

**ED v. Jatinder Pal Singh**  
**ECIR/DLZO-I/58/2021 dated 27.12.2021**  
**FIR No. 200/2021**  
**PS EOW**  
**U/s 120B r.w Section 420/468/471 IPC**

17.01.2022

Present: Sh. Zoheb Hussain, Ld. Special Counsel for ED through VC.

Sh. N. K. Matta, Ld. SPP for ED through VC.

Sh. Amardeep, EO, ED through VC.

Sh. H. S Bhullar and Sh. Shikhar Sharma, Ld. Counsel for applicant/accused through VC.

Proceedings done through video conferencing.

It is certified that link was working properly and no grievance was agitated by either of the counsel in this regard.

1. Liberty is a sacrosanct constitutional value and the Courts of this country are duty bound to act as sentinel to protect Citizens Liberty against the wrath of State sceptre.
2. By way of the instant order, I propose to dispose of an application u/s 439 CrPC moved on behalf of applicant/accused Jatinder Pal Singh for grant of bail.

**Brief Overview :-**

3. Based upon an FIR registered with Central Bureau of Investigation, Directorate of Enforcement ( hereinafter referred to as "ED") commenced with an investigation against the applicant/accused Jatinder Pal Singh by registering ECIR No. 55/2010. Accused Jatinder Pal Singh was arrested in that ECIR and investigation in that matter led to filing of complaint before Ld Special Judge,still reported to be pending trial before the Rouse Avenue Courts. During the course of further investigation, in the said ECIR, a raid was conducted at the

residence of the house of accused Jatinder Pal Singh on 10.02.2020 by ED. The raid led to seizure of certain documents whereby it was revealed that as per books of accounts of M/s Nau Nidh Overseas Pvt. Ltd., wherein accused is a director, from FY 2014-15 to FY 2016-17, purchased 'fabric' worth Rs.6.60 Crore from M/s Astonishing Sales Pvt. Ltd. However, during investigation, the seller company (i.e. M/s Astonishing Sales Pvt. Ltd.) was found untraceable. The postal authorities and the notice server both reported that M/s Astonishing Sales Pvt. Ltd. was untraceable at the given address. As per the website of the Ministry of Corporate Affairs (MCA), M/s Astonishing Sales Pvt. Ltd's Annual General Meeting (AGM) was last held on 30th September, 2014, its balance sheet was last filed on 31st March, 2014 and the present status of the company (for e-filing) is "strike off". However, M/s Nau Nidh Overseas Pvt. Ltd. booked purchases from M/s Astonishing Sales Pvt. Ltd. till FY 2016-17. Therefore, the transactions held between M/s Nau Nidh Overseas Pvt. Ltd. and M/s Astonishing Sales Pvt. Ltd. were concluded to be fictitious and based on forged invoices. It was further revealed that M/s Nau Nidh Overseas Pvt. Ltd. used the forged documents/ invoices to make bogus entries in its books of accounts and used the same as genuine. Further, during analysis of seized Tally Data of M/s Nau Nidh Overseas Pvt. Ltd., it was noticed that from FY 2013-14 to FY 2016-17, M/s Nau Nidh Overseas Pvt. Ltd. sold fabric worth Rs.12.23 Crore to M/s Shree Shyam Dhani Trading Co. (prop. Sh. Sanjay Kumar). However, during investigation, the purchaser proprietorship concern (i.e. M/s Shree Shyam Dhani Trading Co.) was found untraceable. Summons dispatched to the available addresses of M/s Shree Shyam Dhani Trading Co. through special messenger were returned back with the report of non-existence of the firm on the available addresses. The postal authorities also confirmed that the firm was untraceable at the given address. During analysis of the seized material for FY 2015-16, 2016-17 & 2017-18, it was observed that during

this period, M/s Nau Nidh Overseas Pvt. Ltd. showed purchase of (5,12,009 mtr long) fabric worth Rs. 5.11 Crores (@ Rs.99.84 per meter) mainly from M/s Astonishing Sales Pvt. Ltd. despite it being struck off and sold the entire quantity of fabric for Rs.10.45 Crores (@ Rs. 204.02 per metre) mainly to M/s Shree Shyam Dhani Trading Co. On the basis of these transactions with these shell entities, M/s NauNidh Overseas Pvt. Ltd. claimed a total profit of Rs.5.33 Crores (with Gross Profit (GP) @ 51% which is about 05 times higher than the normal prevailing rate of GP in this business i.e. @ 10-12%). In view of the above, M/s Shree Shyam Dhani Trading Co. was concluded to be a shell entity and transactions of M/s Nau Nidh Overseas Pvt. Ltd. with this firm were found to be fake and forged which have been used by M/s Nau Nidh Overseas Pvt. Ltd. as genuine. It is alleged that the above mentioned purchase and sale of M/s Nau Nidh Overseas Pvt. Ltd. involving M/s Astonishing Sales Pvt. Ltd. and M/s Shree Shyam Dhani Trading Co. were bogus and were rooted in forged documents which were used by M/s Nau Nidh Overseas Pvt. Ltd. and its directors as genuine to acquire wrongful gain.

Consequently, the matter was reported to EOW of Delhi Police by ED for registration of FIR, alleging the commission of offence u/s 120B r/w 420/468/471 of IPC.

Eventually, the instant ECIR bearing no. 58/2021 was registered by ED alleging the commission of offence of money laundering u/s 3 punishable u/s 4 of the Prevention of Money Laundering Act 2002 (hereinafter referred to as PMLA) on the ground that from the seized material it was revealed that the suspected entities/persons have directly/indirectly made illegal earnings arising as a result of criminal activities related to scheduled offences and acquired funds, which are proceeds of crime and thus are required to be traced out. Accordingly, the investigation was carried out by ED and accused was arrested on 31.12.2021.

The defence has now moved the instant bail application

praying for release of the applicant/accused on bail.

4. It is forcefully argued by Ld. Senior Advocate Sh. Sudhir Nandrajog that the instant ECIR is nothing but gross abuse of process of law. It is submitted that perturbed by the bail granted to the accused in case CC No. 55/2010 and the subsequent rejection of the application for cancellation of bail, ED has implicated the accused in a false and concocted story. It is submitted that when the application for cancellation of bail of the accused Jatinder Pal Singh in ECIR No. 55/2010 was rejected, ED, mischievously, in order to frustrate the bail order foisted a false and fabricated case against the applicant/accused. It is forcefully argued by Ld. defence counsel that ED has wrongly, with an oblique intent, claimed that M/s Astonishing Sales Pvt. Ltd and M/s Shree Shyam Dhani Trading Company are shell companies and as a matter of fact both the companies are existing and duly paying their taxes. It is submitted that as per ECIR No. 55/2010, the entire Proceeds of Crime qua that case is Rs.2 crores, which already stood confiscated and no proceeds of crime beyond that amount as such is involved in the instant matter and thus the instant ECIR could not have been validly registered by ED. It is submitted that since there are no proceeds of crime in the instant matter, no case is made out against the applicant/accused Jatinder Pal Singh and the arrest in the instant matter is absolutely illegal. It is submitted that the activities ascribed to the accused in the instant case is only to identify layering, projection etc of the proceeds of crime of ECIR No. 55/2010 and a different ECIR for the identification of same proceeds of crime is not legally permissible. It is further argued by Ld. defence counsel that applicant/accused has been elaborately questioned in sufficiently long custodial interrogations and yet till date, the source of funds is not traceable. It is submitted that unless the source is revealed by ED, the funds involved cannot be tainted as Proceeds of Crime. It is thus argued that this is a fit case

wherein the continued detention of the accused is legally not tenable. It is contended that the accused is neither inclined to flee from the course of justice nor he is in a position to influence the course of investigation as the allegedly incriminating material has already been seized and ED is no longer seeking custody remand of the accused and investigation qua him stands concluded.

5. It is additionally argued that applicant/accused herein is a chronic heart patient and his condition becomes all the more vulnerable on account of the rising covid-19 cases in the jail. It is thus prayed that applicant/accused Jatinder Pal Singh deserves to be admitted on bail.
  
6. Ld. Special Counsel Sh. Zoheb Hussain for ED has vehemently opposed the bail application arguing that it is a settled law that economic offences constitute a class apart and needs to be visited with a different approach while granting bail. It is submitted that mandatory twin conditions for grant of bail u/s 45 of PMLA having been revived by way of Finance Act, 2018 will apply and bail can only be granted only if it is satisfied that there are reasonable grounds believing that accused is not guilty of such offences. It is further submitted that the arrest of applicant/accused has been made as per the mandate of Section 19 of PMLA and the search conducted at the house of the applicant/accused was within the ambit of provisions of PMLA, 2002. It is submitted that pursuant to summons dated 29.12.2021, applicant/accused appeared before the investigating agency and his statement was recorded u/s 50 of PMLA but he chose to remain non-cooperative in his statement and concealed true facts and after observing the provisions u/s 19 PMLA and guidelines of Hon'ble Apex Court in the matter of **D. K. Basu v. State of West Bengal**, he was arrested on 31.12.2021.

7. It is further submitted by Ld. Special Counsel that applicant/accused made futile attempts to link the present FIR with some other ECIR investigated by ED as both the ECIRs are entirely separate and independent. It is submitted that ECIR no. 55/2010 is based on CBI's FIR under P. C. Act whereas the present ECIR is based on FIR No. 200/2021 of P.S EOW. It is submitted that since both the cases are distinct and independent, hence, both the cases are separately registered and investigated by ED. It is submitted that provisional attachment order or prosecution complaint or any other action in ECIR no. 55/2010 does not and cannot affect the present ECIR and therefore, the question of double jeopardy does not arise at all.
8. It is further submitted that the investigation conducted so far has revealed that applicant/accused and his mother Smt. Charanbaljit Kaur were directors of M/s Nau Nidh Overseas Pvt. Ltd and the said company purchased fabrics worth Rs.6.60 crores for the period from 2014-2015 to 2016-2017 from M/s Astonishing Sales Pvt. Ltd which is reported to be a shell company. It is submitted that the transactions were infact sham and never took place and were shown only on the basis of forged/bogus bills. It is submitted that applicant/accused prepared fake/bogus bills to show sale of fabrics which actually never took place from M/s Nau Nidh Overseas Private Limited to M/s Shree Shyam Dhani Trading Co and six other prima facie suspected shell entities to illegally earn proceeds of crime in the form of commission on the fake transactions @ 5 to 8 per cent of the bill amount. It is further submitted that for the financial year 2012-2013 to 2017-2018, M/s Nau Nidh Overseas Private Limited prepared fake/bogus bills worth Rs.17.35 crores without having any genuine business transactions. It is submitted that proceeds of crime directly linked to the offence under investigation so far computes to Rs.1.39 crores. It is submitted that investigation in the present case is at nascent

stage and the amount of proceeds of crime is likely to increase during the course of investigation.

9. It is further submitted that so far as the source of proceeds of crime is concerned, applicant/accused forged bills of M/s Astonishing Sales Private Limited to show bogus purchase of fabrics from it and prepared fake bills showing sale of fabrics which actually never took place from M/s Nau Nidh Overseas Private Limited to M/s Shree Shyam Dhani Trading Co. and other suspected shell companies.
10. It is submitted that applicant/accused has projected the proceeds of crime acquired by him as untainted. It is submitted that the investigation conducted so far has revealed that proceeds of crime acquired by the accused were either declared in ITR returns as consultancy fees or transferred into bank accounts of accused in the form of profit from trading of shares.
11. In support of his submissions, Ld. Defence counsel has placed reliance upon the judgment in the matter of *State of Orissa v. Ganesh Chandra Jew (2004) 8 SCC 40*, *Enforcement directorate v. Dr. V. C. Mohan SLP (Crl) 8441/2021 decided on 04.01.2022*, *Bimal Kumar Jain and Naresh Jain v. Directorate of Enforcement Bail Application no. 112/2021 and 122/2021 dated 30.07.2021 and 14.09.2021*, *Bimal Kumar Jain v. Directorate of Enforcement SLP (C ) 7942/2021 dated 04.01.2022*, *Parkash Gurbaxani v. Directorate of Enforcement CRM-M-12901/2021 dated 02.06.2021*, *Directorate of Enforcement v. Parkash Gurbaxani etc SLP (Crl) 7666-7667/2021 dated 20.10.2021*, *Upendra Rai v. Directorate of Enforcement 2019 SCC OnLine Del 9086*, *Directorate of Enforcement v. Upendra Rai SLP (Crl) Dy. No. 5150/2020 dated 03.06.2020*, *Dr. Shivendra Mohan Singh v. Directorate of Enforcement 2020 SCC OnLine Del 766*, *Directorate of Enforcement v. Shivender Mohan Singh SLP (Crl) No.*

*3474/2020 dated 31.07.2020, Mohammad Arif v. Directorate of Enforcements 2020 SCC OnLine Ori 544, Mohammad Arif v. Directorate of Enforcement SLP (Crl) No. 4878/2020 dated 24.11.2020, Suresh N. Patel v. State (ED) CRL OP (MD) No. 7966/2021 dated 28.06.2021, Suresh N. Patel v. State of Tamil Nadu SLP (Crl) 5696-5697/2021 dated 03.09.2021 and Rohit Tandon v. Directorate of Enforcement(2018) 11 SCC 46.*

12. 'Proceeds of Crime' is sine qua non for commission of offence of money laundering. Since the stand of ED with respect to Proceeds of Crime in the instant matter was very hazy and wavering, therefore, this court was constrained to ask for clarifications regarding the stand of ED with respect to Proceeds of Crime by way of an affidavit. Consequently, it was claimed on behalf of ED that during the investigation conducted so far, it is revealed that the accused Jatinder Pal Singh forged bills of Astonishing Sales Private Limited to show bogus purchase of fabrics from it and prepared fake/bogus bills to show sale of fabrics, which actually never took place from his company M/s Nau Nidh Overseas Private Limited to M/s Shree Shyam Dhani Trading Co and six other suspected shell entities to illegally earn proceeds of crime in the form of commission on these fake transactions @ 5% to 8% of the bill amount. As per the seized material analysed so far, from FY 2012-2013 to 2017-2018, M/s Nau Nidh Overseas Private Limited prepared fake bogus bills worth Rs.17.35 crores without having any genuine business transactions and this included fake/bogus sale bills of Rs.12.23 crore raised on M/s Shri Shyam Dani Trading Company for sham sale of fabrics. It was forcefully argued by Ld. Special Counsel for ED that the proceeds of crime in the instant matter is infact Rs.1.39 crores on account of commission paid by M/s Shree Shyam Dhani Trading Co to applicant/accused.

13. In rebuttal, it was forcefully argued by Ld. Senior Advocate for

the applicant accused that having failed to detect the source of money, ED has now come up with an altogether different theory. It is submitted that ED is not only busy changing goal posts but even the proceeds of Crime, which pursuant to a detailed custodial interrogation and investigation should have naturally increased, has now decreased in the instant matter. It is pointed out that initially, during the course of arguments in the remand applications, it was informed to this court that the proceeds of crime in the instant matter was more than Rs.10.0 crores and that is why, the ECIR came to be registered in the instant matter, whereas during the course of bail arguments, the proceeds of crime was revealed to be Rs.2.43 crores and now it has been alleged that the proceeds of crime have further fallen down to Rs.1.39 crores. It is submitted that ordinarily, as investigation progresses in a money laundering case, the proceeds of crime tends to grow whereas proceeds of crime in the instant matter is gradually diminishing and the reasons are not far to fathom. It is submitted that ED is now finding it ensnared in its own false and cooked up story. It is submitted that the theory of 'generation of commission' is not only inconsistent with ED's own stand but is infact a mischievously sinister design to implicate an innocent citizen in a false and fabricated case and deprive him of his liberty. It is submitted that this court should come as a savior protecting the liberty of the applicant/accused. It is submitted that a very onerous duty is cast upon the ED authorities while choosing to arrest an accused u/s 19 of PMLA. It is submitted that ED authorities have violated the provisions of Section 19 of PMLA with impunity in the instant matter and the arrest as such is illegal in the eyes of law. It is thus once again forcefully argued that the accused Jatinder Pal Singh deserves to be admitted on bail.

14. I have heard and considered the rival contentions made by Ld. counsel for both the parties and also carefully gone through the material available on record including the case file made

available to me by the IO.

15. Before proceeding to deal with the issue on merits, in pains, I must admit at the very outset that the conduct of ED in the instant matter is highly disappointing, if not deplorable as suggested by the defence. In its zeal to ensure the sustained detention of the applicant/accused, ED seems to have thrown out the baby with the water.
16. The case of ED as set out in the ECIR No. 58/2021 is that applicant/accused purchased cloth worth Rs.6.60 from M/s Astonishing Private Limited and sold the same to M/s Shree Shyam Dhani Trading Company, a proprietorship concern of one Sanjay Kumar for a sum of Rs 12.23 Crores. It was claimed that both the said entities i.e. M/s Astonishing Private Limited and M/s Shree Shyam Dhani Trading Company are sham companies and were found to be not traceable.
17. In my considered opinion, the activities ascribable to applicant/accused are merely layering activities and applicant accused appears to be a mere cog in the wheel. Now under such circumstances, the focus of investigation should infact be the 'source of money' used to purchase the fabric, so as to decide the crucial issue as to if the money came from a tainted source or not. However, unfortunately, instead of focusing upon the source of money, accused Jatinder Pal Singh is the focus of investigation in the instant matter. Having failed to detect the source of money and apprise this court as to if the same came from a tainted source or not, ED, during the course of arguments improved upon its own case and came up with an altogether different contention that the 'commission generated' by applicant/accused on account of fabric shown to have sold off by them to M/s Shree Shyam Dhani Trading Company is infact the proceeds of crime in the instant case. However, if the said contention is accepted to be correct and the proceeds of crime in the instant matter is admitted to be the commission

generated, the very arrest of applicant/accused in the case at hand becomes seriously questionable.

18. As per Section 19 of the PMLA, competent officer is required to record its prima facie satisfaction that accused is guilty of offence of money laundering and thereafter sanction the arrest of the accused. Competent officer under that section is further duty bound to inform the accused about the grounds of arrest. The duty cast under Section 19 of PMLA is far more onerous as compared to arrest in an ordinary crime.
19. In the case at hand, the applicant/accused was arrested by ED on **31.12.2021** and the permission to arrest was granted on 30.12.2021. The consistent stand of ED throughout the case was that M/s Shree Shyam Dhani Trading Company, which is a proprietorship concern belonging to one Sanjay Kumar, is not traceable. However, subsequently, **on 12.01.2022**, said Sanjay Kumar was examined by the IO wherein it was revealed that some commission was generated , therefore, the factum of generation of commission came into the notice of ED only on 12.01.2022 and not before that whereas the permission to arrest in the instant matter was accorded on 30.12.2021 itself. A fact which came into the notice of ED on 12.01.2022 only could obviously not have been a reason to grant permission to sanction the arrest of accused. Therefore, it is apparent that either the source of money till date remains undetected or the contention now adopted by ED regarding the proceeds of crime is merely an after thought and the arrest of the accused was absolutely unjustified on 31.12.2021. In either case, I am of the considered opinion that applicant/accused Jatinder Pal Singh deserves to be admitted on bail. Reliance is placed upon the case of **Rajbhushan Omprakash Dixit v. Union of India & Anr W. P. (Cri) No. 363/2018 and Cri. M. A No. 2151/2018 decided on 19.02.2018** wherein a Division Bench of Hon'ble Delhi High Court, while granting bail to the accused therein for non-compliance of section 19 of PMLA by ED, has observed as under:

**" Powers of arrest under the PMLA**

42. Even as regards the grounds of arrest it must be noted at the outset that in the present case the DOE has admittedly in fact not followed Section 19 of the PMLA.

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45. Although the file was not produced before the Court, even if the above assertion regarding reasons to believe having been recorded, is taken to be present in the file, it is difficult to believe that without the participation of the Petitioner, the DOE could have concluded that he is guilty of the offence of money laundering. However, at this stage the Court would not want to further comment on this aspect of compliance with the requirements of Section 19 of the PMLA which, as rightly pointed out by Mr. Chaudhary, places a higher onus on the DOE than even the Cr PC.

46. The power of arrest specified in Section 19 of the PMLA undoubtedly displaces the corresponding powers of arrest vested in a police officer under the Cr PC. Section 19 PMLA requires certain conditionalities to be fulfilled prior to the arrest. In particular the reasons to believe have to be recorded in writing in the file. The second aspect of Section 19 of PMLA is the communication of the grounds of arrest. Although Section 19 uses the word, „inform“ in the context in which it appears a mere communication of the grounds would, in the considered view of the Court, not suffice. Merely reading out the grounds of arrest to the detenu would defeat the very object of requiring the reasons to believe to be recorded in writing and communicated to the detenu. As explained the Constitution Bench of the Supreme Court in C.B. Gautam (supra), in the context of the IT Act, the obligation to record reasons and convey the same to the party concerned operates as a deterrent against possible arbitrary action by the quasi-judicial or the executive authority invested with judicial powers. Also it is not understood why the DOE did not want to provide the detenu the copy of grounds of arrest as recorded by it. It would not prejudice the DOE in any way.

47. The Notes on Clauses accompanying the PML Bill, 1999 clarified What was intended as follows:

“Clause 18 proposes to empower the Director, the Deputy Director, the Assistant Director or any other authorized officer to arrest a person if he has reason to believe that the person is guilty of an offence under the proposed legislation. Necessary safeguards such as furnishing the grounds of arrest and production before the Judicial Magistrate or a Metropolitan Magistrate within twenty-four hours are also sought to be provided.” (emphasis supplied)

48. Rules 2 (1) (g) and (h) of the PMLA Arrest Rules define “material” and “order” respectively. Rule 2 (1) (h) states that „order“ means the order of arrest “and includes the grounds of such arrest under sub Section (i) of Section 19 of the Act.” The arrest order is specified in Form III. In terms of Rule 6 it is required to be signed by the arresting officer while exercising the power under Section 19 (1) PMLA. Form III itself indicates that the arrest order is to be communicated to the person arrested. The foot of Form II read thus:

“To

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[Name and complete address of the person arrested]”

49. When Form III uses the word „order“ that has to include, as per Rule (1) (h) of the PML Arrest Rules, the grounds of arrest. The basic idea is not merely to inform the person arrested of the grounds of arrest but to also furnish him a copy thereof. Even Rule 3 (1) of the PML Arrest Rules requires the order and material to be forwarded to the Adjudicating Authority.

50. Admittedly the arrest of the Petitioner in the present case has taken place without following Section 19 PMLA read with the relevant PML Arrest Rules and Form III. The grounds of arrest were furnished not “as soon as may be” as mandated by Section 19 (1) PMLA but only along with the short reply filed on 13th February 2018 more than two weeks after the arrest. Also, it is doubtful that the said grounds would have been furnished if the present petition had not been filed. That prima facie renders the arrest of the Petitioner illegal. Added to this is the failure to follow the detailed guidelines pertaining to arrest as laid down in D.K. Basu v. State of West Bengal (supra) which as clarified by the Supreme Court in para 37 (SCC) of the said decision applies with equal force to “other governmental agencies” which expressly included the DOE.

51. Here again the Court is conscious that a Division Bench of this Court has reached the opposite conclusion in Moin Akhtar Qureshi v. Union of India (supra) and held that the words —as soon as may be— Section 19 (1) PMLA implies that the grounds of arrest need not be supplied at the time of arrest and the failure to do so would not render the arrest illegal. This Court is unable to subscribe to that view in view of the above discussion. It appears to this Court that there can ordinarily be nothing secret, qua the detenu, about his own grounds of arrest.

52. Further, in the present case, the grounds of arrest enclosed with the short affidavit of the DOE, filed in response to the writ petition, runs into four pages. It is not the case of the DOE that anything in the grounds of arrest is covered by the Official Secrets Act or any such law prohibiting it from being communicated. The basic idea is for the Petitioner to know why he has been arrested. How could he be expected to apply for bail or oppose a request of the DOE for extending his remand without knowing the grounds of his arrest? How would the object of Section 19 (1) PMLA be served if the four page grounds of arrest are merely read out to him or offered for inspection without providing a copy thereof? Why the DOE should fight shy of providing the Petitioner the grounds of arrest to the Petitioner at the time of his arrest is not clear at all...”

20. Now, evidently, in the case at hand the IO came to know about

the 'Proceeds of Crime' on 12.01.2022 only, when he examined Sh Sanjay Kumar (Proprietor of M/s Shree Shyam Dhani). In the Note dated 30.12.2021( whereupon the permission to arrest was granted),in the first para itself, IO claims that Applicant accused is concealing 'his actual source of income' and nowhere in the succeeding paragraphs there is any mention of proceeds of crime generated on account of 'Commission' paid by M/s Shri Shyam Dhani Trading Co. to the applicant accused. And thus, in the absence of 'proceeds of crime', arrest sanctioning authority ( which I am informed by the IO is Special Director ED) would have no reasons to believe that applicant accused has been guilty of an offence punishable under PMLA , leave aside the communication of the grounds of arrest to the applicant. It appears that in the case at hand arrest preceded the grounds of arrest. Consequently, the arrest of the applicant/accused in itself comes under a scanner.

21. Elaborating upon the issue of ' Human Liberty and Role of courts', including the district courts, Hon'ble Apex Court in the matter of **Arnab Manoranjan Goswami v. The State of Maharashtra & ors Criminal Appeal No. 742-744/2020 D.O.D 27.11.2020** has observed as under:-

**J Human liberty and the role of Courts**

60. Human liberty is a precious constitutional value, which is undoubtedly subject to regulation by validly enacted legislation. As such, the citizen is subject to the edicts of criminal law and procedure. Section 482 recognizes the inherent power of the High Court to make such orders as are necessary to give effect to the provisions of the CrPC —or prevent abuse of the process of any Court or otherwise to secure the ends of justicell. Decisions of this court require the High Courts, in exercising the jurisdiction entrusted to them under Section 482, to act with circumspection. In emphasising that the High Court must exercise this power with a sense of restraint, the decisions of this Court are founded on the basic principle that the due enforcement of criminal law should not be obstructed by the accused taking recourse to artifices and strategies. The public interest in ensuring the due investigation of crime is protected by ensuring that the inherent power of the High Court is exercised with caution. That indeed is one – and a significant - end of the spectrum. The other end of the spectrum is equally important: the recognition by Section 482 of the power inhering in the High Court to prevent the abuse of process or to secure the ends of justice is a valuable safeguard for protecting liberty. The Code of Criminal Procedure of 1898 was

enacted by a legislature which was not subject to constitutional rights and limitations; yet it recognized the inherent power in Section 561A. Post Independence, the recognition by Parliament of the inherent power of the High Court must be construed as an aid to preserve the constitutional value of liberty. The writ of liberty runs through the fabric of the Constitution. The need to ensure the fair investigation of crime is undoubtedly important in itself, because it protects at one level the rights of the victim and, at a more fundamental level, the societal interest in ensuring that crime is investigated and dealt with in accordance with law. On the other hand, the misuse of the criminal law is a matter of which the High Court and the lower Courts in this country must be alive. In the present case, the High Court could not but have been cognizant of the specific ground which was raised before it by the appellant that he was being made a target as a part of a series of occurrences which have been taking place since April 2020. The specific case of the appellant is that he has been targeted because his opinions on his television channel are unpalatable to authority. Whether the appellant has established a case for quashing the FIR is something on which the High Court will take a final view when the proceedings are listed before it but we are clearly of the view that in failing to make even a prima facie evaluation of the FIR, the High Court abdicated its constitutional duty and function as a protector of liberty. Courts must be alive to the need to safeguard the public interest in ensuring that the due enforcement of criminal law is not obstructed. The fair investigation of crime is an aid to it. **Equally it is the duty of courts across the spectrum – the district judiciary, the High Courts and the Supreme Court – to ensure that the criminal law does not become a weapon for the selective harassment of citizens. Courts should be alive to both ends of the spectrum – the need to ensure the proper enforcement of criminal law on the one hand and the need, on the other, of ensuring that the law does not become a ruse for targeted harassment. Liberty across human eras is as tenuous as tenuous can be. Liberty survives by the vigilance of her citizens, on the cacophony of the media and in the dusty corridors of courts alive to the rule of (and not by) law. Yet, much too often, liberty is a casualty when one of these components is found wanting.**

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.. The doors of this Court cannot be closed to a citizen who is able to establish prima facie that the instrumentality of the State is being weaponized for using the force of criminal law. Our courts must ensure that they continue to remain the first line of defense against the deprivation of the liberty of citizens. Deprivation of liberty even for a single day is one day too many. We must always be mindful of the deeper systemic implications of our decisions.

62 It would be apposite to extract the observations made, albeit in a dissenting opinion, by one of us (Dhananjaya Y Chandrachud, J.) in a decision of a three judge bench in Romila Thapar vs Union of India:

“The basic entitlement of every citizen who is faced with allegations of criminal wrongdoing, is that the investigative process should be fair. This is an integral component of the guarantee against arbitrariness under Article 14 and of the right to life and personal liberty under Article 21. If this Court were not to stand by the principles which we have formulated,

we may witness a soulful requiem to liberty.”

63 More than four decades ago, in a celebrated judgment in **State of Rajasthan, Jaipur vs Balchand**, Justice Krishna Iyer pithily reminded us that the basic rule of our criminal justice system is bail, not jail’. The High Courts and Courts in the district judiciary of India must enforce this principle in practice, and not forego that duty, leaving this Court to intervene at all times. We must in particular also emphasise the role of the district judiciary, which provides the first point of interface to the citizen. Our district judiciary is wrongly referred to as the ‘subordinate judiciary’. It may be subordinate in hierarchy but it is not subordinate in terms of its importance in the lives of citizens or in terms of the duty to render justice to them. High Courts get burdened when courts of first instance decline to grant anticipatory bail or bail in deserving cases. This continues in the Supreme Court as well, when High Courts do not grant bail or anticipatory bail in cases falling within the parameters of the law. The consequence for those who suffer incarceration are serious. Common citizens without the means or resources to move the High Courts or this Court languish as undertrials. Courts must be alive to the situation as it prevails on the ground – in the jails and police stations where human dignity has no protector. As judges, we would do well to remind ourselves that it is through the instrumentality of bail that our criminal justice system’s primordial interest in preserving the presumption of innocence finds its most eloquent expression. The remedy of bail is the —solemn expression of the humaneness of the justice system . Tasked as we are with the primary responsibility of preserving the liberty of all citizens, we cannot countenance an approach that has the consequence of applying this basic rule in an inverted form. We have given expression to our anguish in a case where a citizen has approached this court. We have done so in order to reiterate principles which must govern countless other faces whose voices should not go unheard...

22. Evidently, Hon,ble Apex Court has reminded district judiciary of its solemn and pious role to protect the citizens against state excess.
23. Before conclusively determining the issue of bail, it would also be apt to deal with the technical objections of the Ld. Special Counsel for Edin opposing the bail plea. The Ld. Special Counsel has opposed the bail of the applicant/accused on the following counts :-
  - I. That the investigation is at a nascent stage.
  - II. The offence alleged is an economic offence.
  - III. The twin condition prescribed u/s 45 of PMLA stands revived in the wake of amendment in the law.

24. Let us deal with the contentions of Ld. Special Counsel in seriatim.

**I. That the investigation is at a nascent stage.**

25. ED made a conscious choice to arrest the accused without doing proper preliminary enquiry. Having made a conscious choice to place the cart before the horse and apprehend the accused upon the basis of half baked facts, ED cannot cry hoarse now that the investigation is at a nascent stage. The contention of defence that the ED seems to be perturbed by the bail granted to the accused by the Rouse Avenue Court cannot be brushed aside lightly as ED seems to have acted in haste and the focus of investigation seems to be applicant/accused and not the crime or the actual criminals. Under such circumstances, ED cannot claim that the investigation is at nascent stage. More so, the raid in the instant matter was carried out on 10.02.2020 and the accused has been remanded to ED custody for a sufficiently long period. Now the continued detention of applicant/accused seems to be absolutely unwarranted.

**II. The offence alleged is an economic offence.**

26. There is no rule of law or prudence which warrants that the economic offenders shall never ever be granted bail. Reliance is placed upon the observations made by Hon'ble Apex Court in the matter of in **P. Chidambaram v. Directorate of CNR No.DLCT11-000084-2021 Page No.52 of 56 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)*

### **III. The twin condition prescribed u/s 45 of PMLA stands revived in the wake of amendment in the law.**

27.It is submitted by Ld. Special Counsel for ED that post amendment in the law, the twin conditions as prescribed u/s 45 of PMLA stands revived and resurrected. In support of his

submissions, he placed heavy reliance upon *Enforcement directorate v. Dr. V. C. Mohan SLP (Crl) 8441/2021* decided on 04.01.2022 and judgment of Hon'ble Delhi High Court in the matter of *Bimal Kumar Jain and Naresh Jain v. Directorate of Enforcement Bail Application no. 112/2021 and 122/2021* dated 30.07.2021 and 14.09.2021.

In my considered opinion in the matter of Dr. V. C Mohan (supra), Hon'ble Apex Court has remanded back the matter to the Hon'ble High Court to reconsider the anticipatory bail granted to the accused therein and consider the mandate of Section 45 of PMLA. It has neither decided nor observed that the twin conditions prescribed u/s 45 of PMLA stands revived.

Hon'ble Delhi High Court in the matter of **Sai Chandrasekhar vs Directorate of Enforcement (Bail Appln. No. 3791/2020 Decided on March 5, 2021)**, has observed 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 Nishesh Tarachand Shah vs. 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 for 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(I)(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.'

28. Further, In the matter of **Amarendra Dhari Singh vs Directorate Of Enforcement BAIL APPLN. 2293/2021 and CRL.M.A. 9959/2021** decided on 5 August, 2021\_Honble Delhi High Court has once again observed that Section 45 continues to remain unconstitutional and with respect to the order in the matter of *Bimal Kumar Jain and Naresh Jain v. Directorate of Enforcement (supra)* it has been explained that the bail in that case was denied

on account of perimeters prescribed u/s 439 CrPC and not u/s 45 of PMLA. Further, recently, Hon'ble Delhi High Court in the matter of **Rajeev Sharma v. Directorate Of Enforcement BAIL APPLN. 3156/2021 decided on 21 December, 2021** has once again reiterated that twin conditions prescribed u/s 45 of PMLA continues to remain inoperative.

29.As a cumulative effect of the above discussion, I am of the considered opinion that applicant/accused deserves to be admitted on bail. Applicant/accused Jatinder Pal Singh is accordingly admitted to bail on his furnishing bail bond in the sum of Rs.2,00,000/- with two sureties each in the like amount and subject to the following conditions :-

- A. He shall continue to cooperate in the on going investigations;
- B. He shall not leave the country without the permission of this court;
- C. He shall inform the concerned IO about his active mobile number and he shall always keep his mobile phone on at all times;
- D. He shall drop a pin on the google map to ensure that his location is available to the IO;
- E. He shall surrender his passport before the court concerned before his release from jail.
- F. He shall not directly or indirectly make an attempt to influence the fair course of investigation.

30.Before parting, this Court is constrained to bring on record its anguish regarding the casual and cavalier approach in which the investigation is being conducted. Unfortunately, even the supervisory officers have miserably failed to guide the Investigating Officer in the instant matter to ensure fair and impartial investigation. It appears that the officers involved in the investigation of the instant matter have even attempted to

hoodwink their own Special Director while procuring the permission for arrest u/s 19 of PMLA by not disclosing the facts in its entirety or at least in the correct perspective before the worthy Special Director. In view of the same, I deem it appropriate to bring the matter to the notice of higher echelons of ED. Copy of the instant order be placed before the worthy Special Director with a request to personally monitor the on going investigations and ensure a free and fair investigation in the instant matter. Reliance is placed upon **Vinubhai Haribhai Malaviya & ors v. The State of Gujarat & ors Criminal appeal Nos. 478-479 of 2017 decided on 16.10.2019**). Further, it has been noticed by this court that the requirement of maintaining duly paginated case diaries is also not been complied with the IOs in the ED. It is hereby requested that the Special Director shall also ensure the due compliance of statutory provisions regarding the maintenance of case diaries. It is also expected of the worthy Special Director that the remedial action initiated at his end in this regard shall also be apprised to this court.

31. Needless to say that nothing observed herein shall have any bearing upon the merit of the case. Application stands disposed off accordingly. Copy of this order be given dasti to all the concerned.

**DHARMENDE  
R RANA**

Digitally signed by  
DHARMENDER RANA  
Date: 2022.01.17 21:08:47  
+05'30'

(Dharmender Rana)  
ASJ-02, NDD/PHC/New Delhi  
17.01.2022