impose upon him while granting bail to him. It is stated that the applicant/ accused No.8 belongs to a respectable family and has deep roots in the society. It is thus, prayed that

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the applicant/ accused No.8 be granted bail for the offence under Sections 3/4 of PMLA, 2002.

5. Reply was filed on behalf of ED to the application for bail making the preliminary submissions that all the averments, contentions and submissions made in the application were frivolous and contrary to settled legal principles and were denied. It is averred that the applicant/ accused No.8 in his statement dated 19.09.2019 recorded under Section 50 PMLA, had himself stated that he was a Chartered Accountant and worked as auditor and also in accounts departments of various companies from 1978 to 2006. He further stated that he had joined M/s. Alchemist Ltd. in 2006 as Vice President of Internal Audit Department and later on became Director in various group companies of Alchemist Group and his job was to oversee accounts and finance functions. Investigation done so far had revealed that he was a close aide of Shri Kanwar Deep Singh, Chairman Emeritus of Alchemist Group and co-accused in the case and the day to day affairs i.e. administrative or financial affairs of the companies of Alchemist Group were/ are managed by him in association with Shri Kanwar Deep Singh. He used to give instructions regarding the administrative matters in the companies which had received and further laundered the proceeds of crime and was privy to the transactions as the balance sheets had been signed by him. Thus, being an active Director, he was responsible for all the financial transactions or otherwise undertaken by the companies of Alchemist Group and investigation had revealed that he was actively involved in the laundering of proceeds of crime and therefore, he had directly indulged and was actually involved in the process and

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activity of layering of the proceeds of crime and committed the offence of money laundering as per Section 3 of PMLA, punishable under Section 4 of PMLA.

6. It is averred that the applicant/ accused No.8 is seeking bail *inter-alia* on three grounds i.e. the Prosecution Complaint had been filed, the applicant/ accused No.8 was not arrested during the course of investigation and was entitled to bail. It is stated that the argument was misconceived in the facts and circumstances of the case. Further investigation in the matter was still going on as the entire proceeds of crime were still to be identified. The submission that since the applicant/ accused No.8 was not arrested during the course of investigation and hence default bail should be granted to him was misconceived and reference was made to the judgment of Hon'ble High Court of Delhi in **V. Hansprakash** v. **State** (2021) 277 DLT 173. It is further submitted that the economic offences are a class of its own and are required to be treated differently in the matter of bail. The applicant/ accused No.8 had committed an offence which had economically affected the public at large and as per the settled law, economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. It is submitted that the classification of economic offences as different class in itself was a clear jurisprudential recognition of gravity of the offence being judicially recognized as an extremely relevant factor while considering matters regarding bail and categorization of any offence as an 'economic offence' was an exercise which depicted the gravity of such offence.

7. It is stated that it is trite law that gravity of the offence and the role played by the accused is not an alien concept in matter concerning bail. It is averred that the

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nature of accusations in the present case, the gravity of the offence, especially in light of economic offence which primarily entailed the present case, needed to be analysed. It is submitted that the Hon'ble Supreme Court had emphasized that gravity of offence and the role played by an accused in an economic offence ought to be viewed with severity in matter concerning bail. Further, the court while granting bail, had to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction would entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/ State and other similar considerations. Further gravity of the offence had nothing to do with the punishment provided for the same. The gravity was to be judged by the impact, the offence had on the society, economy, financial stability and integrity of the country. Economic offences constituted a class apart and a class by itself, as they cut at the very root of probity and purity of public administration and resulted in eroding the public confidence which it reposed on the government elected by it. It is submitted that it was well settled by a catena of judgments that economic offences were considered to be the gravest offence against the society at large and hence were required to be treated differently in the matter of bail. Reliance is placed on the judgments of the Hon'ble Supreme Court in **State of Gujarat** v. **Mohanlal Jitamalji Porwal** (1987) 2 SCC 364; **Y.S. Jagan Mohan Reddy** v. **CBI** (2013) 7 SCC 439**; Anil Kumar Yadav** v. **State (NCT of Delhi)** (2018) 12 SCC 129; and in **Sunil Dahiya** v. **State (Govt. of NCT of Delhi)** 2016 SCC OnLine Del 5566**.**

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8. It is averred that the twin conditions for grant of bail under Section 45 (1) of the PMLA having been revived were applicable to the present case. It is submitted that the Hon'ble Supreme Court in the case of **Nikesh Tarachand Shah (supra)** declared Section 45 (1) of the PMLA, as it stood then, as unconstitutional and violative of Articles 14 and 21 of the Constitution of India in so far as it imposed conditions on bail. It is averred that there appeared to be two reasons based on which the Hon'ble Supreme Court struck down Section 45(1) of the PMLA in **Nikesh Tarachand Shah (supra)** i.e. i) a classification based on sentencing of the scheduled offence was found to have no nexus with the objective of PMLA, thereby rendering it to be manifestly arbitrary or unjust and violative of Article 14 of the Constitution of India; ii) Since the application of the twin conditions in Section 45 (1) was restricted only to a particular class of offences within the PMLA i.e. offences punishable for a term of imprisonment of more than three years under Part-A of the Schedule, and not to all the offences under the PMLA, such an indiscriminate application of the twin conditions on bail as prescribed under Section 45(1) would lead to a violation of rights enshrined under Article 21. It is averred that thereafter, vide Finance Act, 2018 (No. 13 of 2018), for the words "punishable for a term of imprisonment of more than three years under part A of the Schedule", the words "under this Act" were substituted in Section 45 (1) of the PMLA.

9. It is submitted that by way of amendment vide Finance Act, 2018, the twin conditions for grant of bail as prescribed under Section 45 (1) were made applicable to all offences under PMLA and therefore the defects due to which Section 45(1) was

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struck down by the Hon'ble Supreme Court in **Nikesh Tarachand Shah (supra)** were cured by the amendment and there no longer existed a classification based on the term of imprisonment, which was held to make the application of Section 45(1) violative of Articles 14 and 21 of the Constitution of India. It is averred that the said change in law had been taken judicial notice of by the Hon'ble Supreme Court in **P. Chidambaram** v. **ED** (2019) 9 SCC 24. Reliance is also placed on the judgment of Hon'ble High Court of Orissa in **Mohd. Arif** v. **Govt. of India** 2020 SCC OnLine Ori 544 wherein revival of the twin conditions under Section 45 PMLA was upheld. It is stated that the Hon'ble Supreme Court had dismissed an SLP as withdrawn against the said judgment by its order dated 24.11.2020 in SLP Crl. 4878/2020. Further a contrary view held in the case of **Upendra Rai** v. **Directorate of Enforcement** 2019 SCC OnLine Del 9086 had been stayed by the Hon'ble Supreme Court in SLP (Crl) 2598/2020 vide an order dated 03.06.2020 and the contrary view taken in **Dr. Shivender Mohan Singh** v. **Directorate of Enforcement** 2020 SCC OnLine Del 766 had been stayed by the Hon'ble Supreme Court vide its order dated 31.07.2020 in SLP (Crl) No. 3474/2020 titled **Directorate of Enforcement through Deputy Director** v. **Shivender Mohan Singh**. Reference was also made to the judgment of the Hon'ble Supreme Court of India in **Directorate of Enforcement** v. **Parkash Gurbaxani** SLP (Crl.) No(s). 7666-7667/2021 decided on 20.10.2021 and to the judgment of the Hon'ble High Court of Delhi in **Bimal Kumar Jain and Naresh Jain** v. **Directorate of Enforcement, Bail Application No.112/2021.** It was submitted that the petitioners in the said case thereafter filed a petition before the same bench for recalling and for seeking clarification in respect of paragraphs 19 and 20 by way of Criminal Misc. Application

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No.12579/2021 and the Hon'ble High Court vide order dated 14.09.2021 held that no clarification was required in the order dated 30.07.2021.

10. It is submitted that Section 45(1) PMLA is constitutionally valid and the mandatory twin conditions must be satisfied while granting bail under the provisions of PMLA and the twin conditions under Section 45 had been validly re-enacted and merely because the entire Section was not re-enacted would be of no consequence since the provision even after being declared unconstitutional, did not get repealed or wiped out from the statute book and it only became unenforceable. It is averred that the application had been filed under Section 439 Cr.P.C. whereas the PMLA being a Special Act, the application for grant of bail should have been filed only under Section 45 i.e. the provision which deals with the grant of bail and not under Section 439 Cr.P.C. It is thus prayed that the application be dismissed.

11. In the para wise reply, it is averred that the accused/ applicant No.8 had not put on record any document to corroborate the submission regarding the alleged medical ailments being suffered by him. It is reiterated that the applicant/ accused No.8 being an active Director was responsible for all the financial transactions or otherwise undertaken by the companies of Alchemist Group and he was actively involved in the laundering of proceeds of crime and as such his claim of having no intentional act of contravention of provisions of Section 3 of PMLA was not true as he was well versed with the accounts and finances of the companies of Alchemist Group. It is averred that the applicant/ accused No.8 did not appear before the Directorate to join the investigation on summons and only started appearing after searches were carried out

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by the Directorate under Section 17 of PMLA and thereafter also, he was non-cooperative during the recording of statements. It is submitted that the applicant/ accused No.8 had no vested right to be released on bail and granting bail was a discretionary power of the court for which the court had to take into consideration the magnitude of the offence. It is averred that the applicant/ accused No.8 did not cooperate in investigation and since the investigation is pending, there was every likelihood that the applicant/accused No.8 may influence witnesses.

12. I have heard arguments of Shri Tushar Anand, Ld. Counsel for the accused, Shri N.K. Matta and Shri Mohd. Faraz, Ld. SPPs for ED along with IO Manish Choudhry, AD (PMLA) through CISCO Webex (Video-Conferencing) and perused the record. I have also perused the documents filed on behalf of the applicant/ accused No.8 by email.

13. The Ld. Counsel for the applicant/accused No.8 had submitted that the applicant/ accused No.8 was not arrested during investigation. The main accused Shri K.D. Singh had already been granted bail. It was submitted that the health records of the applicant/accused No.8 had been sent through email and he was facing a lot of problems since the previous 25 years as he was suffering from diabetes, Parkinson's disease which did not let him do his day to day activities, or even go to washroom on his own. So there was no reason for him to be sent to custody.

14. Shri Mohd. Faraz Ld. SPP for ED had submitted that the twin conditions under Section 45 PMLA had to be considered before grant of bail and the same stood revived by the amendments which were made to the Section. Reliance was placed on

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the judgment of the Hon'ble Supreme Court in **The Asst. Director Enforcement Directorate** v. **Dr. V. C. Mohan** in Criminal Appeal No.21/2022 decided on 04.01.2022 to contend that even where the accused had not been arrested during investigation, the rigours of Section 45 PMLA would apply and bail could not be granted automatically. It was submitted that it was the duty of the court to consider Section 45 PMLA. The Hon'ble Supreme Court was aware that the said provision had been struck down judicially which was taken note of in the case of **P. Chidambram** v. **Directorate of Enforcement** (2020) 13 SCC 791. Reliance was placed on the judgment in **Rohit Tandon's** case. It was contended that other considerations did not matter if the accused was not able to satisfy the conditions contained in Section 45 PMLA. It was submitted that the judgment in **Satender Antil (supra)** relied upon two judgments which were based on Section 170 Cr.P.C. whereas complaint had been defined under Section 2 (d) of Cr.P.C. and in the present case it was a question of Section 439 Cr.P.C. and not Section 170 Cr.P.C. It was submitted that in the judgment of the Hon'ble High Court of Delhi in **V. Hansprakash** v. **State** (2021) 277 DLT 173 it had been held that there was a difference between Section 170 Cr.P.C. and Section 439 Cr.P.C. and the court could not be a post office of the IO. Reliance was also placed on the judgment of Hon'ble Bombay High Court in **Radha Kapoor Khanna** v. **CBI & Anr.** Criminal Bail Application No.3323 of 2021 decided on 28.09.2021 and it was submitted that the gravity of offence and magnitude of the money involved had to be seen.

15. Shri N.K. Matta, Ld. SPP for ED had submitted that the applicant/accused No.8 was the Director in the Alchemist Group of Companies and huge amount of money

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had been laundered. Reference was made to the allegations in the complaint and that essentially two sums of money i.e. Rs.444.67 crores and Rs.1403.51 crores were involved which were collected from investors/ home buyers and were proceeds of crime and the said amount was diverted. It was argued that the statement of the accused showed that the funds were diverted and layered through him and out of the proceeds of crime the major amount was dealt with by him. If Section 3 of PMLA was considered then the main person was the applicant/ accused No.8 who had laundered the money. It was submitted that in the case of **Rohit Tandon,** it had been held by the Hon'ble Supreme Court that statements under Section 50 of PMLA were admissible and the bail application was dismissed by the Hon'ble Supreme Court on that basis. It was contended that the conditions under Section 45 PMLA were in addition to Section 439 Cr.P.C. so the case had to be decided as per merits and looking into the merits of the case, the applicant/accused No.8 was not entitled to bail as he had also admitted that he was the main person in the companies and Shri K.D. Singh was controlling the companies from outside. It was submitted that the day to day affairs of the companies were handled by the applicant/accused No.8 and he had knowingly laundered the money.

16. The Ld. Counsel for the applicant/accused No.8, in rebuttal had submitted that the applicant/accused No.8 was only an employee.

17. The present ECIR is based on Scheduled Offences under Sections 406, 420, 120-B IPC in FIR No.84 dated 16.03.2017 PS Bowbazar, Kolkata and FIR No.82/2017, 83/2017 and 84/2017 dated 01.04.2017 at PS Chitpore, Kolkata and other

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FIRs at Kanpur and Agra against the applicant/ accused No.8 and others. As per the case of ED, the applicant/ accused No.8 along with others had entered into criminal conspiracy and in pursuance to that conspiracy cheated investors/ victims and fraudulently collected money and induced the complainants to invest in MIS scheme but after maturity of the scheme they did not return the amount. Investigation into the said scheduled offences was initiated vide ECIR No. ECIR/09/DALZO-I/2018 dated 11.07.2018. As per the allegations, Rs.444.67 crores were raised from investors by Alchemist Holdings Ltd. from 2005 onwards but the funds were not used for intended purposes and were diverted/ siphoned off into Group Companies of Alchemist Group and the investors did not get there matured amounts back. Further, Rs.1403.51 crores were raised from investors in the garb of giving plots etc. by Alchemist Township India Ltd. from 2012 onwards and the funds so raised from the investors were not used for the intended purposes and were diverted/ siphoned off into the group companies of the Alchemist Group and the investors did not get the matured amounts back. As such the said funds which were proceeds of crime were still outstanding to be paid.

18. Reference was made to the statement of the applicant/ accused No.8 recorded on 19.09.2019, 23.09.2019, 23.10.2019, 11.11.2019 and 12.02.2020 who had stated that he had joined M/s Alchemist Ltd. in 2006 as Vice President (Internal Audit Department) and was working in M/s Alchemist Ltd. as Director of M/s Alchemist Ltd. and other group companies of Alchemist Group. He directly reported to Shri K.D. Singh, Chairman Emeritus of the Alchemist Group. He was a paid employee and was

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asked by Shri K.D. Singh to become a Director in 20 companies. He had also stated that granting interest free unsecured loans to group companies was without any provisions from the management and submitted the details of loans and advances taken by the companies in which he was/ is Director. It was alleged that the applicant/ accused No.8 was/ is Director in various companies of Alchemist Group and was a close aide of Shri Kanwar Deep Singh. The day to day affairs i.e. administrative or financial affairs of the companies of Alchemist Group were/ are managed by him in association with Shri Kanwar Deep Singh. He used to give instructions regarding the administrative matters and being a Director in the companies which had received and laundered the proceeds of crime was privy to the transactions as the balance sheets had been signed by him. Being an active Director, he was responsible for all the financial transactions or otherwise undertaken by the company and he was actively involved in the laundering of proceeds of crime and had directly indulged in and was actually involved in the process and activity of layering of the proceeds of crime and committed the offence under Section 3 of the PMLA punishable under Section 4 of the PMLA.

19. As such, it is the contention of ED that the applicant/ accused No.8 was directly involved in the laundering of proceeds of crime. It is not in dispute that the applicant/ accused No.8 was not arrested during the course of investigation, though it is the submission of ED that the investigation is still ongoing. The Ld. Counsel for the applicant/ accused No.8 had contended that as per the settled law, a person who was not arrested during investigation and rendered due co-operation and appeared before

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the court upon issuance of process had a vested right to be released on bail as his case was to be viewed differently from those qua whom power to arrest was exercised. It is again not in dispute that the applicant/ accused No.8 had appeared before the court upon issuance of process, albeit through Video Conferencing. The Ld. Counsel for the applicant/ accused No.8 in this regard had relied upon the judgments in **Siddharth** v. **State of Uttar Pradesh & Anr. (supra), Amanpreet Singh** v. **CBI (supra), Satender Kumar Antil** v. **Central Bureau of Investigation & Anr. (supra); and Satender Kumar Antil** v. **Central Bureau of Investigation & Anr. (supra)**.

20. The Ld. SPP for State on the other hand had drawn a distinction between Section 170 Cr.P.C. and Section 439 Cr.P.C. (under which provision the present bail application has been filed) and submitted that bail could not be automatically granted to a person who had not been arrested during investigation. In this regard, reliance was placed on the judgment of the Hon'ble High Court of Delhi in **V. Hansprakash** v. **State (supra)** wherein it was observed as under:

> *"Taking the said aspect into account and the factum that the applicant is alleged to have committed an economic fraud which affects the moral fabric of society, coupled with the factum that economic offences corrode the very fabric of democratic governance and probity in public life and are considered to be the gravest offences against the society and the persons alleged to have committed such offences are necessarily required to be treated differently in the matter of bail despite the submission made on behalf of the petitioner placing reliance on the verdict of his Court in Tejinder Singh (supra) with specific observations therein in paragraph 20(v) which reads to the effect:-*
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> > *"20. (v) The Court shall on appearance of an accused in non bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his*

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> *having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.",*
>
> *which is reiteration of observations of this Court in* ***"Court on its own motion Vs. CBI" 109 (2003) DLT 4944,*** *it is essential to observe that what is brought forth through the observations therein is to the effect that merely because a person who was not arrested by the police or Investigating Agency during investigation nor produced in custody as envisaged in Section 170 of the Cr.P.C., 1973 ought not to be taken into custody merely because the charge sheet has been filed, the same however, does not spell out an embargo on the Court to reject a prayer made for bail by such an accused not arrested during investigation or not produced in custody, to be taken into custody in the circumstances where the facts of a case as alleged bring forth the gravity and magnitude of the alleged commission of an offence and consequently negate the grant of bail."*

It was thus, held by the Hon'ble High Court that even where a person was not arrested by the police or Investigating Agency during investigation nor produced in custody, the same does not spell out an embargo on the Court to reject a prayer made for bail by such an accused and to be taken into custody where the facts of the case as alleged bring forth the gravity and magnitude of the alleged commission of an offence. It was argued by the Ld. SPP for ED that in the present case as well, looking to the magnitude and gravity of the offence, the applicant/ accused No.8 cannot be held entitled to bail merely because he was not arrested during investigation.

21. Reliance was also placed on the judgment of Hon'ble High Court of Bombay in **Radha Kapoor Khanna** v. **CBI & Anr. (supra)** wherein it was held as under:

> *"...If material brought on record indicates the gravity of the offence and culpability as well complicity of the accused persons then in that case, the Court is duty bound to exercise its power, which have been*

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invoked by preferring an application as per Sections 437 and 439 of the Code.

12. The Court of the Magistrate or the Session Court cannot be held bereft of power and jurisdiction to grant bail or decline bail, once an application is preferred before it and in such a contingency, the said Court is duty bound to take into account the evident material, emerging from the charge-sheet. In cases where the offences alleged indicate that they are grave, heinous, barbaric, seditious or aimed at damaging the financial health of the State, then in that case the concerned Court is expected to take into consideration various factors and parameters, including the gravity of the accusations which by this time are crystallized in form of the charge-sheet while deciding the entitlement of the accused as to whether to admit him to bail or otherwise.

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14. The fact, therefore, remains that the accused who has been allegedly involved in commission of heinous and grave offence, should be investigated and in view of the fact that if the incriminating material is to be seized or fruitful information is to be elicited then arrest can be adverted to. Arrest can also become necessary if the offence is of grave nature and there is likelihood of the offender absconding or fleeing away from justice. This would all depend upon the facts and circumstances of each case as in every case, full co-operation from a suspect would convert him to an accused and from an accused to a convict and to bring the investigation to its logical end. When on completion of investigation, the fnal report is tendered before the Court, the Court is duty bound to aid and assist the cause of the prosecution and the power and discretion to grant bail would always depend upon the claim and demand raised by the prosecution for custody of the offender lest police or magisterial for having the profound investigation, deep probe and arrival of the conclusion, indicating total involvement of the accused.

15. In the instant case, it is apparent that all the Applicants are alleged to have indulged in commission of offences, which have resulted in serious dent to the financial health of the State as well as defrauding the public at large. Such offences are occurring in plenty and have resulted in stultifying overall growth of the nation and also have caused tremendous impairment to the economy of the nation. These crimes are more heinous in nature as they intend to destroy the economic fabric and financial edifice of the State. Such crimes have the tendency to degrade and defy the faith of the public in law and order situation as it tantamount to a serious blow to its economic/financial condition.

In view of the above, it is incumbent upon the Court, who deals with the application for grant of bail, to exercise its power and discretion

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> *on the basis of the material put forth by the prosecution and would also be subject to the necessity shown by the prosecution for seeking custody as per the culpability and complicity of the particular accused for proving the deep involvement of each accused and unfold and unearth the modus operandi in the embezzlement in order to drive a conclusion about the involvement of each of the accused person….In* ***State*** *v.* ***Jaspal Singh Gill*** *(1984) 3 SCC 555: AIR 1984 SC 1503, the Hon'ble Apex Court expressed the view that the court before granting bail in cases involving non-bailable offences, particularly where the trial has not yet commenced should take into consideration various factors such as the nature and seriousness of the offence, character of the evidence, circumstances peculiar to the accused, a reasonable possibility of the accused not presenting himself during trial and reasonable apprehension of witnesses being tampered with and the larger interest of the society or the State.*
>
> *Xxx*
>
> *Dispensation of arrest at the stage of investigation need not continue throughout and in particular, when the offence made out against the Applicants has now clearly emerged in the charge-sheet as a grave economic offence and, the witnesses who will participate in the trial apparently surfacing, the Applicants do not deserve their release on bail."*

In this case as well, it was held that dispensation of arrest at the stage of investigation need not continue throughout and in particular, when the offence made out is a grave economic offence. The matter has been considered by the Hon'ble Supreme Court in **Satender Kumar Antil** v. **Central Bureau of Investigation & Anr. (supra)** in the orders dated 28.07.2021 and 07.10.2021 on which reliance was placed by the Ld. Counsel for the applicant/ accused No.8. In the order dated 07.10.2021, the Hon'ble Supreme Court was pleased to categorize the offences into 4 categories of which category C) dealt with offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc. Thus, contrary to the submissions of Ld. SPP for ED that the present case would not be covered under the said judgment as the present was a complaint

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case, once the Hon'ble Supreme Court specifically included Section 45 PMLA on the basis of which the Ld. SPP for ED has prayed that bail cannot be granted to the applicant/ accused No.8, in the category of offences, the present case would be clearly covered and even otherwise, it is the own case of ED that the applicant/ accused No.8 is not entitled to bail automatically. A separate category was carved out as D) "Economic Offences not covered by Special Acts." However, as the present case is under PMLA which is a special legislation covered under category C), the present case would fall in that category.

22. The Hon'ble Supreme Court then delineated the requisite conditions for the application of the guidelines laid down in the said judgment i.e.

> *"1) Not arrested during investigation.*
>
> *2) Cooperated throughout in the investigation including appearing before Investigating Officer whenever called.*
>
> *(No need to forward such an accused along with the charge sheet Siddharth v. State of UP, 2021 SCC Online SC 615)"*

As regards the category C), it was held that on appearance of the accused in Court pursuant to process issued bail application has to be decided on merits "with the additional condition of compliance of the provisions of Bail under NDPS S.37, 45 PMLA, 212 (6) Companies Act 43d(5) of UAPA, POCSO etc." Thus, after the accused appears in the Court pursuant to process issued to him, he has to file a bail application which is to be decided on merits. It may be mentioned that in the subsequent order of the Hon'ble Supreme Court in the said matter dated 16.12.2021, it had been held that Section 45 PMLA had been inadvertently mentioned in category C

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though it stood struck down by the Court. However, even then, the position would be that the bail application has to be decided on merits. In the present case as well, the applicant/ accused No.8 had appeared pursuant to issuance of process and there cannot be any dispute that the bail application has to be decided on merits and he would not be entitled to bail automatically as was contended by the Ld. Counsel for the applicant/ accused No.8 though the applicant/ accused No.8 was not arrested during investigation. As regards the condition laid down by the Hon'ble Supreme Court that the accused should have cooperated throughout in the investigation including appearing before the Investigating Officer whenever called, it was submitted on behalf of ED that the applicant/ accused No.8 did not appear before the Directorate to join the investigation on summons and only started appearing after searches were carried out by the Directorate under Section 17 of PMLA, 2002 and thereafter also, he was non-cooperative during the recording of statements. Be that as it may. The complaint filed by ED itself reflects that the statement of the applicant/ accused No.8 was recorded on five occasions i.e. on 19.09.2019, 23.09.2019, 23.10.2019, 11.11.2019 and 12.02.2020.

23. It was then contended on behalf of ED that the twin conditions stipulated in Section 45 PMLA had to be satisfied for grant of bail to the applicant/ accused No.8 since the same stood resurrected by the amendments to Section 45 PMLA. On the other hand, the Ld. Counsel for the applicant/ accused No.8 had submitted that the twin conditions were struck down by the Hon'ble Supreme Court in **Nikesh Tarachand Shah** v. **Union of India & Anr. (supra)** and thereafter the consistent view

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of the courts had been that the same had not been resurrected. In the said case, the Hon'ble Supreme Court had observed that the twin conditions under Section 45(1) of PMLA are unconstitutional as they violate Article 14 and Article 21 of the Constitution of India. The Hon'ble Supreme Court had observed as under:

> *"54. Regard being had to the above, we declare Section 45(1) of the Prevention of Money Laundering Act, 2002, insofar as it imposes two further conditions for release on bail, to be unconstitutional as it violates Articles 14 and 21 of the Constitution of India. All the matters before us in which bail has been denied, because of the presence of the twin conditions contained in Section 45, will now go back to the respective Courts which denied bail. All such orders are set aside, and the cases remanded to the respective Courts to be heard on merits, without application of the twin conditions contained in Section 45 of the 2002 Act. Considering that persons are languishing in jail and that personal liberty is involved, all these matters are to be taken up at the earliest by the respective Courts for fresh decision. The writ petitions and the appeals are disposed of accordingly."*

As such the Hon'ble Supreme Court had declared the twin conditions laid down in Section 45 PMLA to be *ultra vires* and violative of Articles 14 and 21 of the Constitution. The Ld. SPP for ED had contended that the Explanation to Section 45 made it clear that the amendment had retrospective effect and that all offences were cognizable and non-bailable and in view of the amendment to Section 45 PMLA w.e.f. 19.04.2018, the twin conditions of bail had again come into existence and the said conditions were mandatory. Reliance was placed on the judgment of the Hon'ble Supreme Court in **Rohit Tandon** v. **Directorate of Enforcement** (2018) 11 SCC 46. However the said judgment was duly considered by the Hon'ble Supreme Court in **Nikesh Tarachand Shah** v. **Union of India (supra).**

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24. The Ld. SPP for ED had then placed reliance on the judgment of the Hon'ble High Court of Orissa in **Mohd. Arif** v. **Directorate of Enforcement, Govt. of India** BLAPL No.2607 of 2020 decided on 13.07.2020 to contend that the revival of the twin conditions under Section 45 PMLA had been upheld and in the said judgment, it was observed as under:

> *"23. While deciding a bail application, the provisions of Section 45 read with Section 24 which reverses the burden of proof and creates presumption of guilt required to be dislodged by the accused, will mandatorily apply. A similar view of the matter has been reiterated in Rohit Tandon Vs. Directorate of Enforcement. It may further be held that the reliance placed by the petitioner on Nikesh Tarachand Shah Vs. Union of India is untenable in view of the fact that Section 45 has been amended (by the Amendment Act 13 of 2018) whereby the original expression "imprisonment for a term of more than three years under Part A of the Schedule "(preamendment) now stands substituted by the expression "no person accused of an offence under this Act shall be released on bail or on his own bond". Thus, the contention raised by the petitioner with regard to Section 45 of the Act does not hold good. A similar sentiment has been echoed by the Apex Court in P. Chidambaram Vs. Directorate of Enforcement".*

It was thus, held that the provisions of Section 45 PMLA would mandatorily apply. It was submitted on behalf of ED that the Hon'ble Supreme Court had dismissed an SLP as withdrawn against the said judgment by its order dated 24.11.2020 in SLP Crl. 4878/2020. It was also submitted that a contrary view held in the case of **Upendra Rai** v. **Directorate of Enforcement (supra)** had been stayed by the Hon'ble Supreme Court in SLP (Crl) 2598/2020 vide an order dated 03.06.2020. Another contrary view taken in **Dr. Shivender Mohan Singh** v. **Directorate of Enforcement** 2020 SCC OnLine Del 766 wherein it was held that the twin conditions were not applicable had been stayed by the Hon'ble Supreme Court vide its order dated 31.07.2020 in SLP

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(Crl) No.3474/2020 titled **Directorate of Enforcement through Deputy Director** v. **Shivender Mohan Singh** wherein the Hon'ble Supreme Court had held as follows:

> *"until further orders, status quo with respect to release from jail be maintained and impugned judgment not to be treated as a precedent for any other case."*

It was thus held that the order of the Hon'ble High Court of Delhi was not to be treated as a precedent for any other case. It was also submitted that the Hon'ble Supreme Court of India in the case of **Directorate of Enforcement** v. **Parkash Gurbaxani (supra)** had in reference to the twin conditions under Section 45 PMLA held that "We are in agreement with the grievance that the High Court has not dealt with the mandatory twin requirements but has granted indulgence to the respondent(s) on extraneous consideration." Reference was then made to the order of the Hon'ble High Court of Delhi in **Bimal Kumar Jain and Naresh Jain** v. **Directorate of Enforcement (supra)** wherein it was held as follows:

> *"19. Therefore, merely because the entire section is not reenacted would be of no consequence since the provision even after being declared unconstitutional, does not get repealed or wiped out from the statute book and it only becomes unenforceable. Therefore, once the Parliament steps in and cures the defect pointed out by a Constitutional Court, the defect appears to be cured and the presumption of constitutionality is to apply to such provision.*
>
> *20. Thus, there is a presumption in favour of constitutionality since the amended section 45 (1) of the PMLA has not been struck down, (see) Nagaland Senior Govt. Employees Welfare Assn. Vs. State of Nagaland (2010) 7 SCC 643."*

It was submitted on behalf of ED that the petitioners in the said case thereafter filed a petition before the same bench for recalling and for seeking clarification in respect of

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paragraphs 19 and 20 by way of Criminal Misc. Application No.12579/2021 and the Hon'ble High Court vide order dated 14.09.2021 held that no clarification was required in the order dated 30.07.2021.

25. On the other end of the spectrum as well there are judgments which hold that the twin conditions are not applicable and reference may be made to the order of the Hon'ble High Court of Bombay in **Sameer M. Bhujbal** v. **Enforcement Directorate & Anrs.** dated 06.06.2018 in Bail Application No.286 of 2018 wherein the Hon'ble Bombay High Court, while discussing the effect of amendment in Prevention of Money Laundering Act, 2002 observed as under:

> *"7. At the outset, it is to be noted here that the Supreme Court in the case of Nikesh Shah (supra) has in unequivocal terms held in para 44 that 'we have struck down Section 45 of the Act as a whole'. It is further held by the Supreme Court in Para 45 that, we declare Section 45(1) of the Prevention of Money Laundering Act, 2002 in so far as it imposes two further conditions for release on bail to be unconstitutional as it violates Articles 14 and Article 21 of the Constitution of India.*
>
> *8. The Supreme Court in the case of* ***Brshiu Municipal Council, Barshi, District Solapur*** *v.* ***The Lokmanya Mills Limited, Barshi and another*** *reported in 1972 (2) SCC 857 has held that, when the Rule was struck down by this Court, the effect was Rule could never be deemed to have been passed. The Validating Act has also not revived or resurrected the Rule (2(c) therein) and therefore, the position was that there was no charging provision for imposition of house tax on the Mills, Factories or Buildings connected therein.*
>
> *9. It is to be noted here that, after effecting amendment to Section 45(1) of the PMLA Act the words "under this Act" are added to Sub Section (1) of Section 45 of the PMLA Act. However, the original Section 45(1) (ii) has not been revived or resurrected by the said Amending Act. The Ld. Counsel appearing for the accused and the learned Additional Solicitor General of India are not disputing about the said fact situation and in fact have conceded to the same. It is further to be noted here that, even Notification dated 29.03.2018*

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thereby amending Section 45(1) of the PMLA Act which came into effect from 19.04.2018, is silent about its retrospective applicability.

In view thereof, the contention advanced by the Ld. ASG cannot be accepted. It is to be further noted here that the original Sub-Section 45(1) (ii) has therefore neither revived nor resurrected by the Amending Act and therefore, as of today there is no rigor of said two further conditions under original Section 45(1) (ii) of PMLA Act for releasing the accused on bail under the said Act."

Reference may also be made to the order dated 18.02.2019 passed by the Hon'ble Supreme Court in **Assistant Director, ED** v. **Sameer M. Bhujbal**. It may be mentioned that a Division Bench of the Hon'ble High Court of Bombay in a recent judgment delivered on 28.01.2022 in **Ajay Kumar** v. **Directorate of Enforcement** in Criminal Application (BA) No.1149 of 2021 on a reference (on which reliance has been placed by the Ld. SPP for ED), has held that the twin conditions stand revived and would operate in view of the legislative intervention vide the Amendment Act of 2018 which on date was in force.

26. In **Dr. Vinod Bhandari** v. **Enforcement Directorate** 2018 SCC OnLine MP 1559 order dated 29.08.2018, the Hon'ble High Court of Madhya Pradesh had made the same observations as made in the case of **Sameer M Bhujbal (supra)** and the SLP filed against the said order had been dismissed. In **Kiran Prakash Kulkarni** v. **The Enforcement Directorate & Anr.** SLP (Crl.) 1698/19 which was decided on 11.04.2019 nearly after one year of the amendment of 2018, the Hon'ble Supreme Court had observed that the Hon'ble High Court had not taken into account the law laid down on the constitutional validity of Section 45 (1) of PMLA in **Nikesh**

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Tarachand Shah v. **Union of India (supra).** In **Mst. Ahilya Devi @ Ahilya Devi** v. **State of Bihar & Ors.** Criminal Miscellaneous No.41413 of 2019 order dated 28.05.2020 the Hon'ble Patna High Court had referred to the various judgments including the decision of the Hon'ble Supreme Court in **P. Chidambaram** v. **Directorate of Enforcement (supra)** on which reliance was sought to be placed by ED and held that the amendment in sub-Section (1) of Section 45 of the Act introduced after the decision in **Nikesh Tarachand Shah (supra)** did not have the effect of reviving the twin conditions for grant of bail, which had been declared *ultra vires* Articles 14 and 21 of the Constitution of India. Similar view was taken by Hon'ble High Court of Delhi in **D.K. Shivakumar** v. **Directorate of Enforcement** 2019 SCC OnLine Del 10691 (order dated 17.10.2019) and reference may be made to the order in **Directorate of Enforcement** v. **D.K. Shivakumar** SLP (Crl) No.10164/2019 dated 15.11.2019 of the Hon'ble Supreme Court whereby the Hon'ble Supreme Court had dismissed the petition filed by ED for cancellation of bail; as also the judgments in **Mohit Sharma** v. **Directorate of Enforcement** CRLMB-14691-2020 (order dated 05.02.2021 of Hon'ble Rajasthan High Court); **Babu Lal Aggarwal** v. **Enforcement Directorate** 2021 SCC OnLine Chh 269 and **Okram Ibobi Singh** v. **Directorate of Enforcement** 2020 SCC OnLine Mani 365. Further the Hon'ble High Court of Delhi in **Sai Chandrasekhar** v. **Directorate of Enforcement** 2021 SCC OnLine Del 1081 which is dated 05.03.2021 had held that the twin conditions mentioned in Section 45 of PMLA continued to be struck down as being

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unconstitutional and the amendment did not revive the twin conditions observing as under:

> *"17. Twin conditions mentioned in Section 45 of the PML Act continue to be struck down as being unconstitutional in view of the judgment of the Apex Court in the case of Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1. The amendment in Section 45 by the Finance Act 2018 is only with respect to substituting the term 'offence punishable for 3 years' with 'offence under this Act'. The said amendment does not revive the twin conditions already struck down by the aforesaid judgment.*
>
> *18. Since the twin conditions of bail in section 45 of the PML Act have been struck down by the Hon'ble Supreme Court and the same are neither revived nor resurrected by the Amending Act therefore, as of today there is no rigor of said two conditions under original Section 45(1)(ii) of the PML Act for releasing the Petitioner on bail. The provisions of section 439 of Cr.P.C. and the conditions therein will only apply in the case of the Petitioner for grant of bail."*

27. The Ld. SPP for ED had then placed reliance on a recent judgment of the Hon'ble Supreme Court in **The Asst. Director Enforcement Directorate** v. **Dr. V. C. Mohan (supra)** wherein it was observed as under:

> *"For the nature of order that we propose to pass suffice it to observe that the High Court considered the matter as if it was dealing with prayer for anticipatory bail in connection with ordinary offence under the Indian Penal Code. Indeed, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian Penal Code. That* ***does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play****.*
>
> *Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondent invited our attention to the dictum in paragraph 42 of the judgment in Nikesh Tarachand Shah vs. Union of India & Anr. reported in (2018) 11 SCC 1. The observations made therein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in*

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> *connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered – although the application is under Section 438 of Code of Criminal Procedure.*
>
> *Xxxx*
>
> *...It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind." (Emphasis supplied).*

Thus, as on 04.01.2022, the Hon'ble Supreme Court had held that the mandate of Section 45 of the PMLA has to be kept in mind. However, the Hon'ble Supreme Court in **Satender Kumar Antil** v. **Central Bureau of Investigation & Anr. o**rder dated 16.12.2021 observed as under:

> *"At this stage, suffice for us to say that while referring to category 'C', inadvertently, Section 45 of Prevention of Money Laundering Act (PMLA) has been mentioned which has been struck down by this Court. Learned ASG states that an amendment was made and that is pending challenge before this Court before a different Bench. That would be a matter to be considered by that Bench."*

Thus, the Hon'ble Supreme Court had noted that the challenge to the amendment was pending but had held that Section 45 of PMLA had been struck down by the Court. Reference may also be made to a recent judgment of the Hon'ble High Court of Delhi in **Rajeev Sharma** v. **Directorate of Enforcement** Bail Appln.3156/2021 decided on 07.01.2022 on which reliance has also been placed by the Ld. Counsel for the applicant/ accused No.8, wherein it was observed as under:

> *"In Nikesh Tarachand Shah (supra), the Hon'ble Supreme Court struck down the twin conditions mentioned in Section 45 of the PMLA. The amendment in Section 45 by the Finance Act 2018 is only with respect to substituting the term 'offence punishable for 3 years' with 'offence under this Act.' The said amendment does not revive the twin conditions already struck down by the aforesaid judgment as*

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> *held by this Court in Bail Appln.249/2019 titled as Upendra Rai Vs. Directorate of Enforcement. The twin conditions under Section 45 of the PMLA not being applicable, the triple test is required to be applied so as to consider grant of bail to the petitioner."*

Similar is the position in the instant case. In view of the fact that the Hon'ble Supreme Court had struck down the twin conditions in **Nikesh Tarachand Shah** v. **Union of India (supra)** and it has been held in several cases that the said twin conditions do not stand resurrected by the amendments to PMLA and has also been so held by the Hon'ble High Court of Delhi in **Rajeev Sharma** v. **Directorate of Enforcement (supra),** the rigors of the said two conditions would not apply while considering the application for bail and the present application has to be decided on the touchstone of Section 439 Cr.P.C.

28. In **Sai Chandrasekhar** v. **Directorate of Enforcement (supra)**, the Hon'ble High Court had culled out the conditions to be considered for grant of bail and it was laid down as under:

> *"19. At the stage of granting bail, detailed examination of evidence and elaborate documentation of the merits of the case should be avoided, so that no party should have the impression that his case has been prejudiced. (Niranjan Singh v. Prabhakar Rajaram Kharote (1980) 2 SCC 559.)*
>
> *20. 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, behavior and standing of*

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the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Prahlad Singh Bhati v. NCT, Delhi (2001) 4 SCC 280). 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."

29. Coming to the facts of the case, as noted above, the present ECIR emanates out of FIR No.84 dated 16.03.2017 registered by Bowbazar Police Station, Kolkata-12; FIR No.82, 83 and 84 all dated 01.04.2017 registered by Chitpore Police Station, Kolkata-2 under Sections 120-B, 406, 409 and 420 IPC which are scheduled offences under PMLA. It is alleged that Rs.444.67 crores approximately were raised from investors from different States in India by issuing redeemable preference shares by Alchemist Holdings Limited from 2005 onwards and Rs.1403 crores approximately were raised from investors from different States in India by Alchemist Township India Limited from the year 2012 onwards. It is further alleged that the funds so raised from the investors were not used for the intended purposes and were diverted/siphoned off into the group companies of Alchemist Group and were still outstanding to be paid back to the said two companies and had been used for the benefit of promoters/ Chairman/ Chairman Emeritus i.e. Kanwar Deep Singh and his family members. It is submitted that the applicant/ accused No.8 was/ is Director in various companies of Alchemist Group and was a close aide of Shri Kanwar Deep Singh; the day to day affairs i.e. administrative or financial affairs of the companies of Alchemist Group were/ are managed by him in association with Shri Kanwar Deep Singh and being an active Director, he was responsible for all the financial transactions or otherwise

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undertaken by the company and he was actively involved in the laundering of proceeds of crime.

30. It was the contention of the Ld. Counsel for the applicant/ accused No.8 that the applicant/ accused No.8 was only an employee and in fact in the complaint, it was stated that the applicant/ accused No.8 had stated that he was an employee. Per contra, ED in its reply had contended that the applicant/ accused No.8 in his statement dated 19.09.2019 had stated that later on he became Director in various group companies of Alchemist Group and his job was to oversee accounts and finance functions and that investigation had revealed that the day to day affairs i.e. administrative or financial affairs of the companies of Alchemist Group were/ are managed by him in association with Shri Kanwar Deep Singh and it was so argued as well. However, the actual role of the applicant/ accused No.8 would be a matter of trial.

31. It was the contention of ED that the applicant/ accused No.8 had committed an economic offence which had economically affected the public at large and as per the settled law, economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. It was argued that economic offences constituted the gravest offence against the society at large and reliance was placed on the judgments of Hon'ble Supreme Court in **State of Gujarat** v. **Mohanlal Jitamalji Porwal (supra)**, **Y.S. Jagan Mohan Reddy** v. **CBI (supra)**, **Anil Kumar Yadav** v. **State (NCT of Delhi) (supra)** and **Sunil Dahiya** v. **State (Govt. of NCT of Delhi) (supra)**. However, in this regard, reference may be made to the judgment of the

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Hon'ble Supreme Court in **P. Chidambaram** v. **Directorate of Enforcement** (2020) 13 SCC 791 wherein it was observed as under:

> *"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of the allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied.* ***In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.****"(emphasis supplied)*

Thus, it was held that even if the allegation was one of grave economic offence, it was not a rule that bail should be denied in every case. Even in the case of **Satender Kumar Antil** v. **Central Bureau of Investigation & Anr. o**rder dated 07.10.2021 by

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which the Hon'ble Supreme Court had carved out a separate category of offences D) titled "Economic offences not covered by Special Acts" it was observed:

> *"The suggestions of learned ASG which we have adopted have categorized a separate set of offences as "economic offences" not covered by the Special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in Sanjay Chandra vs. CBI, (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:*
>
> *a) seriousness of the charge and*
>
> *b) severity of punishment.*
>
> *Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor."*

While recognizing that economic offences do form a different nature of offences, it was held that economic offences are not completely taken out of the guidelines. In the instant case, the amount involved is no doubt more than Rs.1800 crores. However, the maximum punishment entailed under Section 4 PMLA is not less than 3 years but which may extend to seven years and also fine which may extend to Rs.5 lakhs and if the offence relates to any offence specified under paragraph 2 of Part A of the Schedule, the punishment may extend to ten years (which is not so in the present case).

32. Though it was contended by ED that the applicant/ accused No.8 did not cooperate during investigation, it is seen that he had appeared before ED and his statement was recorded on several dates. Nothing has been placed on record to show that the applicant/ accused No.8 is a flight risk. An apprehension was expressed that

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the applicant/ accused may tamper with the evidence. The present ECIR was registered in 2018 and the applicant/ accused No.8 was never arrested during investigation and joined the investigation. It was contended that further investigation is pending but the fact is that the complaint has also been filed in the present case and statements of witnesses have been filed with the same. In the case of **Sukhram** v. **State (CBI)** Crl. M. Appeal No.2407/1996 decided on 14.10.1996, similar apprehension expressed by the counsel for CBI that the accused could tamper with evidence was negatived by the Hon'ble High Court of Delhi. As such, the question of tampering with evidence would not arise nor of influencing the witnesses, moreso as the FIRs were registered way back in 2017 and even the present ECIR is of 2018. Moreover, if the applicant/ accused No.8 is at any stage required for investigation, he can be called to join the investigation. Further necessary conditions can be put in this regard and any such effort by the applicant/ accused No.8 may lead to cancellation of bail.

33. It is also pertinent that though the complaint has been filed, it is stated that the investigation is still going on and as such, the trial is likely to take considerable time. The co-accused K.D. Singh who was arrested during investigation has already been released on bail. It may also be mentioned that the applicant/ accused No.8 is aged about 68 years and is stated to be suffering from various illnesses including Parkinson's disease in respect of which documents were filed through email. The correctness or otherwise of the allegations as to whether the applicant/ accused No.8 had laundered the proceeds of crime can only be gone into during the course of trial.

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34. In view of the above discussion and considering the facts and circumstances of the case, the applicant/ accused No.8 Bikram Bhattacharya is admitted to bail on furnishing personal bond in the sum of Rs.5 lakhs with two sureties of the like amount with further conditions as under:

i) He shall not tamper with the evidence.

ii) He shall not try to contact or influence the witnesses.

iii) He shall join further investigation, if any, as and when called upon to do so by the prosecuting agency.

iv) He shall not leave the country without the permission of the Court and shall deposit his passport with the Court.

v) He shall furnish his mobile numbers and e-mail IDs used by him to the prosecuting agency and shall also inform the change in mobile numbers and e-mail IDs, if any, to the IO.

Accordingly the application for bail is allowed. Copy of the order be sent by email to the Ld. Counsel for the applicant/ accused No.8 and also to the Ld. SPP for Enforcement Directorate.

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ANNOUNCED IN THE OPEN COURT ON THIS 14th DAY OF FEBRUARY, 2022

(GEETANJLI GOEL)
ASJ/SPL. JUDGE (PC ACT) (CBI)-24
(MPS/MLAS CASES),
ROUSE AVENUE DISTRICT COURT,
NEW DELHI