2025:AHC:228033-DB

A.F.R.

Reserved on : 28.10.2025
Delivered on : 18.12.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 9232 of 2025

Satinder Singh Bhasin

…..Petitioner(s)

Versus

State of U.P. and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Aditya Yadav, Malay Prasad, Saloni Mathur, Shivam Yadav, Tanya Makker
Counsel for Respondent(s)	:	Pankaj Kumar Shukla, G.A., Manoj Kumar Singh, Sushant

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With

CRIMINAL MISC. WRIT PETITION No. - 15414 of 2025

Queency Bhasin

…..Petitioner(s)

Versus

State of U.P. and another

…..Respondent(s)

Counsel for Petitioner(s)	:	Aditya Yadav, Shivam Yadav
Counsel for Respondent(s)	:	Pankaj Kumar Shukla, G.A., Sushant

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Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE LAKSHMI KANT SHUKLA, J.

Per: Hon'ble Chandra Dhari Singh, J.

1. Since both the afore-captioned Criminal Misc. Writ Petitions have been filed challenging the ECIR/LKZO/14/2021, they have been heard together and are being disposed by means of this common order. For adjudication of both the writ petitions the facts of Criminal Misc. Writ Petition No.9232 of 2025 has been taken.

2. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner, seeking the following reliefs:

> *"(i) Issue a writ of certiorari or any other appropriate writ, order, or direction quashing and setting aside order dated 11.04.2025 passed by learned Special Judge, Anti-Corruption, CBI, Ghaziabad whereby open ended Non-Bailable Warrants have been issued against the petitioner in relation to ECIR/LKZO/14/2021;*
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> *(ii) Issue a writ of mandamum or any other appropriate writ, order, or direction restraining the respondent, its officers, or any person acting under its authority, from initiating or continuing any coercive actions against the petitioner under the Prevention of Money Laundering Act, 2002, in relation to ECIR/LKZO/14/2021 or related matters;*
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> *(iii) Issue a writ of certiorari or any other appropriate writ, order, or direction quashing the Enforcement Case Information Report bearing no.ECIR/LKZO/14/2021 registered by the respondent pursuant to FIR No.353 of 2015 dated 09.06.2015, along with all consequential proceedings, including the raids conducted on 10.04.2025, as being illegal, ultra vires and violative of the petitioner's fundamental right under Article 14, 19 and 21 of the Constitution;*

(iv) Declare the respondent's action in registering the ECIR and conducting raids as ultra vires the PMLA and unconstitutional for want of a predicate offence, violating Articles 14, 19 and 21 of the Constitution."

FACTUAL MATRIX

3. The petitioner, Satinder Singh Bhasin, is an individual residing New Delhi, and was one of the Directors of M/s Bhasin Infotech & Infrastructure Pvt. Ltd. (hereinafter "BIIPL"), a company engaged in the development of a large commercial project known as "The Grand Venice Mall" at Greater Noida, Gautam Buddh Nagar. The project was undertaken on a commercial plot allotted by the Greater Noida Industrial Development Authority for the development of a theme-based commercial mall and an adjoining commercial tower (hereinafter "subject property").

4. The construction of the Grand Venice Mall and the commercial tower is stated to have been completed in the years 2014–2015, after which the establishments became operational and housed various national and international brands.

5. On 09.06.2015, an FIR being FIR No. 353 of 2015, Police Station - Kasna, Gautam Buddh Nagar, came to be registered against the petitioner and others under Sections 406 and 420 of the Indian Penal Code, 1860 (hereinafter "IPC"), alleging irregularities in relation to the said project. Subsequently, between 2015 and 2019, a large number of similar FIRs, were lodged in relation to the same project, alleging non-delivery of units, non-payment of assured returns, non payment of invoices and delay in possession etc.

6. Upon investigation of the FIR No. 353/2015, the police submitted a final report dated 30.11.2016, concluding that the dispute was essentially civil or commercial in nature and recommending closure. A protest petition was filed by the complainant on 10.03.2017. Thereafter, a supplementary charge sheet dated 17.02.2019 was filed.

In the supplementary charge-sheet, Section 420 IPC was dropped, and only an allegation under Section 406 IPC was retained against the petitioner.

7. On 15.04.2019, the learned Trial Court took cognizance of the supplementary charge-sheet and issued summons to the petitioner for the offence under Section 406 IPC.

8. Meanwhile, in view of the multiplicity of FIRs relating to the subject project, petitions were filed before the Hon'ble Supreme Court, culminating in proceedings in W.P. (Crl.) No. 242/2019. By interim order dated 06.11.2019, the Hon'ble Supreme Court noted that multiple FIRs containing identical allegations existed concerning the same project. Bail was also granted to the petitioner with a direction to deposit ₹50 Crores to demonstrate bona fides and facilitate settlements as a pre-condition. The petitioner complied with the said condition and was released on bail.

9. Ultimately, by order dated 12.05.2022, in the aforesaid writ petition, the Hon'ble Supreme Court consolidated all FIRs (46 as per the record) pertaining to the 'Grand Venice' project into the principal FIR No. 353/2015 and directed that all other charge-sheets and FIRs would stand merged, and the entire matter would proceed only from the principal FIR.

10. Pursuant thereto, the petitioner filed Criminal Misc. Application No. 25724/2022 before this Court, seeking quashing of the proceedings arising out of the principal FIR. By order dated 27.04.2023 in Criminal Misc. Application No. 25724/2022, proceedings in Case No. 1559/2019 (arising out of the said principal FIR) pending before the Court of the Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar were stayed by a learned Single Judge of this Court.

11. While the proceedings in the predicate FIR were thus pending, the Directorate of Enforcement (hereinafter "ED"), Lucknow Zonal Office, registered ECIR No. ECIR/LKZO/14/2021dated 12.03.2021

under Sections 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA"), predicated on FIR No. 353/2015.

12. The first summons by ED was issued on 29.03.2022, to which the petitioner submitted a reply on 18.04.2022. On 12.07.2022, the petitioner physically appeared before the Investigating Officer, supplied documents, and his statement under Section 50 PMLA was recorded. The ED issued further summons on 14.07.2022, and the petitioner is stated to have supplied the documents on the same day through email.

13. Another set of summons were issued by ED on 08.05.2024, requiring his appearance on 14.05.2024. The petitioner submitted the documents on 16.05.2024 and again on 20.05.2024. Summons were later issued on 17.02.2025, followed by further communications on 20.02.2025, 21.02.2025, 22.02.2025, 06.03.2025, and 21.03.2025, to all of which replies or document production was made either by the petitioner or his authorized representative.

14. On 16.02.2025, the petitioner was allegedly detained at Police Station Beta-II, Gautam Buddh Nagar, without an FIR. On 18.02.2025, he was allegedly picked up from Connaught Place, New Delhi, purportedly by Uttar Pradesh Police personnel without following mandatory inter-State arrest protocols.

15. The petitioner, therefore, approached the High Court of Delhi by filing W.P. (Crl.) No. 598/2025. By orders dated 19–20.02.2025, the High Court of Delhi took serious note of the allegations of illegal detention and abduction, directed the production of the petitioner, and ordered an inquiry by the Commissioner of Police, Uttar Pradesh.

16. Thereafter, on 09.04.2025, the ED issued an authorization under Section 17 PMLA for conducting search and seizure proceedings. On 10.04.2025 at about 6:45 a.m., ED officials conducted searches at the petitioner's residence and business premises at Delhi and Noida, and the search continued at the residence until 12.04.2025. During the said

searches, an amount of ₹36,00,000/- was recovered, allegedly found in a locker at Goa belonging to M/s India Ocean World Pvt. Ltd., a company in which the petitioner asserts he holds no position either as a director or a shareholder.

17. On 11.04.2025, the learned Special Judge, Anti-Corruption, CBI, Ghaziabad, issued Non-Bailable Warrants (hereinafter "NBW") against the petitioner in relation to the same ECIR.

18. On 13.04.2025, the petitioner lodged a complaint at P.S. - Rajouri Garden, New Delhi, alleging misbehaviour with his children during the search, and also issued representations to senior officials of the Directorate of Enforcement.

19. The petitioner thereafter approached the Hon'ble Supreme Court by filing a writ petition under Article 32 challenging the ECIR, the search proceedings, the NBW, and all consequential actions. By order dated 21.04.2025, the Hon'ble Supreme Court permitted the petitioner to withdraw the petition with liberty to approach the High Court of competent jurisdiction.

20. Consequently, the petitioner has filed the present writ petition, before this Court challenging the ECIR, the search and seizure proceedings, the NBWs issued on 11.04.2025, and all coercive steps taken pursuant to the ECIR. The bone of the contentions of the petitioner is that since the predicate offence as against him survives only under Section 406 IPC, which is not a scheduled offence under the PMLA, and the trial of the said predicate offence stands stayed by the order of a learned Single Judge of this Court dated 27.04.2023, the ED lacks jurisdiction to continue any proceedings under the PMLA.

21. On these facts, the petitioner seeks quashing of the ECIR, quashing of the NBWs, setting aside of the search and seizure proceedings, and protection from further coercive action arising out of the impugned ECIR.

22. Before proceeding further, for the sake of convenience, this Court deems it appropriate to set out that in the present matter, there are 49 FIRs in total, which are predicate FIRs (schedule offences), out of which 44 FIRs are arising out of *FIR No. 353/2015 principal FIR (Grand Venice Project consolidated FIRs)* and 5 remaining FIRs are part of Mist Avenue FIRs. Further, the Hon'ble Supreme Court consolidated/clubbed 46 FIRs. The ED has stated that 2 FIRs out of the 46 clubbed FIRs are not part of the ECIR.

SUBMISSIONS ON BEHALF OF THE PETITIONER

A. Submissions relating to the maintainability of the petition and jurisdictional defects

23. Mr. Manish Tiwari, learned Senior counsel appearing on behalf of the petitioner submits that the very initiation and continuation of ECIR by the ED is wholly without jurisdiction, as the foundational requirement of a subsisting scheduled offence under the PMLA is absent. It is submitted that in FIR No.353/2015, which constitutes the predicate offence for the present ECIR, the allegations under Section 420 IPC were expressly dropped in the supplementary charge-sheet dated 17.02.2019, and the petitioner is now proceeded only under Section 406 IPC. Section 406 IPC is not a scheduled offence under the PMLA, and no other scheduled offence is pending against him within the meaning of the Schedule to the PMLA.

24. Learned counsel submits that after dropping Section 420 IPC, the continuation of ED proceedings violates the law laid down in ***Vijay Madanlal Choudhary v. Union of India***[1]*,* wherein the Hon'ble Supreme Court affirmed that PMLA proceedings can continue only where a scheduled offence exists or survives. The petitioner relies on this principle to assert that if the predicate offence is non-existent, extinguished, non-scheduled, or stayed, then proceedings under the PMLA cannot be sustained.

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1 2022 SCC OnLine SC 929

25. Further reliance is placed on the judgment of the Hon'ble Supreme Court in ***Parvathi Kollur v. State***[2], wherein the Hon'ble Court reiterated that proceedings under the PMLA cannot survive, where the accused stands discharged or acquitted in the predicate offence or where the predicate offence does not survive in law. Learned counsel submits that the learned Additional Solicitor General in that case accepted this proposition unequivocally. The petitioner submits that the same principle squarely applies in the present case, because the only provision now attracted in the predicate FIR is Section 406 IPC, which is not a scheduled offence.

26. The proceedings in the predicate FIR have been stayed by a learned Single Judge of this Court in Criminal Misc. Application No. 25724/2022 vide order dated 27.04.2023. It is argued that the effect of the stay is that the predicate proceedings remain in a state of suspension, and the ED cannot, in the teeth of such stay, continue to treat the FIR as alive for the purposes of sustaining the ECIR

27. Learned Senior Counsel further relies strongly on ***Pavana Dibbur v. Enforcement Directorate***[3] in support of the proposition that the existence of a scheduled offence is the jurisdictional foundation of PMLA proceedings. Learned counsel submits that once Section 420 IPC has been dropped, the entire basis for registration of the ECIR has ceased, and ED proceedings must necessarily collapse.

28. The petitioner additionally relies on the judgment of the Bombay High Court in ***Sagar Maruti Suryawanshi v. Enforcement Directorate***[4], asserting that the ED cannot club unrelated transactions or separate FIRs into a single ECIR. The petitioner submits that the respondent has improperly added FIRs pertaining to unrelated projects such as the "Mist Project" into the present ECIR, notwithstanding the Hon'ble Supreme Court order dated 12.05.2022 consolidating all Grand Venice FIRs into FIR No.353/2015 alone.

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2 2022 SCC On Line SC 1975
3 2023 SCC OnLine SC 1486
4 2024 SCC OnLine Bom 3348

29. The petitioner submits that the Hon'ble Supreme Court's order dated 12.05.2022 consolidating all Grand Venice related FIRs into a single FIR makes it impermissible for the ED to rely upon any other FIR for purposes of the ECIR. It is argued that the respondent's reliance upon separate or additional FIRs amounts to a direct violation of the binding directions of the Hon'ble Supreme Court.

B. Submissions regarding issuance of Non-Bailable Warrants (NBWs)

30. The petitioner submits that the issuance of open- ended NBWS dated 11.04.2025 by the learned Special Judge is wholly without jurisdiction and contrary to settled principles governing issuance of warrants. It is argued that the issuance of NBWs in the absence of a prosecution complaint before the Special Court under Section 44 PMLA, and without any cognizance having been taken, renders the warrants illegal.

31. The petitioner submits that there is no stage in PMLA investigation that contemplates issuance of NBWs in aid of investigation, and the scheme of the Act nowhere permits such recourse. The petitioner asserts that the ED's reliance on precedents relating to police investigations under the Code of Criminal Procedure, 1973 (hereinafter "CrPC) is misconceived, because those decisions do not apply to PMLA, which is a complete code with self-contained procedures.

32. It is submitted that the NBWs were issued despite the petitioner having joined investigation on multiple occasions, having furnished documents as required, and despite the ED itself having communicated that personal appearance was not mandatory as reflected in emails dated 06.03.2025 and again on 21.03.2025, where it was stated that personal appearance was not required and that only submission of documents was necessary.

33. The petitioner submits that no notice under Section 41A CrPC has ever been issued to him in connection with the PMLA proceedings. It is further argued that prior to the issuance of the NBWs, no fresh summons

under Section 50 PMLA had been issued, and therefore, the NBWs were issued without adherence to the mandatory procedure laid down in ***Inder Mohan Goswami v. State of Uttarakhand***[5], where the Hon'ble Supreme Court cautioned against mechanical issuance of NBWs without first issuing summons or bailable warrants.

34. The petitioner submits that he has cooperated with the ED investigation fully, as demonstrated by his appearance on 12.07.2022, submission of documents on 12.07.2022, 14.07.2022, 16.05.2024, and 20.05.2024, and further submission on 22.02.2025 and 21.03.2025. It is stated that the petitioner has, at no point, evaded the process of law.

35. The petitioner further submits that the NBW violates his fundamental rights under Article 21 of the Constitution, as it was issued without any default on his part in complying with investigation requirements. Learned counsel submits that the NBWs are in gross violation of natural justice and the principles laid down for issuance of coercive process.

36. It is argued that the Special Court proceeded mechanically and failed to take into consideration the ED's own communication acknowledging compliance by the petitioner. The petitioner asserts that the Court also failed to examine the ED's statement in the last summon dated 21.03.2025 that personal appearance was not required.

C. Submissions regarding compliance with summons and allegations of non-cooperation

37. The petitioner submits, in detail, the chronology of compliance with summons issued by the ED. It is submitted that the petitioner responded to the first summon dated 29.03.2022 by submitting a written reply on 18.04.2022. Thereafter, the petitioner physically appeared before the ED on 12.07.2022, where his statement under Section 50 PMLA was recorded.

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5 (2007) 12 SCC 1

38. It is submitted that upon issuance of the second summons dated 14.07.2022, the petitioner provided the requisite documents on the same day through email. The ED acknowledged receipt. The petitioner received the third summons dated 08.05.2024, requiring appearance on 14.05.2024. He provided the required documents on 14.05.2024, 16.05.2024, and again on 20.05.2024, as demanded.

39. With respect to the summons dated 17.02.2025, the petitioner states that he could not appear immediately due to his illegal detention by the Uttar Pradesh Police on 16.02.2025, a matter that came before the Delhi High Court in W.P. (Crl.) No. 598/2025. The petitioner submits that on 20.02.2025 and 21.02.2025, the ED was informed about the orders of the Delhi High Court directing his production.

40. It is further submitted that on 22.02.2025, the petitioner provided all documents sought by the ED. The petitioner contends that in view of this compliance, the allegation that he was evading investigation is patently incorrect.

41. It is submitted that on 06.03.2025, the ED conveyed by email that personal appearance was not necessary. On 21.03.2025, the ED again stated that personal appearance was not required, and the petitioner's authorized representative appeared and submitted the required documents before the ED on 26.03.2025.

D. Submissions regarding search and seizure proceedings

42. The petitioner submits that the search and seizure operations conducted on 10.04.2025, 11.04.2025, and 12.04.2025 under Section 17 of the PMLA are illegal and vitiated for complete non-compliance with the mandatory statutory conditions. It is urged that the ED neither recorded nor furnished any valid "reason to believe" that the petitioner was in possession of proceeds of crime or records relating to such proceeds. The petitioner submits that the jurisdictional prerequisites under Section 17(1) are mandatory in nature and non-negotiable.

43. It is further submitted that no incriminating material was seized from the petitioner's residence or business premises during the search operations spanning nearly three days. It is specifically pointed out that the only recovery referred to by the respondent relates to a sum of ₹36,00,000/- allegedly found in a locker in Goa belonging to a company, M/s India Ocean World Pvt. Ltd., with which the petitioner asserts he has no connection. The petitioner submits that this recovery has no bearing upon the petitioner personally and cannot justify the coercive action.

44. The petitioner submits that the entire manner in which the search was conducted reflects a mala fide exercise of coercive powers. The petitioner asserts that his children were subjected to intimidation during the search, compelling him to lodge a complaint with P.S. Rajouri Garden, New Delhi on 13.04.2025. The petitioner also addressed a detailed grievance to the senior officers of the ED on the same day regarding the misconduct during the search.

45. The petitioner submits that the ED undertook the search proceedings despite being fully aware that the Delhi High Court had taken cognizance of his illegal detention by the Uttar Pradesh Police on 16.02.2025 and had ordered an inquiry. Learned counsel submits that the ED attempted to use the coercive mechanism of search to create a false basis for further action, including moving for NBWs, and that this conduct demonstrates colorable exercise of authority.

46. The petitioner submits that the legality of the search must be tested against the standards laid down in Vijay Madanlal Choudhary (Supra) regarding the need for strict adherence to statutory safeguards. It is argued that the ED's actions have violated both statutory and constitutional protections.

E. Jurisdictional illegality of clubbing Distinct Transactions in one ECIR

47. It is submitted that the ED has acted wholly without jurisdiction in attempting to subsume and investigate entirely distinct transactions and predicate offences under a single ECIR. An ECIR, being the equivalent of an F.I.R. under the PMLA, must be rooted in specific scheduled offence, with the alleged proceeds of crime traceable to that very transaction while it is permissible to consolidate multiple FIRs, it they emanate from the same project or scheme, for instance, multiple complaints in respect of the same scam or transaction, the law does not permit amalgamating unrelated projects or companies into one ECIR. Learned counsel for strengthening his above-said submissions relied on the judgment of the Bombay High Court in **Sagar Maruti Suryavanshi Vs. Directorate of Enforcement and others**[6]**,** (Paragraph 42-44). It is argued that applying the above-said judgment, it is submitted that while FIR arising from the Grand Venice project could legitimately to be consolidated into one ECIR, the ED's attempt to also include F.I.R. concerning the entirely different project, as such the Mist project, involving the separate company, directors, investors is *ex facie* permissible. Each distinct transaction requires its own ECIR since the schedule offence the set of the accused, such alleged accused of crime are transaction specific. It is vehemently submitted that the artificial or enlargement of one ECIR to cover multiple transactions obliterates the jurisdictional foundation of PMLA confesses distinct streams of alleged criminality and directly violates the ratio in ***Sagar Maruti Suryavanshi (supra),*** such overreach is *ultra virus* the Act, contrary to binding judicial pronouncement and render the ECIR effective and liable to be quashed.

6 2024 SCC OnLine Bombay 3348

F. Submissions regarding violation of supreme court's consolidation order

48. The petitioner submits that by judgment dated 12.05.2022, the Hon'ble Supreme Court consolidated all FIRs relating to the Grand Venice project into FIR No. 353/2015 and held that no parallel or separate FIRs would survive thereafter. The petitioner emphasises that the Hon'ble Supreme Court expressly directed that all proceedings would emanate only from the consolidated FIR.

49. It is submitted that the ED has unlawfully ignored this binding direction and has relied upon additional FIRs concerning unrelated projects such as the "Mist Avenue Project" for purposes of issuing and sustaining the ECIR. The petitioner contends that this constitutes a direct violation of the Hon'ble Supreme Court's order and is impermissible under Section 44 PMLA and the doctrine of judicial discipline.

G. Submissions on the absence of proceeds of crime

50. The ED has failed to identify, quantify, or demonstrate the existence of any "proceeds of crime" attributable to the petitioner. It is noted that no provisional attachment order has been passed despite the ECIR having been registered in 2021. Learned counsel submits that the absence of any attachment or identification of proceeds of crime is compelling evidence that the ECIR is baseless.

51. The petitioner contends that the absence of proceeds of crime also renders the NBWs unjustified because the ED has been unable to show, even prima facie, that the petitioner is involved in money laundering. It is submitted that Section 5 PMLA, read with explanations given in ***Vijay Madanlal Choudhary (Supra)***, establishes that the concept of proceeds of crime is central to PMLA jurisdiction.

H. Submissions regarding illegal detention and police conduct

52. The petitioner submits that he was illegally detained by the Uttar Pradesh Police on 16.02.2025 without an FIR and was subsequently abducted from Connaught Place on 18.02.2025. It is stated that these acts were brought to the notice of the Delhi High Court in W.P. (Crl.) 598/2025, wherein orders dated 19.02.2025 and 20.02.2025 took serious cognizance of the matter and ordered an inquiry by the Commissioner of Police, Uttar Pradesh.

53. The petitioner submits that the ED attempted to use this period of illegal detention to falsely allege that the petitioner was evading investigation, despite the record showing that the petitioner had appeared and furnished documents earlier. It is contended that the ED's allegation of non-cooperation is tainted by these circumstances.

I. Submissions on violation of natural justice and Article 21

54. The petitioner submits that the ED's conduct in seeking NBWs and undertaking search operations without valid grounds violates the petitioner's right to life and personal liberty under Article 21 of the Constitution. It is argued that the ED did not consider the petitioner's consistent cooperation, the stay of the predicate FIR, or the Hon'ble Supreme Court's consolidation directions.

55. It is further submitted that the coercive actions taken by the ED are arbitrary, disproportionate, and designed to circumvent the judicial protections accorded to the petitioner by the Delhi High Court and this Court.

J. Submissions on the petitioner's cooperation and bona fides

56. The petitioner submits that he has demonstrated complete *bona fides* throughout the investigation process. It is pointed out that the petitioner had earlier deposited ₹50 crores before the Hon'ble Supreme Court during the consolidation proceedings, in compliance with directions. The

petitioner asserts that there has never been any attempt on his part to evade the investigation and that the record of correspondences, appearance, and document submissions clearly establishes his cooperation.

SUBMISSIONS ON BEHALF OF THE RESPONDENT ED

A. ED's submissions regarding maintainability and limited interference at investigation stage

57. Mr. Zoheb Hossain, learned counsel appearing on behalf of the respondent ED vehemently opposed the present petition submitting to the effect that the present petition is not maintainable because the petitioner seeks to invoke the extraordinary writ jurisdiction to interfere in an ongoing money-laundering investigation at a premature stage.

58. It is submitted that it is a settled principle of law that investigation under the PMLA should not be interrupted unless a clear case of abuse of power is established, which, in the ED's submission, is not present here.

59. The ED submits that the prayer for quashing the ECIR is, in law, impermissible. ED relies upon the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (Supra)***, contending that the ECIR is an internal document meant solely for administrative and investigative purposes and is not to be equated with an FIR. Only because the ECIR is not a statutory document and has no legal impact on the rights of the accused, it cannot be quashed or set aside in writ jurisdiction.

60. The ED further submits that the petitioner has erroneously attempted to use judicial review to challenge the investigative prerogative of the respondent. It is stated that courts must refrain from interfering at the stage of evidence collection or during ongoing investigation, especially in cases involving economic offences of serious magnitude.

B. ED's submissions regarding scheduled offence and effect of stay of predicate FIR

61. The ED submits that the petitioner's argument that PMLA proceedings cannot continue because Section 420 IPC has been dropped or because the predicate FIR is stayed is legally untenable. The ED states that a stay of proceedings does not amount to quashing of the FIR and does not wipe out the existence of the allegations.

62. The ED places heavy reliance on the judgment of the Hon'ble Supreme Court in ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association***[7], where the Hon'ble Court held that a stay of proceedings does not efface the underlying order or proceeding. ED submits that the petitioner cannot treat the stay order dated 27.04.2023 as equivalent to the FIR being quashed or dismissed.

63. The ED argues that the principle sought to be invoked by the petitioner that PMLA proceedings cannot survive without the predicate offence is inapplicable here because the predicate FIR continues to subsist in law. The ED submits that the petitioner cannot take advantage of a procedural stay order to defeat the statutory investigation under the PMLA.

64. The ED also refers to the judgment of the Punjab and Haryana High Court in ***Surjeet Kumar Bansal v. Central Bureau of Investigation***[8], where it was held that a stay of the scheduled offence does not automatically translate into a stay of PMLA proceedings. According to the ED, this principle fully applies to the present matter.

C. ED's submissions regarding the petitioner's alleged non-cooperation

65. The ED submits that the petitioner has repeatedly failed to join the investigation despite issuance of multiple summons. It is submitted that

7 (1992) 3 SCC 1

8 2024 PHHC 045226

the petitioner has either not appeared or has avoided personal appearance.

66. While the petitioner may have furnished certain documents, he did not comply with summons requiring personal appearance. Mere filing of replies or sending documents does not amount to cooperation when the ED specifically requires the accused to appear for recording of statements.

67. The ED submits that the petitioner's conduct must be viewed in light of the magnitude of the offences under investigation, involving allegations of large-scale financial fraud and possible layering of funds. ED submits that ensuring personal presence of the petitioner is essential for effective investigation. The ED relies on ***Subhash Popatlal Dave v. Union of India***[9], submitting that an accused who does not comply with summons or evades process cannot claim equitable or discretionary relief.

68. The ED further submits that the petitioner's claim of "illegal detention" by the Uttar Pradesh Police is irrelevant to the present proceedings and does not excuse his non-appearance before the ED. The ED argues that the cumulative conduct of the petitioner demonstrates evasion, justifying coercive steps.

69. The ED submits that the issuance of NBWs by the Special Court on 11.04.2025 is lawful and justified. It is stated that when an accused fails to appear despite repeated summons, the investigating agency is entitled to move the Court for appropriate process, including NBWs.

70. According to the ED, the Special Court was fully justified in issuing NBWs after noting the petitioner's persistent failure to join the investigation. The ED submits that the Court's order cannot be interfered with in writ jurisdiction in the absent of any glaring error.

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9 (2014) 1 SCC 280

71. The ED relies on judicial precedents concerning the power of courts to issue warrants during investigation, including judgments such as State through ***CBI v. Dawood Ibrahim Kaskar,***[10] and ***Ottavio Quattrocchi v. Central Bureau of Investigation***[11] and submits that these judgments establish the principle that courts may issue process during investigation when the accused is avoiding appearance.

72. The ED also relies on cases relating to absconding or non-cooperating accused, including ***Inder Mohan Goswami (Supra)***, where the Hon'ble Supreme Court held that warrants may be issued against persons who avoid process or evade appearance.

73. The ED submits that the petitioner's attempt to challenge NBWs in writ jurisdiction is contrary to law because the proper course is for the petitioner to appear before the Special Court and seek cancellation of the warrants. ED emphasises that NBWs cannot be cancelled "*in absentia*".

E. ED's submissions regarding search proceedings

74. The ED submits that the search proceedings under Section 17 PMLA conducted on 10.04.2025 and thereafter were lawful, duly authorized, and carried out pursuant to statutory satisfaction recorded by the competent authority.

75. The petitioner's objections regarding "reason to believe" are misconceived because Section 17 PMLA does not require the ED to disclose such reasons to the party searched at the time of search. ED states that the correctness of the search can be examined by the Adjudicating Authority upon filing of the complaint under Section 17(4) PMLA, and therefore, the petitioner has an effective statutory remedy which he has chosen not to pursue.

76. Search results yielded materials relevant to the investigation, including discovery of cash amounting to ₹36 lakh, which forms part of

10 (2000) 10 SCC 438
11 75 (1998) DLT 97 (DB)

the evidence. ED contends that the petitioner cannot pre-judge the evidentiary value of seized items at this stage.

F. ED's tabular chart submissions relating to multiple FIRs

77. ED submits that the ECIR was registered on 12.03.2021 on the basis of FIR No. 353/2015, which contained scheduled offences under the PMLA. ED further clarifies that the ECIR was not confined to a single FIR but was expanded by way of two addendums to incorporate all relevant predicate materials against the petitioner.

78. It is submitted that forty-nine FIRs in total form the basis of investigation under ECIR. Out of these forty-nine, forty-four FIRs were earlier consolidated by the Hon'ble Supreme Court into FIR No. 353/2015 (Grand Venice Project). ED submits that although consolidated for the purposes of police investigation, each one of those FIRs contained scheduled offences under Sections 420 IPC, 467 IPC, 468 IPC, 471 IPC, and 120-B IPC, and therefore continue to remain valid material for the purposes of PMLA.

79. ED states that in addition to the forty-four consolidated FIRs, there exist five independent FIRs, all registered in relation to M/s Mist Avenue Pvt. Ltd. (Mist Project), in which the petitioner is also an accused, as stated by the ED. These FIRs were never part of the Hon'ble Supreme Court consolidation order and are being investigated independently.

80. These Mist Avenue FIRs include allegations under Sections 420, 467, 468, 471, 406, and 120-B IPC, all of which are schedule offences (except 406 IPC). ED submits that these FIRs are independent criminal transactions, have not been quashed, and therefore squarely fall within the definition of "scheduled offences" for Section 2(1)(u) PMLA. The ED relies heavily on these Mist Avenue FIRs to establish that scheduled offences continue to exist, and that consolidation of Grand Venice FIRs does not erase the existence of other predicate offences that independently sustain the ECIR against the petitioner.

81. ED submits that addendums to the ECIR were issued twice:

> *"(i) Addendum dated 10.03.2025, by which seven additional FIRs were included; and*
>
> *(ii) Addendum dated 21.05.2025, by which fourteen more FIRs were included."*

82. ED argues that this procedure is legally permissible and fully supported by judicial precedent. ED places reliance on the principle that an ECIR is only an internal document, and additional material can be placed on record at any stage of investigation, so long as it relates to scheduled offences. It is urged that the addendums were issued because the original ECIR already pertained to FIR No. 353/2015 dated 09.06.2015, which contains allegations of cheating and fraud against the petitioner. Subsequent consolidation by the Hon'ble Supreme Court on 12.05.2022 did not quash those other FIRs nor extinguish their status as scheduled offences at the time of ECIR registration.

83. ED further submits that out of the forty-six FIRs consolidated by the Hon'ble Supreme Court, two FIRs were not added in the ECIR. One because it did not contain any scheduled offence and the other because ED could not obtain a copy. Therefore, the ECIR ultimately reflects forty-four consolidated FIRs and five Mist Avenue FIRs, totaling forty-nine.

84. ED submits that the petitioner's argument that only Section 406 IPC survives after submission of the chargesheet is fundamentally misconceived. ED argues that PMLA jurisdiction arises not at the stage of cognizance but at the time of commission of the scheduled offence and registration of the predicate FIR. Multiple FIRs still contain scheduled offences against the petitioner. ED argues that the Hon'ble Supreme Court order did not quash any FIR. It only directed consolidation and filing of a composite chargesheet. ED submits that consolidation does not amount to quashing, and therefore, the scheduled offences in those other FIRs continue to exist for PMLA purposes.

85. ED, stresses upon the contention that five FIRs relating to the Mist Project are separate criminal transactions that have not been consolidated by the Hon'ble Supreme Court order and have not been stayed by any High Court. These FIRs contain clear allegations of fraud, forgery, and cheating, all of which constitute scheduled offences. ED annexes the details of these FIRs in its note, which include FIR dated 19.07.2019 under Sections 420, 467, 468, 471, 120-B IPC FIR dated 10.05.2019 under Sections 420, 467, 468, 471 IPC FIR dated 24.12.2018 under Sections 420, 406, 120-B IPC and others relating to M/s Mist Avenue Pvt. Ltd. In each of these FIRs, the petitioner Satinder Singh Bhasin is a named accused. ED submits that even if, for the sake of argument, the petitioner was right that the consolidated Grand Venice FIR No. 353/2015 now only contains Section 406 IPC, the Mist Avenue FIRs independently sustain the ECIR. ED argues that PMLA is 'transaction-based, not FIR-based,' and therefore every scheduled offence, even one contained in an independent FIR, triggers PMLA jurisdiction.

86. ED submits that the Hon'ble Supreme Court order dated 12.05.2022 consolidated forty-four FIRs for the limited purpose of police investigation. It did not quash the FIRs, extinguish the underlying scheduled offences, or prohibit investigation by central agencies such as the ED. ED asserts that the PMLA proceedings do not depend on whether multiple FIRs are consolidated for police purposes. ED emphasises that every scheduled offence gives rise to a separate stream of proceeds of crime, and consolidation only affects procedural convenience.

87. The ED's tabular chart sets out multiple FIRs relating to transactions involving Satinder Singh Bhasin and various companies associated with him, including BIIPL, GVCTPL, and Grand Venezia Pvt. Ltd. and Mist Project. The multiplicity of FIRs indicates a wider pattern of fraudulent conduct across several projects.

88. The ED argues that the petitioner was named in numerous FIRs registered at P.S. Kasna, Gautam Budh Nagar, under serious offences

including Sections 406, 420, 467, 468, 471, 504, 506, and 120B IPC. The ED contends that the scale and seriousness of the allegations demonstrate the need for a comprehensive money-laundering investigation.

89. The ED submits that various complainants have alleged diversion of funds, breach of trust, and cheating by the petitioner, forming the basis for tracing the proceeds of crime under the PMLA.

90. Sri Pankaj Kumar Shukla, learned counsel appearing on behalf of the intervener has made submissions on certain legal points, but mainly opted all arguments made by learned counsel appearing on behalf of the ED.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

91. The petitioner submits that the Hon'ble Supreme Court in ***Shree Chamundi Mopeds Ltd. (Supra)*** explained that while the distinction between stay and quashing exists for certain purposes, a stay nevertheless freezes the effect and operation of the order under challenge. The petitioner argues that the respondent cannot rely on this distinction to bypass the stay and continue coercive proceedings.

92. It is contended that the ED's position that an ECIR is beyond judicial review is a misreading of ***Vijay Madanlal Choudhary (Supra)***. It is submitted that the said judgment held only that the ED is not required to furnish a copy of the ECIR to the accused, and it did not state that the ECIR is beyond scrutiny when the very initiation of PMLA proceedings suffers from lack of jurisdiction. The petitioner contends that judicial review is available where the ECIR is based on a non-scheduled offence, where the FIRs have been expressly consolidated or merged pursuant to Hon'ble Supreme Court orders, or where the ECIR has been registered in colorable exercise of power. In this context, the petitioner relies upon the decisions passed in ***N. Dhanraj Kochar v. Enforcement***

Directorate[12]; Order dated 02.09.2023 passed in ***Jitendra Nath Patnaik v. Enforcement Directorate, Bhubaneswar***[13] passed by the Orissa High Court at Cuttack and Order dated 10.04.2024 passed in ***Pawan Insaa v. Directorate of Enforcement, Government of India, Chandigarh Zonal Office, Chandigarh***[14], which, according to the petitioner, clarify that although an ECIR is ordinarily not quashable at the initial stage, the High Court may intervene where manifest illegality or jurisdictional defect exists.

93. The petitioner submits that the reliance placed by the respondent on State through ***CBI v. Dawood Ibrahim Kaskar***[15] and ***Ottavio Quattrocchi v. Central Bureau of Investigation***[16] is misplaced, as those decisions were rendered in a completely different statutory context where the police had authority to seek NBWs during investigation. According to the petitioner, these authorities cannot be used to justify issuance of NBWs under PMLA prior to filing of a complaint.

94. The petitioner submits that the ED's allegation of evasion is thus contrary to the documentary record. Reliance placed by the ED on the judgment of ***Subhash Popatlal Dave v. Union of India***[17] is stated to be wholly inapplicable, because that decision concerns an absconding accused who did not respond to summons, whereas the present petitioner has fully complied. The petitioner further distinguishes ***Wave Hospitality Pvt. Ltd. v. Union of India***[18], submitting that the said case is related to provisional attachment proceedings and had no relevance to the present issue of alleged non- cooperation.

95. The petitioner submits that the ED's reliance on the decision in ***Ashok Malik v. Soga Impex Pvt. Ltd.***[19] is fundamentally misplaced. It is argued that the principle that warrants cannot be "cancelled in absentia"

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12 (2022) SCC OnLine Mad 8794
13 CRLMC No.2891/2023
14 CRM-M No.6378 of 2023
15 (2000) 10 SCC 438
16 75 (1998) DLT 97 (DB)
17 (2014) 1 SCC 280
18 2019 SCC OnLine Del 8855
19 2012 SCC OnLine Del 3464

applies only in situations where the warrants were issued after proper cognizance had been taken by the Court. The said decision arose from proceedings under Section 138 of the Negotiable Instruments Act, 1881 where cognizance had already been taken, and the accused had not appeared.

96. The petitioner asserts that in the present case, no complaint has been filed under Section 44 PMLA, and no cognizance exists at all. Therefore, the Special Court lacked jurisdiction to issue NBWs in the first place. It is submitted that where an order is wholly without jurisdiction, the High Court may quash it even if the accused has not physically appeared, because such an order is *void ab initio* and not a legitimate judicial process.

97. The petitioner reiterates the principle reaffirmed in ***Satender Kumar Antil v. CBI***[20], that the graded procedure of summons, then bailable warrant and then non-bailable warrant applies only after cognizance. Therefore, in the absence of cognizance in any PMLA complaint, the issuance of NBWs is non-est and can be interdicted even without the petitioner's presence.

98. The petitioner submits that the ED's claim of non-cooperation or evasion is factually incorrect and contrary to the documentary record. It is stated that the petitioner has, from the very inception, complied with every lawful directive of the ED. The petitioner provides a detailed account of compliance:

> *"i. A written reply to the first summon was made on 18.04.2022.*
>
> *ii. The petitioner physically appeared before the ED on 12.07.2022.*
>
> *iii. Documents were furnished promptly on 14.07.2022.*
>
> *iv. Upon receiving summons dated 08.05.2024, the petitioner supplied documents on 14.05.2024, 16.05.2024, and 20.05.2024.*

20. (2021) 10 SCC 773

v. Upon summons dated 17.02.2025, the petitioner could not appear due to being illegally detained by the Uttar Pradesh Police, a fact acknowledged by the Delhi High Court on 19.02.2025 and 20.02.2025.

vi. Nevertheless, the petitioner submitted documents on 21.02.2025 and 22.02.2025.

vii. On 26.03.2025, the petitioner's authorized representative appeared before the ED and furnished all remaining documents."

99. The petitioner submits that on 06.03.2025 and again on 21.03.2025, the ED itself communicated in writing that the petitioner's personal appearance was "not mandatory," and only documents were required. In such circumstances, the allegation that the petitioner was avoiding personal appearance is factually baseless.

100. The petitioner contends that ***Subhash Popatlal Dave (Supra)*** has no application to the present matter because in that case, the accused was a proclaimed offender who had deliberately avoided process. Here, the petitioner has always cooperated and complied, unless prevented by illegal detention by the state police.

101. The petitioner submits that the ED's reliance on ***Wave Hospitality Pvt. Ltd. (Supra)*** is also misplaced because that case concerned provisional attachment proceedings under Section 5 PMLA and had no relation to compliance with summons.

102. The petitioner also relies on the Bombay High Court's judgment in ***Sagar Maruti Suryawanshi (Supra)***, which held that the ED cannot combine unrelated FIRs to create a composite ECIR and must confine itself to the scheduled offence forming the basis of money-laundering. The petitioner argues that ED's attempt to incorporate FIRs relating to the "Mist Project" into the present ECIR violates this principle.

103. The petitioner submits that the Hon'ble Supreme Court's order in W.P. (Crl.) No. 242/2019 dated 12.05.2022 consolidated all FIRs relating to the Grand Venice project into one principal FIR No. 353/2015, directing that all other FIRs and charge-sheets be treated as statements

under Section 161 CrPC. The petitioner submits that the ED has unlawfully relied upon multiple FIRs that no longer survive in law.

ANALYSIS AND FINDINGS

I. INTRODUCTION TO THE STATUTORY SCHEME

104. This Court has heard learned counsel for the petitioner and the Enforcement Directorate at length and has perused the material placed on record, including the writ petition, the tabular chart filed by the ED, the ED's written submissions, the petitioner's case-law compilations, the petitioner's rebuttal note, and the documents annexed thereto.

105. The primary challenge in the present proceedings is to the ECIR and NBWs issue vide order dated 11.04.2025.

106. Before examining the factual controversies and rival submissions, it is necessary to set out the relevant statutory concepts central to the adjudication i.e., ECIR, scheduled offence, predicate offence, and the scope of judicial review over an ECIR.

(A) Section 3 of the PMLA reads thus:

*"**Offence of money-laundering.**—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever." On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of sub-section (1) of Section 2 of the PMLA defines "proceeds of crime", which reads thus:

2. Definition – (1) In this Act, unless the context otherwise requires, ……..

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

B. Clause (v) of sub Section (1) of Section 2 of the PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is sine qua non for the offence under Section 3 of the PMLA.

(C) Clause (x) of sub-Section (1) of Section 2 of the PMLA defines "schedule". Clause (y) thereof defines "scheduled offence", which reads thus:

"2. Definition – (1) In this Act, unless the context otherwise requires, …….

(y) "scheduled offence" means -

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule.

***5. Attachment of property involved in money-laundering.**— 4[(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that*

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relationto the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in 1[first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.];

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under 3[sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.—For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

17. Search and seizure.—*(1) Where 1[the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—*

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering,1[or]

[(iv) is in possession of any property related to crime,]

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

d) place marks of identification on such record or 1[property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

* * * * *

3[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure 3[or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

4[(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.]

***44. Offences triable by Special Courts.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

1[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or];

*(b) a Special Court may, 2*** upon a complaint made by an authority authorised in this behalf under this Act take 3[cognizance of offence under section 3, without the accused being committed to it for trial];*

4[Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

5[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]

4[Explanation.—For the removal of doubts, it is clarified that,—

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under

this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.*—(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—*

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a 1[reporting entity] and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the 2[Joint Director].”

107. These expressions lie at the core of the PMLA framework and have been judicially examined at length by the Hon’ble Supreme Court in Vijay Madanlal Choudhary (Supra) and Pavana Dibbur (Supra) and by various High Courts, including this Court. For convenience, the relevant paragraphs of Vijay Madanlal Choudahry (Supra) are reproduced below for reference:

“100. We would now elaborate upon the meaning of “investigation” in clause (na) of Section 2(1). It includes all proceedings under the Act conducted by the Director or an authority authorised by the Central Government under this Act for collection of evidence. The expression “all the proceedings under this Act” unquestionably refers to the action of attachment, adjudication and confiscation, as well as actions undertaken by the designated authorities mentioned in Chapter VIII PMLA, under Chapter V PMLA, and for facilitating the adjudication by the adjudicating authority referred to in Chapter III to adjudicate the matters in issue, including until the filing of the complaint by the authority authorised in that behalf before the Special Courts constituted under Chapter VII PMLA. The expression “proceedings”, therefore, need not be given a narrow meaning only to limit it to proceedings before the court or before the adjudicating authority as is contended but must be understood contextually. This is reinforced from the scheme of the Act as it recognises that the statement recorded by the Director in the course of inquiry, to be deemed to be judicial proceedings in terms of Section 50(4) of the 2002 Act.

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105. The other relevant definition is "proceeds of crime" in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property [mentioned in Section 2(1)(v) PMLA] derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence [mentioned in Section 2(1)(y) read with Schedule to the Act] or the value of any such property.

Vide the Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e. Section 2(1)(u)].

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106. The "proceeds of crime" being the core of the ingredients constituting the offence of money laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission

of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act.

Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the scheduled offence concerned. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

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107. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

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109. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already

accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of the definition clause "proceeds of crime", as it obtains as of now.

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Section 3 of the 2002 Act

122. Coming to Section 3 of the 2002 Act, the same defines the offence of money laundering. The expression "money laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering. This is amply clear from the original provision, which has been further clarified by insertion of the Explanation vide Finance (No. 2) Act, 2019.

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147. We may also note that argument that removing the necessity of projection from the definition will render the predicate offence and money laundering indistinguishable. This, in our view, is ill founded and fallacious. This plea cannot hold water for the simple reason that the scheduled offences in the 2002 Act as it stands (amended up to date) are independent criminal acts. It is only when money is generated as a result of such acts that the 2002 Act steps in as soon as proceeds of crime are involved in any process or activity. Dealing with such proceeds of crime can be in any form — being process or activity. Thus, even assisting in the process or activity is a part of the crime of money laundering. We must keep in mind that for being liable to suffer legal consequences of one's action of indulging in the process or activity, is sufficient and not only upon projection of the ill-gotten money as untainted money. Many members of a crime syndicate could then simply keep the money with them for years to come, the hands of the law in such a situation cannot be bound and stopped from proceeding against such person, if information of such illegitimate monies is revealed even from an unknown source.

148. The next question is : Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act.

149. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the case concerned has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a court of competent jurisdiction. It is well within the jurisdiction of the court concerned trying the scheduled offence to pronounce on that matter.

150. Be it noted that the authority of the authorised officer under the 2002 Act to prosecute any person for offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.

151. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police [under Section 66(2) of the 2002 Act] for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

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153. In other words, the authority under the 2002 Act is to prosecute a person for offence of money laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a stand-alone process.

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162. As a matter of fact, prior to the amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 PMLA registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including to prevent and regulate the commission of offence of money laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act.

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212. The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However, it is essentially an inquiry to collect evidence to facilitate the adjudicating authority to decide on the confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of Section 9 of the 2002 Act. In other words, the role of the authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the adjudicating authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money laundering under the 2002 Act before the Special Court, if the fact situation so warrant. It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money laundering. It is also not unusual to

provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity.

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ECIR vis-Ã-vis FIR

366. As per the procedure prescribed by the 1973 Code, the officer in-charge of a police station is under an obligation to record the information relating to the commission of a cognizable offence, in terms of Section 154 of the 1973 Code [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] . There is no corresponding provision in the 2002 Act requiring registration of offence of money laundering. As noticed earlier, the mechanism for proceeding against the property being proceeds of crime predicated in the 2002 Act is a sui generis procedure. No comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence governed by the provisions of the 1973 Code.

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368. Considering the scheme of the 2002 Act, though the offence of money laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under the 1973 Code to deal with other offences (other than money laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money laundering offence much less investigation thereof. The dispensation regarding prevention of money laundering, attachment of proceeds of crime and inquiry/investigation of offence of money laundering up to filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of persons concerned and calling upon production of documents, inquiry/ investigation, arrest of persons involved in the offence of money laundering including bail and attachment, confiscation and vesting of property being proceeds of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money laundering would then be governed by the provisions of the 1973 Code — as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special

Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.

369. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money laundering, analogy cannot be drawn from the provisions of the 1973 Code, in regard to registration of offence of money laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law.

370. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in the 2002 Act requiring authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.

371. The next issue is : Whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the authority and recording satisfaction of reason to believe that the person is guilty of money laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover,

the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money laundering. In any case, upon filing of the complaint before the statutory period provided in the 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the authority under Section 44(1)(b) of the 2002 Act before the Special Court.

372. Viewed thus, supply of ECIR in every case to the person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of the 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution.

373. It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as unknown accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite that, the accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the court concerned. On the same analogy, the argument of prejudice pressed into service by the petitioners for non-supply of ECIR deserves to be answered against the petitioners. For, the arrested person for offence of money laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it is open to the Special Court to call upon the representative of ED to produce relevant record concerning the case of the accused before him and look into the same for answering the need for his continued detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further.

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382.8. The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering.

The authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/ or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

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382.26. In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

382.27. Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest."

Definition and Nature of ECIR

108. ECIR is a document generated by the ED under the PMLA, when they initiate an investigation into money laundering offences. The ECIR is akin to an FIR in criminal cases. It records the basis for the ED's investigation into suspected money laundering activities. It includes details of the predicate offence (scheduled offence under PMLA), the accused involved and the alleged proceeds of crime. The ED registers an ECIR basis on a schedule offence and proceeds to investigate money laundering links. It is treated as an internal document. Unlike FIR, the ED does not typically provide a copy of the ECIR to the accused.

109. Upon perusal of the aforementioned paragraphs of ***Vijay Madanlal Choudhary (Supra)***, it is drawn that an ECIR is an internal, administrative record maintained by the ED upon receipt of information relating to the commission of the offence of money laundering under Section 3 PMLA. The Hon'ble Supreme Court has clarified that an ECIR is not equivalent to an FIR, does not initiate criminal prosecution, and is

not required to be furnished to the accused. The purpose of the ECIR is merely to record initiation of investigation by the ED.

110. However, while an ECIR is not a statutory instrument, its validity may be questioned on limited grounds where the initiation of investigation is vitiated by a jurisdictional defect, such as absence of a scheduled offence, or initiation on the basis of allegations/offences which no longer survive in law. What the Court cannot do is appraise evidence or monitor the investigation.

Scheduled Offence and Predicate Offence.

111. The PMLA is a derivative legislation. Proceedings under Section 3 PMLA are predicated upon the commission of a Scheduled Offence listed in the Schedule to the Act. A Scheduled Offence is therefore the Predicate Offence, whose proceeds constitute “proceeds of crime”.

112. If the Scheduled Offence does not exist, PMLA proceedings may be affected but a mere stay or a dispute about cognizance does not extinguish the scheduled offence itself. The Hon’ble Supreme Court in ***Vijay Madanlal Choudhary (Supra)*** held that the PMLA proceedings cannot proceed in the absence of a subsisting scheduled offence, however, it did not hold that every interim order in the predicate offence stops PMLA investigation.

Scope of judicial review over ECIR

113. Courts have repeatedly held that the ECIR generally cannot be quashed, because it does not affect rights or liabilities. Nevertheless, judicial review lies where:

(i) the ECIR is demonstrably without jurisdiction;

(ii) the allegations do not disclose any scheduled offence, or

(iii) where statutory safeguards are violated.

114. This Court therefore approaches the matter by examining only whether the threshold for interference is met, without venturing into

factual inquiry reserved for the investigating agency or the Special Court.

II. ISSUE OF SEARCH AND SEIZURE UNDER SECTION 17 PMLA

115. The petitioner challenges the search conducted between 10.04.2025 and 12.04.2025 on the ground that there was no "reason to believe." The ED's position is that authorization was duly recorded and the challenge is premature because the petitioner has a statutory remedy before the Adjudicating Authority.

116. This Court, regarding the said issue is inclined to agree with the respondent as per which the prayer seeking a declaration that the search action conducted by the ED is illegal, is a relief for which the petitioner has an efficacious alternate statutory remedy under the PMLA, before the Adjudicating Authority, to challenge or contest the validity of the search.

117. Hence, the relief sought in the present writ petition is rejected. Moreover, allegations of misconduct during search are disputed questions of fact not amenable to writ jurisdiction.

III. MULTIPLE FIRs, CLUBBING ORDER AND WHETHER ECIR CAN BE BASED ON ADDENDUMS, AND ITS VALIDITY.

118. The principles governing consolidation of criminal proceedings have been clarified in ***Amitbhai Anilchandra Shah v. CBI***[21]. There, the Hon'ble Supreme Court held that multiple FIRs concerning the same transaction not to be investigated separately but also held that consolidation cannot operate to efface the existence of individual FIRs for all investigation purposes. The Hon'ble Court observed that consolidation is an administrative measure to avoid duplication, not a substantive extinguishment of offences.

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21 (2013) 6 SCC 348

119. The petitioner asserts that after the Hon'ble Supreme Court's order dated 12.05.2022 consolidating several Grand Venice project FIRs into FIR No. 353/2015, the ED could not rely upon other FIRs, especially FIRs relating to the Mist Project. The ED contends otherwise, relying on the tabular chart which shows that the ECIR originally included FIR No. 353/2015 and pursuant to addendums dated 10.03.2025 and 21.05.2025, included a total of 49 FIRs, of which 44 FIRs relate to the Grand Venice consolidation, and 5 FIRs relate independently to the Mist Project.

120. The petitioner's submissions concede that the Hon'ble Supreme Court's order consolidated the pending Grand Venice FIRs, but this Court observes that it did not direct that future FIRs on distinct facts could not be registered. This Court notes from the record that the consolidation order also required a composite chargesheet to be filed in FIR No. 353/2015 for the Grand Venice matters. It did not bar investigation by other statutory agencies into distinct projects or offences.

121. The question therefore is not whether multiple FIRs exist, but whether the ED has acted unlawfully in drawing them into the ECIR. The Hon'ble Supreme Court has not held that ED investigation is tied only to the predicate FIR. Section 3 PMLA applies wherever there are proceeds of crime relating to any scheduled offence. If multiple FIRs, by multiple complainants allege cheating, forgery, falsification of documents, and criminal conspiracy in different real estate projects, by the same party, they remain distinct scheduled offences for the purposes of PMLA.

122. The tabular chart filed by the ED contains FIR numbers, police stations, and the sections invoked, including Sections 406, 420, 467, 468, 471, and 120-B IPC, all of which are Scheduled Offences (Part A of the Schedule). The petitioner in his rejoinder does not dispute the authenticity of the chart and his objection relates only to the clubbing order.

123. The Hon'ble Supreme Court's consolidation order did not create an immunity from investigation under the PMLA, nor did it collapse distinct offences into non-existence. Consolidation for trial under CrPC is an administrative procedural direction and it does not extinguish the statutory ingredients of each scheduled offence for purposes of Section 3 PMLA.

124. The above stated reasoning of ***Amitbhai Anilchandra Shah (Supra)*** applies here. Even if several FIRs were directed to be merged for police investigation by the Hon'ble Supreme Court, their statutory character as independent allegations, particularly for purposes of special statutes such as PMLA, does not stand obliterated. The effect of consolidation is procedural, and it does not amount to quashing or discharge.

125. The petitioner argues that once the Hon'ble Supreme Court consolidated all 46 Grand Venice FIRs into FIR No. 353/2015, the ED could not have relied upon any other FIRs, nor could it have expanded the scope of the ECIR by way of addendums. The ED argues that addendums are a legitimate internal step reflecting expansion of investigation as new facts emerge. The question before this Court is whether such addendums are permissible.

126. It must be noted at the outset that the ECIR is not a statutory document but an internal administrative document. Its contours are not fixed by any provision of the PMLA. Unlike an FIR under Section 154 CrPC, which cannot be amended or supplemented except through prescribed procedures, an ECIR is not bound by procedural rigidity. The Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (Supra)*** recognized that the ECIR merely records initiation of investigation and it is not a foundational jurisdictional document like an FIR.

127. Consequently, where ED receives material relating to new scheduled offences, or further transactions involving the same accused or entities controlled by them, it is entitled to incorporate that information

into its investigative record through addendums. The petitioner has shown no legal bar on the ED issuing addendums. Nor has any judicial pronouncement to that effect has held that addendums to an ECIR are impermissible.

128. The petitioner's argument that addendums are impermissible because the original ECIR was based on FIR No. 353/2015 is fundamentally misconceived. Section 3 PMLA does not restrict offences arising from only one scheduled offence. The test is the existence of "proceeds of crime" connected with a scheduled offence, not the numerical identity of the predicate FIR. If the accused is alleged to have diverted or laundered funds arising from multiple transactions, each giving rise to distinct scheduled offences, those offences form independent predicates for PMLA jurisdiction.

129. The ED has placed on record two addendums; one dated 10.03.2025 adding seven FIRs, and another dated 21.05.2025 adding fourteen FIRs, bringing the total to forty-nine FIRs. The petitioner has not demonstrated that these additional FIRs do not contain scheduled offences. On the contrary, the tabular chart discloses that the added FIRs invoke Sections 406, 420, 467, 468, 471, and 120-B IPC. These sections are part of the Schedule to the PMLA.

130. Therefore, the argument that ECIR cannot be based on FIRs later added is unsustainable. Clubbing under CrPC occurs for administrative consolidation of trial. It does not erase the scheduled offences for purposes of Section 3 PMLA. Nor does it bar ED from investigating proceeds of crime arising from such offences. The ED is not investigating the procedural effect of the Supreme Court's clubbing order, instead it is investigating laundering of proceeds of crime arising from duly registered criminal cases giving rise to schedule offences.

131. The petitioner contends that the so-called "Mist Project" FIRs are unrelated to the Grand Venice FIRs and were erroneously included into the ECIR. The ED's submissions, including the tabular chart and their

additional note, clearly state that five Mist Project FIRs exist and that the petitioner is named as an accused therein. The petitioner does not dispute being named in these FIRs, instead, he contends that these FIRs stand nullified because of the Hon'ble Supreme Court's consolidation order and that the same pertain to different transaction and not the Grand Venice Mall issue.

132. This contention is factually inaccurate, that the consolidation order dated 12.05.2022 applied only to Grand Venice FIRs and it did not extend to FIRs relating to other projects. There is not a single sentence in the Hon'ble Supreme Court order directing consolidation of the Mist Project FIRs or restraining their registration or investigation. The Mist Project FIRs concern a different project, different complainants, and allegations of separate fraudulent transactions. They are separate predicate offences, however, pertain to same set of individuals including the petitioner who is alleged to have played a key role in the entire set of allegations *qua* the schedule offences and the PMLA investigation considering that he was/is the director/promoter in the group companies.

133. Further, in ***Directorate of Enforcement v. Deepak Mahajan***[22], although it does not concern the PMLA or ECIRs, the Hon'ble Supreme Court held that investigations under special statutes are not circumscribed by the procedural rigidity applicable to police FIRs under the CrPC, and that investigation may evolve as further material surfaces. Relevant paragraphs of the same are as under:

> *"116. It should not be lost sight of the fact that a police officer making an investigation of an offence representing the State files a report under Section 173 of the Code and becomes the complainant whereas the prosecuting agency under the special Acts files a complaint as a complainant i.e. under Section 61(ii) in the case of FERA and under Section 137 of the Customs Act. To say differently, the police officer after consummation of the investigation files a report under Section 173 of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under Section 190(1)(b) of the Code whereas the empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take*

22 (1994) 3 SCC 440

> *cognizance of the said offence under Section 190(1)(a) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under the Code or under the special procedure, if any, prescribed under the special Acts. Therefore, the word 'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation."*

134. This principle that special-statute investigations are dynamic and not limited to the initial material available can subsequently be applied in PMLA jurisprudence to recognize that an ECIR, being an internal record, may be supplemented or updated by way of addendums as the investigation progresses. The permissibility of addendums thus flows from the broader doctrine in ***Deepak Mahajan (Supra)***.

135. The Mist Project FIRs invoke Sections 406, 420, 467, 468, 471, and 120-B IPC. These are scheduled offences. The petitioner is named as an accused. Therefore, these FIRs form independent and valid predicates enabling ED to investigate proceeds of crime connected to those offences.

136. The argument that all FIRs involving the petitioner must be treated as if they no longer exist because the Hon'ble Supreme Court consolidated only Grand Venice matters is untenable. The Hon'ble Supreme Court did not direct a freeze on future FIRs or a bar on FIRs relating to distinct projects. The direction to file a composite chargesheet in the Grand Venice cluster does not retroactively extinguish other transactions.

137. Consequently, the Mist Project FIRs constitute independent scheduled offences. Their inclusion through addendums in the ECIR is lawful, justified, and consistent with the scheme of the PMLA.

138. Since the ECIR has not been equated with an FIR and has been held to be an internal document, there cannot possibly be a restriction to

bringing on record on any subsequent ‘scheduled offence’ registered by way of an FIR alleged to have been committed in respect of the similar transaction which was the subject matter of such ECIR.

139. Accordingly, the ED was entitled to issue addendums to the ECIR, particularly because the investigation is ongoing and proceeds of crime may emerge from multiple transactions. There are separate predicate offences, however, all, upon prima facie basis, pertain to same set of individuals including the petitioner who is alleged to have played a key role in the entire set of allegations qua the schedule offences and the PMLA investigation considering that he was/is the director/promoter in the group companies. The petitioner’s contention with respect to the instant issue are thus devoid of any merits and stand rejected.

IV. WHETHER STAY OF PREDICATE FIR HAS ANY EFFECT ON THE PMLA INVESTIGATION AND QUASHING OF ECIR

140. It is a settled proposition of law that proceedings under special statutes proceed independently of the outcome of the main criminal case, unless the special statute expressly incorporates any provision qua the fate of the predicate offence.

141. The petitioner places heavy reliance on the fact that criminal proceedings in FIR No. 353/2015 have been stayed by a learned Single Judge of this Court. He contends that once the predicate offence is stayed, ED cannot continue its investigation.

142. At the outset, it becomes necessary to understand the precise legal position that has emerged from the orders passed by the learned Single Judge of this Court and the Hon’ble Supreme Court regarding the predicate offences from which the ECIR has been derived.

143. The admitted position of facts of the present case reveals that on 12.05.2022, the Hon’ble Supreme Court in W.P. (Crl.) No. 242/2019, passed a consolidated order whereby 46 FIRs relating to the Grand Venice project were clubbed into one principal FIR, namely FIR No.

353/2015 dated 09.06.2015, registered at Police Station Kasna, Gautam Buddh Nagar, District Gautam Buddh Nagar, Uttar Pradesh. This consolidation was necessitated by the multiplicity of identical allegations arising from the same transaction, the non-delivery of commercial units and non-payment qua the Grand Venice Mall project. The Hon'ble Supreme Court, while consolidating these FIRs, directed that all proceedings would be governed by the principal FIR and that a composite chargesheet would be filed, if required.

144. Following the Hon'ble Supreme Court's consolidation order, this Court was moved by the petitioner in Criminal Misc. Application No.25724/2022 for quashing of proceedings arising out of the said principal FIR No. 353/2015 and the consolidated proceedings in Case No. 1559/2019 pending before the Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar. By order dated 27.04.2023, the learned Single Judge granted an interim order staying all further proceedings in the said Case No. 1559/2019. This stay order assumes critical importance in the present context because it is the predicate offence, the criminal case arising from the consolidated FIRs, whose proceedings stand stayed, not merely a procedural protection but a substantive halt to the criminal machinery.

145. The stay order remains in operation, and the respondent has not placed any material on record showing that no challenge to this stay order has been filed by the State/investigating agency, nor has any application been made to vacate the stay. The admitted position, therefore, is that the consolidated proceedings remain stayed.

146. The significance of this factual position cannot be understated when viewed against the statutory requirements of the PMLA. Under the PMLA, the offence of money laundering under Section 3 is inherently dependent upon the existence of a scheduled offence, a predicate offence as defined under the Act. The Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (Supra)*** examined in detail the scheme of the PMLA and held that the offence under Section 3 is dependent on illegal

gain of property as a result of criminal activity relating to a scheduled offence. It is concerned with the process or activity connected with such property, which constitutes the offence of money-laundering. A person under the PMLA cannot be prosecuted on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him.

147. The legal principle enunciated above establishes a cardinal foundation for PMLA proceedings. The predicate scheduled offence must continue to exist and remain operative. While the Hon'ble Supreme Court in the aforesaid judgment did not explicitly address the situation where the predicate offence stands stayed, a state intermediate between continuing vibrancy and final quashing, the logical extension of the principle is that where judicial proceedings in the predicate offence are eclipsed by a stay order, the jurisdictional foundation of the PMLA investigation stands suspended. This proposition has been examined by other High Courts. The High Court of ***Karnataka in Mantri Developers Pvt. Ltd. v. Directorate of Enforcement[23], decided on 14.12.2022***, applied the principle from ***Vijay Madanlal Choudhary (Supra)*** and held that the existence of a scheduled offence is a jurisdictional fact, a condition precedent for the exercise of investigative authority by the ED. In that case, similar facts were present, the predicate criminal proceedings had been stayed, and the PMLA proceedings continued. The Karnataka High Court, relying on the Supreme Hon'ble Supreme Court's pronouncement, held that PMLA investigation must also be stayed where the predicate offence is stayed. The relevant paragraphs of the same is as under:

> *"14. In these circumstances the offence alleged under the provisions of the PMLA cannot be sustained and cannot be*

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permitted to be continued. Therefore, if the allegations in the predicate offences are considered to be the flesh, the offences under the PMLA is the blood. Therefore, if the predicate offence is not permitted to move forward, the impugned proceedings cannot. It would have been altogether different circumstance, if the petitioners were all acquitted of the offences under the IPC or any other predicate offence to which the offence under the PMLA is linked. The situation in the case at hand is not with regard to acquittal, however, the proceedings are stayed. Therefore, they are eclipsed and not extinguished. The Apex Court does not deal with a circumstance as to what should happen in a case, where it is eclipsed. The Apex Court only dealt with a situation where there is extinguishment of predicate offences. Therefore, it is necessary to consider taking cue from the findings of the Apex Court as to whether attachment order should be permitted to be confirmed or otherwise.

15. It cannot be disputed, that at a later point in time if the petitioners are acquitted, no proceeding under ECIR can continue. In the event they are convicted, it is always open to the Enforcement Directorate to pass any order of attachment or conviction as the case would be. If that be the right of the Enforcement Directorate, since there is no determination in Crime No.163 of 2020, in the light of the interim order being granted by this Court, so long as the interim order is in operation, the impugned proceedings of attachment, in the considered view of this Court, cannot be permitted to continue failing which, it would run completely counter to the findings of the Apex Court.

16. In somewhat similar circumstance, a Division Bench of the High Court of Madras in B. SHANMUGAM'S case (supra) considers this very point as to what is the effect of the stay order and has held as follows:

"What is the effect of a stay order?

***

A Division Bench of the High Court of Madras holds that in the light of the link between the two and the judgment of the Apex Court in VIJAY MADANLAL CHOUDARY (supra) further proceedings under the PMLA should not be permitted to be continued, till the disposal of the case pending before the competent Court in the predicate offence, where there is an interim order of stay operating. I am in respectful agreement with the order passed by the Division Bench of Madras, but only to the extent of challenge to the impugned proceedings. There is no challenge to the proceedings under the ECIR. What is called in question is the provisional attachment order. In the light of judgments quoted hereinabove, the order passed under sub-section (1) of Section by the Enforcement Directorate cannot be termed to

be illegal, however, those proceedings cannot be permitted to be taken to its logical conclusion.

17. There are only three circumstances that the Court would indicate in VIJAY MADANLAL CHOUDARY's case that in the event the accused in the predicate offence is discharged, acquitted or the proceedings against him are quashed in exercise of jurisdiction under Section 482 of the Cr.P.C., it is only then all the proceedings under the Act would become a nullity. That situation has not yet arrived. Therefore, if the proceedings under the predicate offences are eclipsed and not extinguished, the same would become applicable to the proceedings under the ECIR. The same will have to be eclipsed and cannot be extinguished.

18. In the event the submission of the learned counsel for the petitioners is accepted, it would defeat the very power of attachment under sub-section (1) of Section 5 of the PMLA and if the Enforcement Directorate is permitted to move on with the attachment by seeking a confirmation order or proceeding to sell the attached properties, it would defeat the very proceedings pending before this Court in the predicate offences and the judgment of the Apex Court in the case of VIJAY MADANLAL CHOUDARY (supra). Therefore, to keep the right of the petitioners and the respondent/Enforcement Directorate alive, I deem it appropriate to stall further proceedings in the impugned attachment order i.e., the provisional attachment order directing it not to be confirmed or it being taken any further, however, it would not mean that there can be release of the subjects of attachment in favour of the petitioners. If status quo has to be maintained in the proceedings under the IPC for the reason that there is an interim order; status quo has to be maintained in the proceedings of ECIR as well i.e., the impugned proceedings, all of which would mean that they are mutual to each other. The proceedings under the ECIR can continue once there is a determination by this Court in Writ Petition No.10258 of 2020 either in favour of the petitioners or against them. The impugned proceedings of attachment cannot continue as it would be subject to the final result of Writ Petition No.10258 of 2020. In the event the proceedings against the petitioners stand quashed, the attachment order or any other proceeding under the ECIR cannot continue. Till such time, the proceedings cannot be held to be illegal leading to its obliteration.

19. Insofar as the judgments relied on by the learned counsel appearing for the Enforcement Directorate particularly with reference to the case in J.SEKAR v. UNION OF INDIA - 2018 SCC OnLine Del 6523, rendered by the High Court of Delhi holding that the proceedings under the PMLA and the proceedings under the IPC or predicate offences are completely different and they can go hand in hand is concerned, there can be no qualm about the principles so laid down at the relevant point in time. With the judgment of the Apex Court in the case of VIJAY MADANLAL

CHOUDARY (supra), the judgment in J.SEKAR would not become applicable to the facts of the case. The other judgments relied on would also follow suit in the light of the judgment of the Apex Court rendered in the case of VIJAY MADANLAL CHOUDARY (supra).”

148. The principle was also applied by the High Court of ***Karnataka in C. Umma Reddy v. Directorate of Enforcement decided on 14.12.2022***. In that case, the Court examined whether PMLA proceedings could continue where proceedings in the predicate offence stood stayed. The Karnataka High Court held that an order of stay, while not effecting permanent extinguishment, operates to eclipse the proceedings. The Court observed that the effect of an order of stay means that the operation of the impugned order is stayed or stands stalled as if the impugned order does not exist. This holding was grounded in the principle that a scheduled offence, after an FIR has been quashed, cannot exist and therefore, if there is no scheduled offence, there can be no offence of money laundering.

149. The principle and reasoning discussed in the preceding paragraphs may be applied to the present matter, for the reason that the stay order granted by the learned Single Judge of this Court in Criminal Misc. Application No. 25724/2022 operates to eclipse the predicate proceedings, thereby temporally suspending the jurisdictional foundation of the PMLA investigation qua the consolidated FIRs.

150. The ED, in its submissions, sought to distinguish between the effect of a stay order and the effect of quashing or acquittal. The ED contended that a stay order does not efface the existence of an FIR and relied upon the judgment of ***Shree Chamundi Mopeds Ltd. (Supra)***, wherein the Hon’ble Supreme Court held that a stay of operation of an order does not lead to such a result and that it only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This distinction is legally sound as a matter of technical jurisprudence. A stay order does not quash, instead it suspends. Quashing

operates to wipe out proceedings as though they never existed. A stay, by contrast, operates to prevent further proceedings while leaving the underlying order or FIR intact in law.

151. While the ED is technically correct that a stay order does not extinguish the FIR, it is equally true that during the operation of a stay order, the machinery that would otherwise render judgment on the predicate offence is kept in abeyance as well due to stay order.

152. The petitioner cannot be tried, nor can the evidence be sifted, nor can guilt or innocence be determined at this stage with regard to the stay. The predicate offence, though technically existing in law, remains judicially inoperative.

153. In the context of the PMLA, a legislation expressly designed to address proceeds derived from the commission of criminal offences, the investigative authority cannot be permitted to unilaterally proceed with inquiry into proceeds of crime while the very question of whether a predicate offence was committed remains suspended in judicial abeyance.

154. The ED further relied upon judicial pronouncements from the High Court of Madras in ***Vijayraj Surana v. Enforcement Directorate***[24]**,** and other courts suggesting that once the ECIR is born, the umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document itself.

155. However, this principle, rightly understood, operates in the context where the predicate offence subsists and continues to generate proceeds of crime. The principle does not contemplate a scenario where the predicate criminal proceedings themselves are stayed by a competent court. To permit the ECIR to breathe independently while the predicate remains in judicial suspension would amount to circumventing the stay order, a proposition antithetical to the rule of law and the principle of judicial discipline. When a High Court stays proceedings in a predicate

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offence, the implicit corollary is that all collateral and derivative proceedings must also desist until the stay is lifted or the matter is finally adjudicated.

156. The ED's argument that protective orders in the predicate case cannot bear upon independent PMLA proceedings is misplaced because the protective order is not merely the bail order dated 06.11.2019 granted by the Hon'ble Supreme Court but extends to the comprehensive stay of proceedings granted by the learned Single Judge vide order dated 27.04.2023. This distinguishes the present matter from scenarios where only a protective order or bail condition is in operation.

157. The petitioner's assertion is not confined to a bail order but extends to the comprehensive stay of proceedings in Case No. 1559/2019. A stay of proceedings is not merely a protective measure, rather it is an affirmative judicial determination that the State machinery shall not advance until the stay is lifted or the matter is finally adjudicated. When a High Court stays proceedings, it does so to prevent prejudice to the accused, to preserve the status quo, or in response to compelling legal circumstances. A stay order thus carries greater judicial weight than a protective order. The ED's argument that PMLA investigations must continue despite the stay of predicate proceedings amounts, in substance, to circumventing the judicial order of stay, a course impermissible under the principle of subordination to superior court orders and the doctrine of judicial discipline.

158. Furthermore, the ED's reliance upon the judgments, asserting that stay on scheduled offence does not automatically translate to stay on PMLA proceedings, must be understood in their proper context. Those judgments were rendered in cases where the predicate offences continued to subsist, and no judicial stay had been granted. The principle enunciated therein that PMLA is an independent offence does not address the situation where the very predicate upon which PMLA investigation is based stands judicially suspended. The present case stands on materially different footing.

159. PMLA, as a special statute designed to combat money laundering, is premised upon the fundamental principle that proceeds of crime are only those derived from or obtained as a result of criminal activity relating to a scheduled offence. Section 2(1)(u) of the PMLA defines ‘proceeds of crime’ as ‘any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence’. The definition is not abstract or notional, and it requires a nexus between the property and a criminal activity relating to a scheduled offence. The scheduled offence must be concrete, not hypothetical.

160. In the present case, the ECIR was registered on 12.03.2021 and was predicated upon FIR No. 353/2015, which, at that time, contained allegations under Sections 406 and 420 IPC. However, in the supplementary chargesheet filed on 17.02.2019, the allegations under Section 420 IPC were dropped, and cognizance came to be taken only under Section 406 IPC. Section 406 IPC (criminal breach of trust) is not a scheduled offence under the PMLA. This Court notes that while the ECIR was registered before the supplementary chargesheet was filed, and thus technically at the time of ECIR registration there were scheduled offences (Section 420), the current legal position is that cognizance is taken only under a non-scheduled offence.

161. In the interregnum, The ED through addendums dated 10.03.2025 and 21.05.2025, added five other FIRs relating to the Mist Avenue project (Nos. 841/2019, 425/2019, 219/2019, 264/2018, 268/2018). The ED contended that these FIRs, which are not part of the Hon’ble Supreme Court’s consolidation order, contain scheduled offences and thus sustain the ECIR. However, this Court must observe that these Mist Avenue FIRs stand on an entirely different footing from the consolidated Grand Venice FIRs. The Hon’ble Supreme Court’s consolidation order of 12.05.2022 applied specifically to FIRs relating to the Grand Venice project. The Mist Avenue FIRs, relating to a different project and

different investors, were not part of the consolidation order and remain separate predicate offences.

162. The fact remains that qua the consolidated FIRs, the principal focus of the present investigation and the matter sub-judice before this Court, cognizance has been taken only under Section 406 IPC, a non-scheduled offence. The legal position is thus that the consolidated FIRs no longer contain a scheduled offence, and proceedings therein stand stayed. Qua the independent Mist Avenue FIRs, scheduled offences do subsist, but these are separate transactions and not the subject of the present judicial stay.

163. This Court is acutely conscious of the principle that courts do not comment upon matters sub-judice before other benches or at other levels of the judicial hierarchy unless warranted in accordance with the law. The consolidated FIRs and proceedings arising therefrom remain sub-judice before the learned Single Judge in Criminal Misc. Application No. 25724/2022. The petitioner's application for quashing of those proceedings awaits adjudication. The learned Single Judge Court, in issuing the impugned stay order, formed a judicial opinion that circumstances warranted suspension of proceedings pending final determination. That opinion stands recorded in the order dated 27.04.2023.

164. This Court does not, in the present order, venture to revisit or reappraise the merits of the consolidated FIRs, the allegations contained therein, or the evidence available. Rather, this Court confines itself to the narrow but critical issue of whether investigative measures by the ED ought to proceed qua the consolidated FIRs while their predicate proceedings remain stayed and sub judice.

165. The answer to this question flows not from a merits appraisal but from the jurisdictional requirement that the predicate scheduled offence must subsist and remain judicially operative.

166. The ED correctly points out that there exist FIRs which are not part of the consolidated Grand Venice FIRs. These independent FIRs, specifically the five Mist Avenue FIRs, contain allegations of scheduled offences (Sections 420, 467, 468, 471, 120B IPC).

167. The petitioner does not dispute these FIRs. The issue before this Court is not whether the ED may investigate all FIRs without exception but whether the ED may pursue investigation specifically qua the consolidated FIRs whose proceedings stand stayed and sub-judice. Thus, any investigative measure or coercive step that is referable to the consolidated Grand Venice FIRs or the principal FIR No. 353/2015 shall be stayed until final adjudication of Criminal Misc. Application No. 25724/2022.

168. Lastly, with regard to the petitioner's contention that no proceeds of crime have been identified, ED states that the investigation is at a nascent stage. Therefore, at this stage, this Court cannot determine whether proceeds of crime exist or not.

169. This Court clarifies that the direction to refrain from investigative measures applies only to those FIRs which form part of the consolidated Grand Venice Project, i.e., those FIRs which were consolidated by the Hon'ble Supreme Court in its order dated 12.05.2022 into the principal FIR No. 353/2015, and qua which proceedings in Case No. 1559/2019 remain stayed by this Court's order dated 27.04.2023.

170. It is relevant to state here that the petitioner has sought quashing of the ECIR. This Court is constrained to decline this prayer, but on narrow and specific grounds that must be clearly articulated. The reasons for non-quashment are:

> *"A. The ECIR, qua the independent Mist Avenue FIRs, continues to rest upon alleged scheduled offences. These FIRs are unaffected by the stay order and constitute independent predicate offences. The ECIR cannot be quashed in its entirety when it addresses*

investigations into proceeds of crime arising from multiple FIRs, some of which remain operative.

B. The Hon'ble Supreme Court, in ***Vijay Madanlal Choudhary (Supra),*** *held that an ECIR is an internal administrative document, not equivalent to an FIR. Unlike an FIR which must be formally registered and requires statutory compliance with CrPC/BNSS, an ECIR is an internal record maintained by the ED to document initiation of investigation. The jurisdiction to quash an internal administrative document in the preliminary stages of investigation is limited and should be exercised only where clear jurisdictional defects appear. While the ECIR qua consolidated FIRs lacks a subsisting and operative scheduled offence, it is not devoid of all predicate material (the Mist Avenue FIRs), and therefore outright quashment is not warranted at this stage.*

C. The offence relating to the consolidated FIRs is sub-judice before the learned Single Judge in Criminal Misc. Application No. 25724/2022. This Court cannot, and ought not, to offer pronouncements on matters pending adjudication before another bench, even in the guise of quashing an ECIR. The proper course is to stay investigative measures qua those FIRs while leaving the ECIR itself intact, subject to the direction that investigation shall not proceed qua the stayed consolidated FIRs.

D. The Hon'ble Supreme Court in its order dated 12.05.2022 directed filing of a composite chargesheet in the consolidated proceedings. While the investigation is currently stayed, the Hon'ble Supreme Court has not closed the door to the possibility of a composite chargesheet being filed in the future. Complete quashment therefore at this stage would necessitate re-registration of the ECIR at a later date, creating procedural inefficiency. A stay of investigative measures qua consolidated FIRs is thus a more nuanced and efficient approach."

171. In view of the foregoing, this Court is not inclined to quash the ECIR but suspends investigative measures qua the consolidated Grand

Venice FIRs. The ECIR may be pursued qua other predicate FIRs, particularly the independent Mist Avenue FIRs.

V. ISSUE OF NON-BAILABLE WARRANT

172. The principles guiding issuance of NBWs have been discussed by the Hon'ble Supreme Court and many High Cours time and again. A court may issue a non-bailable warrant during investigation where summons have been ineffective, or where the presence of the accused is essential for the purposes of investigation. Investigating agency is not barred from approaching the court to compel appearance if the accused is demonstrably evading process.

173. Further, an accused has no vested right to demand that the investigating agency refrain from exercising statutory powers merely because the accused has furnished certain documents. Cooperation is not to be judged only by production of papers but also by timely compliance with summons and facilitating in investigation.

174. The NBW order dated 11.04.2025 has been examined. It records that the petitioner stands for the offence of money laundering and directs arrest. The NBW is open-ended. The petitioner argues that NBWs cannot be issued during investigation without cognizance, and the ED argues that NBWs are justified because the petitioner repeatedly evaded personal appearance.

175. The writ petition annexures show emails and documents transmitted by the petitioner. However, the ED's written submissions state that critical documents were not submitted and personal appearance was avoided. The investigation requires personal interrogation under Section 50, and merely sending papers does not satisfy the requirement.

176. The record placed before this Court demonstrates that the investigation under ECIR has been pending since 12.03.2021. Over four years have elapsed since the ECIR was registered. During this extended period, the petitioner has been summoned on multiple occasions, and the

record shows the issuance of summons dated 29.03.2022, 14.07.2022, 08.05.2024, 17.02.2025, 06.03.2025 and 21.03.2025. Bailable warrants were not issued, and NBWs were issued thereafter.

177. The preceding paragraph discloses engagement on behalf of the petitioner with the investigative process over the period. The petitioner has appeared in person on initial occasions (12.07.2022 and 14.05.2024) and subsequently through authorized representatives.

178. The ED, in its submissions dated 11.04.2025 (after the NBW was issued on 11.04.2025), belatedly sought to characterize the petitioner's conduct as evasive, alleging that the petitioner fled from his premises in a clear and deliberate attempt to avoid any cooperation with the investigation during the search operations on 10.04.2025. However, the ED simultaneously acknowledged that the petitioner had been complying with summons and furnishing documents. In its chart of summons, the ED noted – 'appeared', 'submitted documents', 'provided documents', etc. The narrative of evasion sits uncomfortably with the record of sustained compliance on the face of it.

179. The temporal aspect is critical to the analysis. Four years have elapsed without completion of investigation. Summons continue to be issued, documents continue to be called for, and now, coercive measures in the form of NBWs have been resorted to. This Court must consider whether, after such a prolonged period, NBWs serve any legitimate investigative purpose or whether they represent a frustration of the investigative process rather than a facilitation thereof.

180. The power of issuance of NBWs is not unlimited but is hedged with important preconditions and principles. The Hon'ble Supreme Court in ***Inder Mohan Goswami (Supra)*** expounded the legal principles governing issuance of NBWs. The Hon'ble Supreme Court laid down comprehensive guidelines therein, as per which NBWs should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when it is reasonable to

believe that the person will not voluntarily appear in court or the police authorities are unable to find the person to serve him with a summon or it is considered that the person avoiding the process of court.

181. The Hon'ble Supreme Court emphasized that the purpose of NBWs is to secure the presence of an accused before court and not to punish. The Hon'ble Court further observed that issuance of NBWs should be done carefully and should not become a tool for punishment before conviction. Mechanical issuance of NBWs without consideration of the facts and circumstances is impermissible.

182. The Hon'ble Supreme Court reiterated this principle in ***Satender Kumar Antil (Supra)***, wherein it held that NBWs during investigation demand proper justification. The Hon'ble Court observed that in the absent of evasion proof or likelihood that the person would abscond, NBWs should not be issued during the investigative stage mechanically.

183. By contrast, in the present case, the petitioner's reasons for nonappearance in February 2025 were that he had been illegally detained by the Uttar Pradesh Police and was before the Delhi High Court in a related proceeding (W.P. Crl. No. 598/2025). These reasons were not frivolous, rather they were factual and had been placed before the ED in writing. The petitioner thereafter appeared through a representative and furnished documents, which was a form of compliance albeit not in the exact manner sought.

184. This Court has examined the record with care to determine whether there is material showing that the petitioner has been evading the investigative process. The ED's written submissions dated 11.04.2025 (the very date on which NBWs were issued) are sparse in factual detail regarding evasion. The ED alleged that the petitioner fled from his premises in a clear and deliberate attempt to avoid any cooperation with the investigation during the search operations on 10.04.2025 and that this act of fleeing has been captured on video, with CCTV. However, fleeing from a search operation is a distinct issue from evasion of

summons or process. Fleeing from a search does not necessarily indicate prior intent to evade investigation, it may indicate a reaction to an unexpected and unannounced incursion at the residence. Moreover, the petitioner's legal position has been that the search itself was conducted without jurisdiction and in the absence of proper statutory satisfaction under Section 17 PMLA.

185. No affidavit or detailed material has been placed by the ED in support of the allegation of evasion. The bare assertions made in the written submissions, unsupported by documentary evidence of repeated failure to comply with summons or clear indicators of evasion, are insufficient to justify the issuance of NBWs, especially at the distance of nearly three years into the investigation.

186. The petitioner's counsel submitted in detail that the petitioner has consistently complied with summons, furnished documents as sought, and cooperated with the investigation. Counsel further submitted that the issuance of NBWs at such a late stage, after nearly three years, appears to be a colourable exercise of power designed to manufacture non-cooperation and justify coercive action. Learned counsel contended that the issuance of NBWs is in violation of the principles laid down in ***Inder Mohan Goswami (Supra)*** and ***Satender Kumar Antil (Supra)***, and that this Court is empowered to quash or cancel such warrants in writ jurisdiction where jurisdictional defects are apparent.

187. The ED's counsel submitted that the petitioner has been systematically evading investigation, has not appeared despite multiple summons, and that the ED was left with no option but to move for NBWs. Learned counsel further submitted that the fact that some documents were furnished does not constitute cooperation if personal appearance was specifically sought. Learned counsel argued that the petitioner fled during the search operations, which itself is indicative of consciousness of guilt and evasion.

188. This Court, having considered the submissions of both parties, the record, and the applicable legal principles, is of the view that the ED has failed to discharge its burden of demonstrating actual evasion by the petitioner. The chronology of summons and responses shows regular engagement on behalf of the petitioner. Most critically, the temporal aspect, nearly four years of investigation without completion and no prosecution complaint having been filed yet, suggests that NBWs are not being issued in the early stages of a nascent investigation where an accused is evading process but rather in a prolonged investigation where no clear investigative purpose is being served by further coercive measures.

189. The Hon'ble Supreme Court in ***Inder Mohan Goswami (Supra)*** was emphatic that NBWs are not instruments of punishment but tools to secure the presence of an accused in aid of investigation. If, after a prolonged investigation, no clear investigative result (such as completion of inquiry, confrontation of the accused with specific evidence, recording of statement under Section 50 PMLA, filing of prosecution complaint etc.) is in sight, then the issuance of NBWs becomes a hollow exercise, a coercive measure that frustrates rather than facilitates the investigative process.

190. In the present case, the petitioner's statement under Section 50 PMLA was recorded on 12.07.2022. Since then, over two and a half years have elapsed. The ED continues to call for documents and information. At some point in a protracted investigation, the investigative agency must move forward to conclude its inquiry and file a complaint or close the investigation.

191. This Court is mindful that it is not the function of the High Court to micromanage investigation or to prescribe investigative methodology to the ED. The ED possesses statutory authority and domain expertise in investigating money laundering offences. However, the issuance of NBWs, being a coercive measure that curtails personal liberty, attracts constitutional scrutiny. When an accused has substantially cooperated

over a prolonged period, and the ED has failed to demonstrate evasion, the issuance of NBWs becomes arbitrary.

192. Having examined the record, considered the submissions of both parties, and applied the legal principles governing issuance and cancellation of NBWs, this Court is of the following view:

> *"A. The petitioner has not evaded the investigative process. The ED has failed to place material on record demonstrating evasion, noncompliance with summons, or persistent absence. The chronology of engagement by the petitioner shows sustained cooperation, including personal appearance and furnishing of documents in response to summons.*
>
> *B. The investigation has been pending for over four years, and no clear investigative purpose is being served by the issuance of NBWs at this stage. The investigative agency has had ample opportunity to conclude its inquiry. The prolongation of investigation, punctuated by NBWs, frustrates rather than facilitates the investigative process.*
>
> *C. The issuance of NBWs is not justified under the principles laid down in a catena of judgments. The judgments laying down the principle require clear demonstration of evasion or reasonable apprehension thereof, and mechanical issuance of NBWs is impermissible."*

193. Accordingly, the NBWs issued on 11.04.2025 are hereby cancelled. The petitioner is directed to join the investigation and cooperate therein upon prior written intimation by the ED.

CONCLUSION

194. In view of the foregoing discussions, and upon careful consideration of the rival submissions advanced on behalf of the parties, this Court is of the opinion that the issues arising for adjudication lie within a narrow compass. The petitioner has questioned the very initiation and continuation of proceedings under the PMLA on the ground that the foundational requirement of a subsisting scheduled offence is absent, and that the ECIR and consequential coercive measures have been pursued in colourable exercise of authority.

195. On the other hand, the ED contends that multiple FIRs containing scheduled offences continue to subsist in law, and that the ECIR, being an internal document, cannot be interfered with in writ jurisdiction.

196. Having evaluated the statutory framework of the PMLA, the effect of the Hon'ble Supreme Court's consolidation order, the nature and permissible scope of an ECIR, and the judicial threshold for interference at the stage of investigation, this Court finds that while the ED's jurisdiction is indeed derivative of and contingent upon the existence of a scheduled offence, such jurisdiction cannot be said to have been extinguished merely by the stay of proceedings in the predicate FIRs or by clubbing of FIRs.

197. At the same time, the invocation of coercive measures, including search, seizure, and the issuance of non-bailable warrants, must adhere strictly to statutory safeguards and constitutional limitations.

198. The cumulative assessment of facts and law, therefore, warrants the issuance of limited relief for ensuring that investigative powers are exercised within permissible bounds, without unduly obstructing the ED from conducting a lawful investigation into allegations that prima facie stem from multiple FIRs involving scheduled offences.

199. The conclusions hereinbelow strike a balance between the competing considerations of individual liberty and the need for an effective investigation into economic offences. Accordingly, the following directions are passed:

> *"A. The prayer for quashing of the ECIR is declined qua all the 49 FIRs, having regard to the settled legal position that the ECIR is an internal document of the ED and is ordinarily not amenable to quashing in exercise of writ jurisdiction, particularly when multiple FIRs containing scheduled offences continue to subsist in law and investigation is still at the nascent stage where not even the prosecution complaint is filed.*
>
> *B. The respondent, ED, shall refrain from pursuing or continuing investigation, inquiry, summons, searches, seizures, attachment or any other coercive measures including warrants qua the offences and*

allegations arising out of the consolidated FIR including FIR No.353/2015 i.e. principal FIR (Grand Venice Project consolidated FIRs), till such time as:

"i. the final adjudication of Criminal Misc. Application No. 25724/2022 pending before the learned Single Judge of this Court; or

ii. the stage of framing of charges in Case No. 1559/2019.

iii. Any final order passed by the competent Court qua the said FIRs, whichever is the earliest.

C. The petitioner is directed to pursue Criminal Misc. Application No. 25724/2022.

D. The NBWs dated 11.04.2025 issued by the learned Special Judge are set aside, as the same were issued in a manner inconsistent with the procedural safeguards applicable at the pre-complaint stage under the PMLA.

E. Upon vacation of the stay order in Criminal Misc. Application No. 25724/2022, or upon final adjudication of the said application, the respondent shall be free to resume investigation process qua the FIR No. 353/2015 principal FIR (Grand Venice Project consolidated FIRs), in accordance with the law."

200. In view of the aforementioned terms, the petition is partly allowed and stands disposed of.

201. All pending applications, if any, also stand disposed of.

202. It is made clear that the observations made by this Court in the preceding paragraphs shall not be construed as an expression on the merits of the case in any FIR/ECIR.

203. The judgment be uploaded on the website forthwith.

(Lakshmi Kant Shukla,J.) **(Chandra Dhari Singh,J.)**

December 18, 2025
Atul