

**IN THE COURT OF SH. DIG VINAY SINGH: SPECIAL JUDGE (P.C. ACT), (ACB)-02,
ROUSE AVENUE COURTS, DELHI**

In re:

DIRECTORATE OF ENFORCEMENT

VS.

NIRMAL SINGH BHANGOO & Others

ECIR NO. ECIR/03/DLZO/2016

P.S CBI

CT. CASE NO. 09/2019

03.09.2020

1. Bail applications filed by accused no. 1 **Nirmal Singh Bhangoo (A1), A3 Kanwaljit Singh Toor, A4 Mohan Lal Sehjpal, A6 Gurmeet Singh & A7 Sarvesh Kumar**, are subject matter of this order. A2 namely M/s Pearl Infrastructure Projects Ltd. (PIPL) & A5 M/s Pearl Agrotek Corporation Limited (PACL), are companies.
2. Brief facts of the case are that the Assistant Director (PMLA) of Enforcement Directorate filed the present complaint U/s 3 & 4 of PML Act 2002 (PMLA), against the above named seven accused. CBI registered an FIR under no. RCBD1/2014/E/0004 dated 19.02.2014 for predicate offences U/s 120B & 420 of IPC, which are scheduled offences under PMLA. The gist offence is that M/s Pearls Golden Forest Limited (PGF) and M/s Pearl Agrotek Corporation Limited (PACL) (A5) collected more than 48,000 Crores of rupees through collective investment scheme from investors all over India under the garb of sale and development of agricultural land. A1 Nirmal Singh Bhangoo was the Managing Director of PGF. He also incorporated another company PACL in 1996 along with other directors including A6 Gurmeet Singh. After collecting money from public under different schemes for allotting plots to them in any part of country and with an option to take back money upon maturity based on expected tentative value of land in lieu of allotted plot under the scheme, in conspiracy money was diverted. Another company by the name of M/s Pearl Infrastructure Projects Ltd. (PIPL) (A2) was incorporated in 2005 by A1 in which 74.63%

shares were held by PACL indirectly through its 43 front companies. PIPL transferred huge amount of money to Australia in some companies formed by the promoters/directors of PIPL and PACL. According to the complainant, a sum of Rs. 657 Crores approximately were diverted to Australia. A detailed flow chart is mentioned in the complaint as to how the funds were diverted from PACL to the 43 companies and PIPL and to certain companies namely M/s Pearls Australiasia PTY Ltd., Hicky Lawyers Trust, M/s Pearls Australiasia Mirage-I PTY Ltd., M/s MII Group Holdings PTY Ltd. Etc.

3. Cognizance of offence U/s 3 & 4 of PMLA was taken by the Ld. Predecessor vide order dated 22.11.2018 and the accused persons were ordered to be summoned. It may be mentioned here that the Ld. Predecessor did not deem it appropriate to issue warrants against any accused and instead directed to issue summons to A2 to A5 & A7. At that time, A1 & A6 were in custody in some other case and therefore their production warrants were ordered to be issued. Out of the individual accused named above, A1 & A6 are stated to be still running in JC in the predicate offence matter. Ld. Predecessor Court after summoning the accused persons, granted interim bail to the individual accused in the present matter vide order dated 16.08.2019.
4. Arguments on the bail applications were heard from both the sides.
5. On behalf of A1, it is argued that he is suffering with various ailments; is 63 years old; is in precarious health condition; has joined investigation as and when required and has already provided all the information within his knowledge to the investigating agency; investigation qua this accused is complete and he is not required for any further custodial interrogation; the case of complainant is primarily based on documents which are already in possession of the investigating agency and; there is no reasonable apprehension of the applicant tampering with the evidence or fleeing from justice. It is also argued on behalf of A1 that the accused was not even a director at the relevant time in the PACL and by virtue of judgment of Hon'ble Rajasthan High Court in the case of PACL India Ltd. Vs. Union of India (2004) 4 Comp.L.J 271 RAJ, the instructions issued by SEBI declaring scheme of PACL within the definition of 'collective investment scheme' as defined U/s 11 AA of the SEBI Act 1992, were declared ultra-virus and it was held that the scheme of PACL does not fall within the said definition of collective investment scheme.

- 5.1. A1 places reliance upon the case of *Court on its own Motion Vs. CBI 2004 (1) JCC 308 and; another case also titled as Court on its own Motion Vs. State CrI. Reference No. 4 of 2017 decided on 27.10.2017; and the case of Sreekumar Vs. State of Kerala (2008) 3 KLT 748.*
- 5.2. In the case of *Court on its own Motion CrI. Reference 4/2017 (Supra)* Hon'ble Division Bench of Delhi High court completely agreed with the view taken in the case of *Court on its own Motion Vs. CBI 2004 (1) JCC 308* and held that **where an accused appears in a non-bailable offence who was neither arrested by the investigating agency during investigation nor produced in custody, the Court shall call upon the accused to move a bail application and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.** It was also held that the principles governing grant or refusal of bail must be followed in letter and spirit. It was also observed by the Hon'ble Delhi High Court that the view that an accused for an offence punishable beyond seven years should necessarily be arrested is not a correct view.
- 5.3. In reply to the bail application of A1, the complainant claims that there is sufficient evidence on record which prima facie reveals that the A1 committed offence U/s 3 of PMLA as he was managing director of PACL and was managing and controlling day to day business of that company which was incorporated in 1996, and a huge sum of Rs. 48,000 Crore was collected and then approximately Rs. 462 Crores were diverted by diverting that money to Australia through PIPL and other companies. It is claimed that the offence under PMLA is a distinct offence from the scheduled offence and even though the investigation of the scheduled offence may be completed but regarding the offence of money laundering investigation is going on and if this accused is released on bail, he may influence the witnesses. Complainant also invokes Sec. 24 & Sec. 45 of PMLA claiming that the burden lies on the accused and also until the two conditions mentioned in Sec. 45 are satisfied, accused cannot be granted bail. It is also stated that statement U/s 50 of PMLA of this accused was recorded which is an admissible piece of evidence and in it the accused has admitted incriminating facts. It is also claimed that many incriminating documents and statements are under investigation and thus the applicant may be required for custodial

interrogation by the complainant and the nature and gravity of offence disentitles the accused to seek bail. Complainant has relied upon the cases of *Y S. Jaganmohan Reddy Vs. CBI (2013) 7 SCC 439*; *the case of Ram Narayan Popli Vs. CBI 2003 (3) SCC 641*; *Hari Narayan Rai Vs. State of Jharkhand 2010 Law Suite (Jharkhand) 448*; *Arvind Vyas Vs. State of Jharkhand Bail Application No. 763 of 2011 decided on 03.05.2011*.

6. On behalf of A3 Kanwaljeet Singh Toor, it is argued that this accused has been falsely implicated in the present matter; he is not even an accused in the predicate offence matter; as there is no allegation against this accused in the case registered by CBI, he cannot be tried for the present offence; investigation by the CBI in the predicate offence is complete and final report has been filed; the accused is an advocate by profession who handled legal matters of certain directors and the company and he simply discharged his duties towards his client, therefore, he cannot be tried as an accused; he has joined investigation and cooperated with the complainant; he never visited Australia nor he had any role to play in the diversion of money; basic ingredients of Sec. 3 of PMLA are not fulfilled; he never authorised any payment from the so-called 43 front companies alleged by the complainant and the same were allegedly received during the time when A3 was director in PIPL. The accused places reliance on the cases of *Sanjay Chandra Vs. CBI (2012) 1 SCC 40*; *Pankaj Jain Vs. UOI (2018) 5 SCC 743*; *Dataram Singh Vs. State of U.P. & Anr. (2018) 3 SCC 22*; *Sundeep Kumar Bafna Vs. State of Maharashtra & Anr. (2014) 16 SCC 623*; *Mukesh Kishanpuria Vs. State of West Bengal (2010) 15 SCC 154*; *Sukhwant Singh & Ors. Vs. State of Punjab (2009) 7 SCC 559*; *Niranjan Singh & Anr. Vs. Prabhakar Rajaram Kharote & Ors. (1980) 2 SCC 559* and; *Madhu Limaye & Anr. Vs. Ved Murti & Ors. 1970 (3) SCC 739*.

6.1. In *Pankaj jain's case (Supra)*, the decision of *Dataram case (Supra)* was quoted with approval by the Hon'ble Supreme court, to the effect **that bail is not to be withheld as a punishment and grant of bail is the rule and refusal an exception**. However, it was also noted that it should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the Judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously, in a humane manner and compassionately and also the conditions of bail ought not to be so strict as to

be incapable of compliance. In Dataram's case, it was also held that **among the factors that need to be considered is whether the accused was arrested during investigation, when that person perhaps has the best opportunity to tamper with the evidence or influence witnesses. If the IO does not find it necessary to arrest an accused during investigation, a strong case should be made out for placing that person in judicial custody after a charge sheet is filed. Similarly, it is important to ascertain whether the accused was participating in the investigations to the satisfaction of the investigating officer and was not absconding or not appearing when required by the IO.**

- 6.2. In *Sandeep Kumar Bafna (Supra)*, the meaning of word 'custody' as occurring in Sec. 439 Cr.P.C was considered and it was held that custody takes place as soon as an accused surrenders before Court and submits to its directions. It was held that hiatus between cognizance of offence by Magistrate and committal of the accused by the Magistrate to Sessions Court can be overcome by the accused preferring application U/s 439 Cr.P.C till committal of the case before the Sessions Judge and administrative difficulties can be overcome by enabling the accused to move Sessions Judge and when an accused has a right to seek bail, there has to be a remedy and there can be no vacuum in law.
- 6.3. In *Mukesh Kishanpuria (Supra) & Sukhwant Singh (Supra)*, availability of power to grant interim bail in regular bail application was reiterated.
- 6.4. In *Niranjan Singh's Case (Supra)*, it was held that the meaning of word custody occurring in Sec. 439 Cr.P.C includes physical surrender by the accused before the Court and submission to the Court's directions.
- 6.5. In *Madhu Limaye's case (Supra)*, arrest without warrant U/s 151 of old Cr.P.C and action U/s 141 & 107 of old Cr.P.C 1898 was considered, which is not applicable in the facts of the present case.
- 6.6. In reply to the bail application of A3, the complainant claims that this accused is a whole-time director of PIPL and he is also authorised signatory along with co-accused M. L. Sehjpal and he was instrumental in transferring the above-mentioned amount to Australia. This PIPL company was a subsidiary company of PACL in which PACL held 98.2% shares. Money was diverted to PIPL through 43 associate companies of PACL and out of those companies, the present accused was director in M/s Saj Realtors Pvt. Ltd. (13.01 Crores);

M/s AG Securities Pvt. Ltd. (12.02 Crores); M/s Shiv Mahima Township Pvt. Ltd. (11.57 Crores); M/s Kamini Investment Ltd. (21.52 Crores); M/s World Wide Buildcone Ltd. (4.75 Crores); M/s World Wide Home Developers Pvt. Ltd. (9.5 Crores) and; M/s Pearl Dream Places Construction Ltd. (10.78 Crores). From these companies, the above-mentioned amount was transferred to PIPL and then to Australia.

- 6.7.** It is also claimed by the complainant that it is not necessary under PMLA that only those persons who are accused in the predicate offence can be an offender under PMLA. Rather offence of money laundering is a distinct offence in which even a person who is not accused of predicate offence can be an accused. Statement of even this accused U/s 50 of PMLA is claimed to be against him. In reply to the bail application of even this accused, complainant has placed reliance upon the above-mentioned judgments as relied upon in the reply to the bail application of A1.
- 7.** On behalf of A4 Mohan Lal Sehjpal, it is argued that even this accused is not named in the predicate offence or even in the list of witnesses in the final report filed by CBI in the predicate offence. It is argued that this accused had limited shares in PIPL and while other directors of PIPL have not been made accused, this accused was singled out. It is also argued that this accused joined investigation and provided all the information; he is no more a director in A2 company and he already had resigned which resignation was accepted by A2 company and rather A2 company had assisted SEBI in bringing back the money; no recovery is to be effected from this accused.
- 7.1.** On behalf of this A4, reliance is placed upon case of *T. T. Antony Vs. State of Kerala (2001) 6 SCC page 181* which lays down that there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of same cognizable offence; on the case of *Data Ram Singh Vs. State of U.P. (2018) 3 SCC page 22*; *Nikesh Tara Chand Shah Vs. Union of India (2018) 11 SCC page 1*; *Gurbaksh Singh Sibbia Vs. State of Punjab (1980) 2 SCC 565*.
- 7.2.** On behalf of this accused, reliance is also placed upon a recent decision of Hon'ble Delhi High Court dated 04.07.2019 in Bail Appl. No. 249/2019 in case titled as *Upendra Rai Vs. Directorate of Enforcement 2019 SCC Online Delhi 9086*. In that case, while dealing with the bail application, Hon'ble Delhi High Court declined the request of Enforcement

Department for reliance upon the case of Gautam Kundoo (Supra). It was specifically held by Hon'ble Delhi High Court that the decision of the case of Gautam Kundoo has no application as it was rendered prior to the Supreme Court deciding the case of *Nikesh Tarachand Shah Vs. UOI (2018) 11 SCC 1*, wherein Hon'ble Supreme Court declared Sec. 45(1) of PMLA, in so far as it imposes two further conditions for release on bail, to be unconstitutional and violative of Article 14 & 21 of the Constitution of India. It was also held that Sec. 24 of PMLA has no application since no charge had been framed on the petitioner of that case by that time. Dealing with the amendment in the Sec. 45 of PMLA in 2018 qua inserting the words "under this Act", it was held by Hon'ble Delhi High Court in para 22 that introduction of those words in Sec. 45 would not revive the twin conditions as imposed in Sec. 45(1) which were struck down by the Hon'ble Supreme Court. Relying on the decision of Bombay High Court in *Sameer M. Bhujbal Vs. Directorate of Enforcement in Bail Appl. No. 286 of 2018* and, on the case of *Vinod Bhandari Vs. Directorate of Enforcement decided by Madhya Pradesh High Court in M.Cr.C.No. 34201/2018*, Hon'ble Delhi High Court held that the amendment in Sec. 45 is inconsequential in dealing with such bail applications. It was also held that Sec. 24 of PMLA would apply only during the course of trial as the stage of raising the presumption or for the accused to rebut the presumption would arise only during the course of trial. It was held that even if assuming that at the stage of bail, the Court was required to consider the presumption, the accused is required to rebut the same not beyond reasonable doubt but on the basis of broad probabilities. In the same judgment it was held that the Court while granting bail has to take into consideration prima facie material available to fortify the commission of offence, gravity of the offence, severity of the punishment, chances of the petitioner not being available for trial or tampering with the evidence or the witnesses.

- 7.3.** In reply to the bail application of this A4, besides the contentions raised by the complainant in reply to the contentions of other accused and as mentioned above, it is claimed that even this accused was director in PIPL and he was an authorised person to transfer the money from India to Australia and in his statement U/s 50 this accused admitted certain incriminating things including signing of bank documents for transfer of money. Even this accused is claimed to be director in M/s Saj Realtors Pvt. Ltd. (Rs. 13.01 Crores); M/s

Pearls Colonisers Pvt. Ltd. (18.02 Crore); M/s PVG Developers Pvt. Ltd. (13.72 Crores) and from these companies' huge amount was transferred to PIPL and then to Australia. It is also argued that co-accused no. 7 Sarvesh Kumar also gave a statement U/s 50 of PMLA in which there is incriminating material against A4 and that A4 knowingly assisted in the process of money laundering by transferring proceeds to Australia.

- 7.4. In reply to the contention of the accused in which reliance has been placed upon the case of *Upendra Rai (Supra)*, Ld. Counsel for the complainant has relied upon order dated 03.06.2020 in **SLP (Crl.) Diary No. 5150 of 2020 whereby Hon'ble Supreme Court** ordered;

“..... *there shall be a stay of operation of the impugned order passed by the High Court of Delhi if the respondent has not already been released on bail.*”

- 7.5. Relying on the said order, it is argued by the complainant that the order passed by Hon'ble Delhi High Court in *Upendra Rai case (Supra)* cannot be relied by this court and in this regard counsel for the complainant has also placed reliance upon the case of *Vidyut Kumar Sarkar vs. State of Bihar & Ors. MANU/DH/0297/2020 decided by High court of Patna on 18.06.2020 in Crl. Misc. No. 73325/2019*. In the said case of *Vidyut Kumar* it was held that in view of order of Hon'ble Supreme Court dated 03.06.2020 in *Upendra Rai case*, the view of Delhi High Court in that case and also the view of High Court of Bombay and Madhya Pradesh in *Sameer M. Bhujbal (Supra)* and the case of *Dr. Vinod Bhandari (Supra)*, especially for the twin conditions under section 45 of PMLA, are not required to be looked into. It is also argued by the complainant that after amendment to section 45 the twin conditions have to be satisfied before grant of bail.

8. On behalf of A6 Gurmeet Singh, it is argued that since the accusations against this accused in the predicate offence, in which final report has been filed by the CBI, has not yet been established and even charges in that matter have not yet been framed, therefore, it would be pre mature to entertain the present complaint, particularly without extending benefit of bail to this accused; unless the predicate offence are established beyond reasonable doubt, the applicant deserves benefit of bail, more particularly when he is already in custody in the predicate offence; the present accused was merely an employee of PACL which is a distinct and different corporate entity from M/s PGF Ltd.; investigation qua the present

accused is complete in the present matter and the documentary evidence has already been collected by the complainant, therefore there is no apprehension of tampering with the evidence; the entire issue whether the activities of PACL constituted an uncertified collective investment scheme is pending adjudication before Hon'ble Supreme Court in another matter under Civil Appeal No. 13301 of 2015 and another connected matters, therefore applicant should be released on bail.

- 8.1.** On behalf of A6 reliance is placed upon the case of *Nikesh Tarachand (Supra)*; *Sudhir Nathany Vs. CBI 2004 72 DRJ 116*; *Court on its motion Vs. State Crl. Reference No. 4/2017(Supra)*; *Lt.Gen. Tejender Singh Vs. CBI (2014) 145 DRJ 162*; *Court on its own motion Vs. CBI ILR (2004) I Delhi 2047(Supra)*; *Dalip Singh Mann Vs. Niranjan Singh CRM No. M/28490/2015*; *Upender Rai (Supra)*; *Sameer Magan Bhujbal (Supra)*; *Mohd. Akbar Vs. State of Chattisgarh 2006 SCC Online CHH 30*; *Vinod Bhandari (Supra) and; Arun Sharma Vs. UOI 2016 SCC Online (Punjab & Haryana) 5954*.
- 8.2.** In the case of *Arun Sharma (Supra)*, a Division Bench of Hon'ble Punjab & Haryana High Court, while agreeing with a view in *Dalip Singh Maan (Supra)*, held that **if a person was neither arrested during investigation under PMLA, nor produced in custody as envisaged in Sec. 170 Cr.P.C., upon issuance of process either by summons or warrant, if he appears before the Court on his own volition, he would be entitled to forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody. It was also held that Sec. 45(1)(ii) of PMLA has no application in case of a person not arrested U/s 19 of PMLA.**
- 8.3.** In reply to the bail application of A6, besides the similar contentions of the complainant, as mentioned above, it is argued by the complainant that this accused is associate of master mind Nirmal Singh Bhangoo (A1) and he was a director in PACL and also chartered accountant who created various companies to make a route for transfer of approximately Rs. 462 Crores, money from PACL; in his statement U/s 50 of PMLA even this accused admitted incriminating substances.
- 9.** On behalf of A7 Sarvesh Kumar, it is argued that this accused had no specific role ascribed to him in the alleged offence; no case is made out against him; there is no apprehension of this accused fleeing from justice.

- 9.1. On behalf of accused no. 7, reliance is placed upon the case of *Court on its own Motion Vs. CBI 2004 SCC Online Delhi 53*, to lay stress on the point that arrest of an accused can be justified only in cases of utmost necessity and the liberty of a citizen being of paramount importance, arrest should be avoided as far as it was possible for the investigating agency to complete the investigation without arrest.
- 9.2. In reply to the bail application of A7, besides the contentions raised by the complainant in reply to the bail applications of other accused and as discussed above, it is claimed that this accused is a director in M/s PIPL and he even visited Australia many times during the commission of offence and in his those visits he organized the business in Australia; he admitted this fact in his statement U/s 50 that he committed the offence on the directions of other accused namely M. L. Sehjpal and K. S. Toor.
10. Ld. Counsel for ED has also relied upon the case of *Anand Chauhan Vs. Directorate of Enforcement in Bail Application No. 2241 of 2016, decided on 10.04.2017 by Hon'ble Delhi High Court*. In that case, the petitioner claimed his arrest under Sec. 19(1) PMLA, as premature since the charge sheet of the scheduled offence U/s 13 of PC Act was yet to be filed, and in violation of Article 21 of the Constitution of India and he also claimed that Sec. 45 was not applicable. **Hon'ble Delhi High Court observed that Sec. 3 of PMLA makes clear that a person who commits the offence of Money Laundering need not be necessarily one who may have been involved in the acquisition of the proceeds of crime and even if the petitioner was assumed to be not guilty U/s 13 of PC Act, he can be charged with abetting the said offence and with laundering of the proceeds of crime of main accused namely Vir Bhadra Singh. The Court did not agree to the contention that for Sec. 3 & 4 of PMLA the person accused should have committed the scheduled offence and should have acquired the proceeds of crime. It was held that proceeds of crime may be acquired by another person who commits one of the scheduled offences, and the person charged with money laundering may have only, directly or indirectly, assisted or knowingly become a party, or may be actually involved in the process or activity of concealing, possessing, acquiring or using and projecting or claiming the said proceeds of crime as untainted property.** In the said case, it was also held that in *Gautam Kundoo Vs. Directorate of Enforcement (2015) 16 SCC 1*, Supreme Court

categorically held that the conditions specified in Sec. 45 of PMLA are mandatory and needs to be complied with and also it was held that Sec. 71 of PMLA provides that PMLA has an over-riding effect and provisions of Cr.P.C would apply only if they are inconsistent with the provisions of PMLA and also that while considering application U/s 439 Cr.P.C, Sec. 45 of PMLA must be complied with.

- 10.1.** The complainant also relied upon the case of *Christian Michel James vs. Directorate of Enforcement in Bail application no. 2715-16/2019* by the Hon'ble Delhi High court on 06.04.2020 and also the subsequent dismissal of SLP preferred by Christian Michel James before the Hon'ble Supreme court on 22.04.2020. In the case of Christian Michel James, the applicant sought interim bail relying upon the direction of Hon'ble Supreme Court in *Suo moto Writ Petition No. 1/2020*, whereby a direction to release prisoners who were charged with offences punishable with seven years of imprisonment or less than that was passed in view of special situation of Covid-19. Hon'ble Delhi High Court in that case noticed that the petitioner was a flight risk with no roots in the society and also the apprehension of the applicant of that case regarding contacting Covid-19 was held to be unfounded. The interim bail was declined by the Hon'ble Court. The said case is of no application in the facts and circumstances of this case as the accused persons are not seeking interim bail pursuant to directions passed by Hon'ble Supreme Court or Hon'ble Delhi High Court in the situation of Covid-19.
- 11.** Similarly, reliance placed by the complainant upon the case of *Dr. Shivender Mohan Singh Vs. State of NCT of Delhi & Ors. W.P. (Crl)- Urgent 10/20* decided by Hon'ble Delhi High Court, dismissing similar Writ petition seeking direction to the Jail Supdtt. to release the petitioner of that case on interim bail due to outbreak of corona virus, has no application in this case. Similarly, reliance placed by the complainant upon the case of *Malvinder Mohan Singh vs. State of NCT of Delhi & Anr. W.P. (Crl.) 814/20* decided on 10.08.2020 by the Hon'ble Delhi High Court, in which a similar Writ petition by the petitioner seeking release on bail/ parole because of Covid-19 pandemic situation, in reference to high powered committee minutes of meeting of Hon'ble Delhi High Court dated 28.03.2020, was dismissed, has no application in this case.
- 12.** The counsel for complainant has also relied upon the order of Hon'ble Supreme Court dated

31.07.2020 in SLP (Crl.) No. 3474/2020 titled as *Directorate of Enforcement Vs. Shivender Mohan Singh* whereby against the order dated 23.07.2020 passed by Hon'ble Delhi High Court in *bail application no. 1353/20 in the case of Dr. Shivender Mohan Singh Vs, Directorate of Enforcement* granting bail to the accused, Hon'ble Supreme Court directed that the impugned judgment shall not be treated as precedent for any other case and directed maintenance of status quo with respect to release of the petitioner in that case from jail.

13. In the present case, as discussed above, none of the accused was arrested by the investigating agency during investigation and complaint against them was filed without arrest and the Ld. Predecessor court chose to issue summons to the accused and also admittedly investigation is still being conducted by the complainant from another country which admittedly is likely to take many months to complete. **Hon'ble High Court in the case of Arun Sharma (Supra) also held that Sec. 45(1)(ii) of PMLA has no application when an accused was not arrested U/s 19 of PMLA. It may be mentioned here that the SLP preferred against the judgment of High Court in Arun Sharma's case, was dismissed by the Hon'ble Supreme Court in SLP(Crl.) No. 5978 of 2016 on 12.08.2016. I need not delve into this question any further.**
14. On behalf of complainant, reliance has also been placed upon the case of *Nitin Johri Vs. SFIO in bail application No. 1971/2019 decided by Delhi High Court on 27.01.2020*, wherein the bail application of petitioner arrested on 02.05.2019 was dismissed. Reliance has also been placed by the complainant upon the case of *Deepak Talwar Vs. ED in bail application no. 1180 of 2019 decided on 19.09.2019*, wherein bail application of that petitioner was also dismissed keeping in view the gravity of offence and also the fact that despite being in JC the petitioner of that case was manipulating things. The complainant also places reliance upon *CBI Vs. Ramendu Chattopadhyay SLP (Crl.) No. 120 of 2019* wherein bail granted to the accused was set aside by Hon'ble Supreme Court in the facts & circumstances of that case. It may be mentioned here that the accused of that case was arrested on 10.03.2016 and then he was released on bail by the High Court under the impugned order in that SLP. In all those above mentioned three cases relied upon by the complainant, the accused persons were arrested by the investigating agency, whereas in the

present case the complainant never chose to arrest the accused persons and filed the complaint in question and that too admittedly when crucial investigation is still continuing for which communications have been sent overseas and admittedly several months are still required by the complainant to complete the investigation. The judgments relied upon by the complainant as mentioned above have no application in the facts & circumstances of the present case and are distinguishable on the facts.

15. During the course of arguments on these bail applications as well as on other occasions, the complainant of this case admitted that investigation qua the money laundering involved in the present matter is still underway and it is also admitted that several months are required by the complainant to complete the investigation, particularly since the investigation relates to off shore aspects also. In such circumstances, no useful purpose would be served by keeping these accused in custody. When the custody of any of these accused was not even deemed necessary by the complainant during investigation into the present offence under PMLA, no useful purpose would be served by now taking them in custody in this case. Although on behalf of complainant it is claimed that there is possibility of tampering of evidence by the accused, if they are released on bail, but no plausible apprehension and no reasonable grounds have been put forth to nurture any such apprehension. This is particularly important since the complainant never arrested any of the accused in this case during investigation. The present ECIR No. ECIR/03/DLZO/2016 was registered on 26.07.2016, admittedly. The complaint was filed in September 2018. Throughout this period, arrest of accused persons was not deemed necessary or appropriate by the complainant. Therefore, now it does not lie in the mouth of the complainant to claim that if the accused are released on bail, they may tamper with the evidence. Evidence in the present matter is primarily documentary which is in possession of the complainant and therefore there is no reasonable apprehension of the accused tampering with the evidence. Similarly, the claim of complainant that custodial interrogation of the accused may be required falls flat as throughout the investigation period, their arrest was never deemed appropriate or necessary. They were not forwarded to the Court in custody at the time of filing of complaint. There is no reasonable apprehension of the accused persons fleeing from justice either.

16. In the given facts & circumstances, **A1 Nirmal Singh Bhangoo, A3 Kanwaljit Singh Toor, A4 Mohan Lal Sehjpal, A6 Gurmeet Singh & A7 Sarvesh Kumar** are admitted **to bail** in the present case upon furnishing personal bond in the sum of Rs 1 lakh, with one surety each in the like amount.
17. The order is subject to the conditions that; the applicants shall surrender their passports to this court; the applicants shall not leave the country without permission of the Court; shall ordinarily reside in their place of residence and immediately inform change of address if any; the applicants shall furnish to the Investigating Officer a cell phone number on which the applicants may be contacted at any reasonable time and shall ensure that the number is kept active; the applicants shall cooperate in any further investigation, as and when required; the applicants shall not, directly or indirectly, contact or visit or offer any inducement, threat or promise to any of the prosecution witnesses or other persons acquainted with the facts of the case and; the applicants shall not tamper with evidence; nor try to prejudice the proceedings in the matter in any manner.
18. Nothing in this order is to be taken as an expression of opinion on the merits of the pending complaint. The applications are disposed of accordingly.

(Dig Vinay Singh)
Special Judge (PC Act) (ACB)-02,
Rouse Avenue Courts, Delhi