



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 816 of 2023

Reserved on : 12.10.2023

Delivered on : 02.11.2023

Mr. Rajnikant Tiwari, S/o Lt. Mr. Shashi Bhushan Tiwari, Aged About 53 Years, R/o H.No. 125, Near Raipur Naka, Raipur Road, Mahasamund, Chhattisgarh.

--- Applicant

Versus

Directorate of Enforcement, GOI, Through its Assistant Director, Mr. Nirmal Jharwal, Raipur Zonal Office, Pujari Chambers, Pachpedinaka, Raipur, Chhattisgarh - 492001

--- Respondent

For Applicant : Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Harshwardhan Parganiha, Ms. Saloni Verma, Advocate.
For Respondent : Mr. Sourabh Kumar Pande, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV ORDER

1. This is first bail application filed by the applicant under Section 438 of the Code of Criminal Procedure, 1973, for grant of anticipatory bail, who has apprehension of being arrested in connection with Crime No. ECIR/RPZO/09/2022 dated 29.09.2022 registered at Police Station- Directorate of Enforcement, Zonal Office, Raipur (C.G.) for the offence punishable under Sections 186, 204, 353, 120B, 384 of IPC, Sections 3 & 4 of the Prevention of Money Laundering Act, 2002



(for short “the PMLA, 2002”).

2. The case of the prosecution is that during a search and seizure investigation under Section 132 of the Income Tax Act conducted on 30.06.2022 and one Mr. Suryakant Tiwari at a hotel room of Hotel Shereton Grand, Bengaluru, certain incriminating materials are said to have been found, based upon which a complaint was lodged by the Income Tax Department at the Kadugodi, Police Station Bengaluru alleging offences under Sections 186, 204 and 353 read with Section 120B of the IPC which led to the registration of the FIR. Based upon the further investigation the Enforcement Directorate registered ECIR No. RPZO/09/2022 and further investigation was conducted. In the course of the investigation, main accused- Suryakant Tiwari was summoned and was arrested on 13.10.2022.

3. It is further case of the prosecution that the prosecution has recovered diaries from the possession of Smt. Soumya Chourasiya and the main accused- Suryakant Tiwari, from which it would reveal transaction of cash money between Smt. Soumya Chourasiya and the main accused- Suryakant Tiwari. It is also case of the prosecution that object of Suryakant Tiwari to tamper and destroy the important documents as well as electronic gadgets and Suryakant Tiwari along with his brother, Rajnikant Tiwari and his associates Hemant Jaiswal, Jogendra Singh, Moinuddin Quaraishi, Nikhil Chandrakar, Roshan Singh and others were involved in criminal conspiracy to run a parallel system of collecting illegal levy on coal and were doing illegal





and unaccounted cash movement as per instructions of Suryakant Tiwari. All the above mentioned associates of Suryakant Tiwari had admitted in their statements recorded before the Income Tax officials that they were doing the illegal levy collection on the instructions of Suryakant Tiwari. The proceeds received from the above referred to action were being used for taking undue advantage and to influence public servants by corrupt and illegal means and by exercise of personal influence.

4. The role of the present applicant is that he was an active member of the extortion syndicate. He was the focal point where all the extorted cash was deposited and was stored and subsequently dispatched for utilization as per the instructions of Suryakant Tiwari. Large amount of cash was also used to purchase immovable assets in the name of the present applicant. Many of the hand written entries in the diaries were made by the present applicant only. He knowingly and actively participated in the extortion racket and acted as the accountant who managed the illegal cash. After Suryakant Tiwari, only the present applicant could finalize/verify the bills raised by various vendors, contractors etc. It was also accepted by broker of the immovable properties viz. Watan Chandrakar, Ved Prakash Sahu @ Pappu Sahu, Ajay Naidu etc. that deal for purchasing of immovable parties was finalized by the present applicant and the payment of cash over and above the registered value of the property was handed over by the present applicant to the seller





of the properties.

5. Learned Senior counsel for the applicant would submit that it is a case where the applicant would be entitled for the benefit under the exceptions carved out under Section 45 of the PMLA, 2002. He would further submit that the applicant has cooperated with the Investigating Agency on all occasions and there is no further possibility of the applicant misusing the bail or would influence in any manner the investigation or tampering of the evidence nor is there any possibility of the present applicant absconding either.
6. Learned Senior Advocate appearing for the applicant would submit that the FIR was registered on 12.07.2022 under various Sections and on 03.12.2022 Section 384 of the IPC has been added which is a schedule offence. The Directorate of Enforcement registered the ECIR and started investigation. The present applicant was directed to appear on 19.10.2022 and 02.11.2022. He would further submit that he was summoned to join the investigation wherein he has appeared in the investigation. He would further submit that on 19.12.2022, a complaint was filed against 7 persons including the present applicant and thereafter on 30.01.2023 another complaint was filed against 8 persons including present applicant. He would further submit that from bare perusal of reply filed by the ED (Annexure R/6), it would be clear that various allegations have been made against the applicant and would submit that from bare perusal of ECIR (Annexure R/6) certain allegations were levelled against the present applicant and the role of the





applicant has also been narrated. He would further submit that investigation has been conducted against the applicant which can be reflected from paragraph 9.2 of the ECIR wherein the role of the present applicant has been mentioned which have been detailed in subsequent paragraph. By briefing this paragraph, he would submit that since the applicant is cooperating with the investigation and he is very much available, statement has already been recorded, thus, he can be considered for grant of anticipatory bail as he is available with the investigating authorities. He would further submit that in paragraph D of ECIR wherein evidence collected against the present applicant regarding offence under the PMLA, 2002 has been detailed and would submit that since the evidence has already been collected as mentioned in the ECIR and thus entire investigation has been completed. Therefore, he is entitled to be granted anticipatory bail. He would further submit that statement of the present applicant has been recorded as reflected from ECIR. He would further submit that the ED has started its investigation in the month of September, 2022 and have completed their investigation in the month of January, 2023, the present applicant was made available and cooperated with the investigation, statement has already been recorded, he was summoned by the ED and made available to them. Thus, he would submit that the applicant is entitled to get anticipatory bail. He would further submit that the applicant is satisfying twin conditions of Section 45 of the PMLA, 2002 for grant of





anticipatory bail. He would further submit that according to Section 19 of the PMLA, 2002 power has been conferred to the Directors, Deputy Directors, Assistant Directors or any other officers authorized in this behalf by the general special order, on the basis of material in his possession, reason to believe (the reason for such believe to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as may be, inform him of the grounds for such arrest. Thus, he would submit that since the prosecution has never come to conclusion with reference to the present applicant that his guilty of offence and have not invoked Section 19 of the PMLA, 2002 and have not arrested the present applicant, therefore, he is legally entitled to be considered for grant of anticipatory bail and he would further submit that if a person is not arrested during investigation against whom charge-sheet has to be filed, he has to be released on bail as a matter of right and would submit that since charge-sheet has already been filed in the month of September, 2022, he may be released on bail.

7. He would further submit that provisions of Section 45 of the PMLA for grant of bail is also applicable for grant of anticipatory bail and the applicant fulfills the requisite conditions for grant of bail under Section 45 of the PMLA, 2002 thus, he is entitled to get anticipatory bail. To substantiate his submission, learned senior counsel for the applicant would refer to the judgment rendered by Hon'ble the Supreme Court and High Courts in case





of Court on its own Motion Vs. CBI ILR (2004) I Delhi 47, Court on its own Motion Vs. State, 2018 SC Online Delhi 12306, Dataram Singh Vs. State of UP, (2018) 3 SCC 22, Siddharth Vs. State of UP, (2022) 1 SCC 676, Amanpreet Singh Vs. CBI, 2021 SCC Online 941, Satender Antil Vs. CBI, (2021) 10 SCC 773, Satender Antil Vs. CBI & another, (2022) 10 SCC 51, Mahdoom Bava Vs. CBI, SLP No. 376 of 2021 (decided on 20.03.2023), Satender Kumar Antil Vs. CBI & another, in M.A. No. 2034/2022 in M.A. No. 1849/2021 in SLP Crl. No. 5191/2021 (decided on 21.03.2021), Satender Kumar Antil Vs. CBI & another, in M.A. No. 2034/2022 in M.A. NO. 1849/2021 in SLP Crl. No. 5191/2021 (decided on 02.05.2023), Govind Prakash Pandey Vs. ED, Allahabad High Court order dated 02.02.2023 in Crl. M.B.A. No. 1943 of 2023, Rana Kapoor Vs. ED, Delhi High Court judgment dated 25.11.2022 in B.A. No. 559/2022, Komal Chadha Vs. SFIO, Delhi High Court judgment dated 21.12.2022 in B.A. No. 1740/2022, Taranjeet Singh Bagga @ Sonu Singh Vs. SFIO, Delhi High Court judgment dated 17.07.2023 in B.A. No. 2347/2022, Vinod Malewar Vs. ED, Chhattisgarh High Court order dated 29.08.2022 in MCRCA No. 898/2022, ED Vs. Debabrata Halder, Calcutta High Court judgment dated 20.12.2022 in CRM (SB) No. 93/2022, Pawan Kumar Agrawal & another Vs. ED, Supreme Court order dated 01.02.2023 in SLP Crl. No. 2106/2022, Aditya Sarda Vs. SFIO, Punjab & Haryana High Court order dated 20.04.2023 in CRM M No. 17518/2022,





Abhishek Agarwal Vs. UoI, Jharkhand High Court judgment dated 19.04.2023 in ABA No. 10336/2022, Roop Singh Yadav Vs. ED, Allahabad High Court order dated 29.04.2022 in Crl. B.A. No. 1831/2022 & Roop Singh Yadav Vs. ED, Supreme Court order dated 11.05.2023 in Crl. A. No. 1473/2023.

8. Controverting the aforesaid submission made by the applicant, learned counsel for the respondent has filed reply to the application mainly contending that the present applicant has played specific role in commission of offence. It has been further contended that ED investigation revealed that unless cash @ Rs. 25/tonne of coal transported was paid to associates of Suryakant Tiwari, the concerned mining officer in the office of collectorate would not issue the requisite transit pass. All of this was facilitated/coordinated by Suryakant Tiwari with clout of Smt. Soumya Chaurasia and other Government officials. It has been further contended that once these associates of Shri Suryakant Tiwari received the additional charge of Rs. 25 per tonne of coal to be transported, message was then communicated to the Mining Officer (s) and thereafter the delivery orders were cleared for transport. It has also been stated that associates (collection agents deployed at difference places) of Suryakant Tiwari used to maintain date of coal delivery order and payment of illegal levy of Rs. 25 per tonne on coal and after collection of levy, they used to hand over such cash amount along with collection date to Rajnikant Tiwari (present applicant), Nikhil Chandrakar and Roshan Kumar Singh at the house of Suryakant Tiwari i.e. I-34,



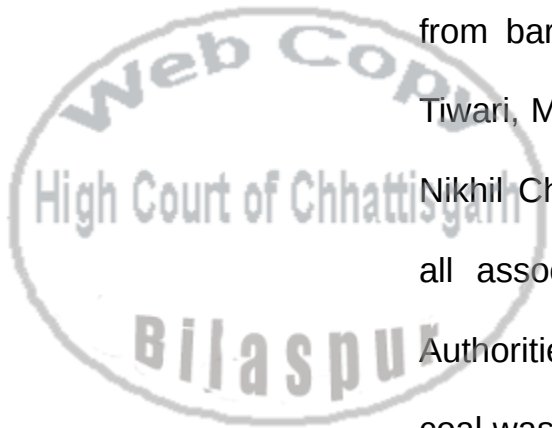


Anupam Nagar, Raipur. At, I-34, Rajnikant Tiwari (present applicant), Nikhil Chandrakar and Roshan Kumar Singh used to maintain consolidated data of this illegal levy collection, to collect the cash and kept here and thereafter, from there, this illegal cash was being used for making bribes to Saumya Chaurasia, other senior bureaucrats and politicians, for incurring Misc. Political Expenses & Election campaign, purchasing immovable properties and coal washeries by Suryakant Tiwari & other members of coal syndicate, Misc. expenses of Suryakant Tiwari and other syndicate members etc. It has also been stated in the reply that part of collected illegal cash was also being transferred to house of present applicant and Laxmikant Tiwari in Mahasamund for safe keeping. It has also been contended that the present applicant, elder brother of Suryakant Tiwari is the main associate and confidant of Suryakant Tiwari. As per the findings of the investigation under the PMLA, 2002 he was the keeper of the accounts and cash for the entire scam, he is responsible for acquisition, possession, concealment, use of the proceeds of crime. He has been claiming assets purchased with the PoC as untainted assets. Therefore, he has directly indulged in the offence of Money Laundering as defined Section 3 of the PMLA, 2002. Statements by Nikhil Chandrakar, Laxmikant Tiwari and others would show that Rajnikant Tiwari (present applicant) used to handle cash payments for getting accommodation entries from various person also.





9. It has also been contended that complaint dated 30.01.2023 has been filed against the present applicant and others for commission of offence under Money Laundering Act and the learned Special Judge (PMLA) Raipur has taken cognizance of the said prosecution complaint. Thus, it is crystal clear that present applicant is knowingly a party to the offence under Section 3 of the PMLA, 2002. It has also been contended that the present applicant is indulged in the acquisition, possession, layering, concealment, use and projection of the proceeds of crime as untainted property. It has also been contended that from bare perusal of statement of present applicant, Navneet Tiwari, Moeenuddin Quereshi, Hemant Jaiswal, Jogendra Singh, Nikhil Chandrakar, Rahul Singh and Chandra Prakash Jaiswal, all associates of Suryakant Tiwari recorded by Income Tax Authorities revealed that illegal collection of levy on transport of coal was being done on the directions of Suryakant Tiwari. It has also been stated that only after the payment of illegal levy, the delivery order of the coal is cleared from mining department. It has also been contended that it is not mandatory that every person who appears to be guilty of the offence of Money Laundering is required to be arrested under Section 19 of the PMLA, 2002 and arrest is carried out to only in cases where it appears that custodial interrogation of such person is required during the course of investigation. As such no requirement was felt during investigation till date, therefore arresting in terms of Section 19 of PMLA, 2002 has not been carried out. It has been





further contended that the applicant was present himself before the Directorate on all occasions, there were instances where the applicant had been non-cooperative and evasive in his replies. It is further submitted that as the investigation in the present case is ongoing and the applicant's custodial interrogation may be required for question during the course of further investigation, the grant of bail at this stage may impede the investigation being conducted by the Directorate. It has been further contended that it is not as if the investigation in the present case is complete. The investigation is ongoing and the Directorate is trying to establish the money trail and identify the proceeds of crime. Therefore, the applicant may still be required during the course of further investigation, the grant of bail at this stage, during the pendency of investigation may have detrimental effect on investigation being conducted by the Directorate. It has been further contended that the applicant is the brother and a close associate of Shri Suryakant Tiwari who is the mastermind behind the present illegal coal levy scam at ground level and is having strong links with politicians and businessmen in the State of Chhattisgarh. Shri Suryakant Tiwari being closely associated with Ms. Saumya Chaurasia, who is a highly influential individual in Chhattisgarh. Therefore, in case present applicant is granted anticipatory bail, the applicant may interfere in the investigation and influence the witnesses concerned in the present case. It has been further contended that various suspects in the present case have attempted to evade the process of law for a very long





time. Thus, it has been prayed for dismissal of the present bail application.

10. I have heard learned counsel for the parties at length, perused the ECIR with utmost satisfaction.
11. The point to be determined by this Court is (1) whether non-arresting of the present applicant entitled him to get anticipatory bail in view of Section 19 of the PMLA, 2002. (2) Whether the twin conditions for grant of bail under Section 45 of the PMLA, 2002 are available on record to release the applicant by granting anticipatory bail.

Point No. 1

12. For better understanding, it is expedient for this Court to extract

Section 19 of the PMLA, 2002 which read as under:-

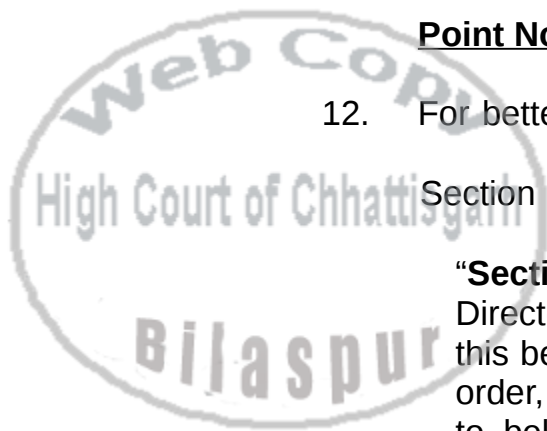
“Section 19 - Power to arrest - (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person 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 person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court.

13. Learned Senior counsel for the applicant would submit that since





the applicant was not arrested and applicant joined the investigation and thus cooperating with the investigation, statement has already been recorded, thus, he may be granted anticipatory bail on the conditions that he will cooperate with the investigation. To substantiate this submission, learned senior counsel for the applicant has forcefully referred to the order dated 29.08.2022 rendered by Coordinate Bench of this Court in MCRCA No. 892/2022 wherein Coordinate Bench of this Court has granted anticipatory bail to the accused on the pretext that there is no apprehension of the applicant absconding or tampering with the evidence or influencing the witness and that conclusion of the trial likely to take time, therefore, he should be released on anticipatory bail. This was opposed by the learned counsel for the respondent/Enforcement Directorate contending that though the applicant has joined the investigation but looking to the gravity of the offence and involvement of other co-accused persons who are the influenced bureaucrats, the applicant may tamper the witnesses, therefore, the anticipatory bail may be rejected.

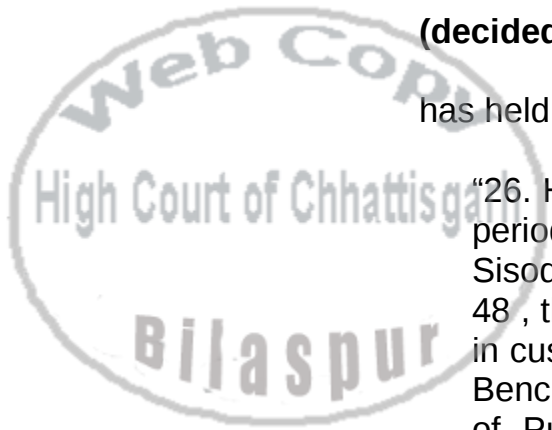
14. Considering the submission and also considering the fact that as per Section 19 of the PMLA, 2002, it is for the authority who on the basis of material in their possession, and reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person. The authorities while conducting the investigation has not opted for this option which was available





with them, but it does not mean that the right of arrest to a person who is involved in the commission of offence under the PMLA, 2002 has come to an end. This can be exercised by them as and when the reasons are available with them for arresting. Thus, the submission that arresting of the present applicant has not been done by the Enforcement Directorate, therefore, the present applicant is entitled to be released on anticipatory bail. This issue has recently come up for consideration before Hon'ble the Supreme Court in case of **Manish Sisodia Vs. Central Bureau of Investigation (Criminal Appeal No. /2023) (decided on 30.10.2023)** wherein Hon'ble the Supreme Court has held at paragraph 26, which is as under:-

"26. However, we are also concerned about the prolonged period of incarceration suffered by the appellant – Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement* 48 , the appellant therein was granted bail after being kept in custody for around 49 days , relying on the Constitution Bench in *Shri Gurbaksh Singh Sibbia and Others v. State of Punjab*, and *Sanjay Chandra v. Central Bureau of Investigation* , that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in *Satender Kumar Antil v. Central Bureau of Investigation and Another*, this Court referred to *Surinder Singh Alias Shingara Singh v. State of Punjab* and *Kashmira Singh v. State of Punjab*, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In *Vijay Madanlal Choudhary (supra)*, this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability. Vijay





Madanlal Choudhary (supra), also held that Section 436A of the Code 56 can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in Arnab Manoranjan Goswami v. State of Maharashtra and Others, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.”

15. Thus, the applicant cannot claim anticipatory bail on the strength that during investigation, he has joined the investigation, though the authorities have power to arrest but they have not arrested him. Thus, Point No. 1 is answered against the present applicant.

Point No. 2

16. For better understanding, it is expedient for this Court to extract

Section 45 of the PMLA, 2002, which reads as under:-

“Section 45- Offences to be cognizable and non-bailable.— (1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless—]

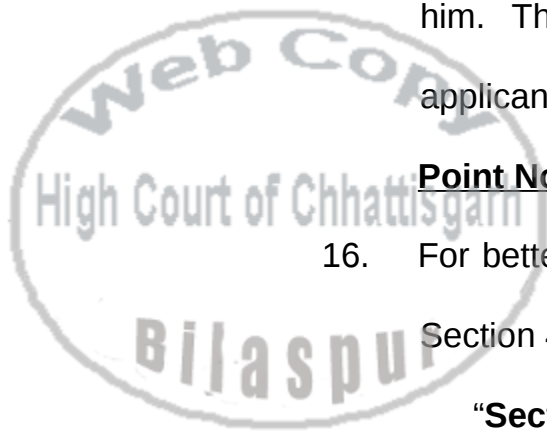
(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money- laundering a sum of less than one crore rupees], may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint in writing made by—

(i) the Director; or





(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

[(1-A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [* * *] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.”

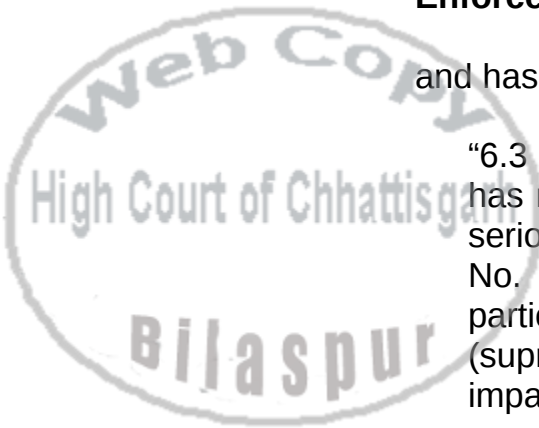
17. Hon’ble the Supreme Court has considered parameters for grant of anticipatory bail in PMLA in case of **M. Gopal Reddy Vs. Enforcement Directorate, Criminal Appeal No. 534 of 2023**

and has held in paragraph 6.3 & 7, which are as under:-

“6.3 From the aforesaid, it can be seen that the High Court has not at all considered the nature of allegations and the seriousness of the offences alleged against respondent No. 1. As per the catena of decision of this Court, more particularly, observed in the case of P. Chidambaram (supra) in case of economic offences, which are having an impact on the society, the Court must be very slow in exercising the discretion under Section 438 of Cr.PC.

7. Considering the overall facts and circumstances of the case and the reasoning given by the High Court and as observed hereinabove, the rigour of Section 45 of the Act, 2002 shall be applicable even with respect to the application under Section 438 Cr.PC and therefore, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 herein in connection with F. No. ECIR/HYZO/36/2020 dated 15.12.2020 is unsustainable. Consequently, the impugned judgment and order passed by the High Court granting anticipatory bail to respondent No. 1 is hereby quashed and set aside. Respondent No. 1 be dealt with in accordance with law. However, it is observed and made clear that after respondent No. 1 is arrested, if he files any regular bail application, the same be considered in accordance with law and on its own merits and considering the material collected during enquiry/investigation of the case. Present appeal is accordingly allowed. No costs.”

18. Hon’ble the Supreme Court in case of **Y. S. Jagan Mohan**





Reddy Vs. Central Bureau of Investigation reported in **(2013)**

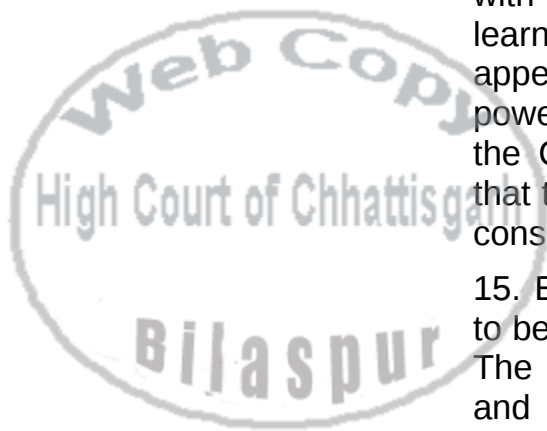
7 SCC 439, has also examined the grant of anticipatory bail looking to the status of accused who may influence the witnesses or tamper the evidence collected by the Directorate of Enforcement and rejected grant of anticipatory bail. Hon'ble the Supreme Court has held at paragraph 14 to 17 as under :-

“14. On going into all the details furnished by the CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, Hyderabad, without expressing any opinion on the merits, we feel that at this stage, the release of the appellant (A-1) would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Though it is pointed out by learned senior counsel for the appellant that since the appellant is in no way connected with the persons in power, we are of the view that the apprehension raised by the CBI cannot be lightly ignored considering the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions.

15. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

16. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.

17. Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation





and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.”

19. Hon’ble the Supreme Court while considering the gravity of economic offence in case of **P. Chidambaram Vs. Directorate of Enforcement**, reported in **(2019) 9 SCC 24** has held at paragraph 78 to 81 as under:-

“78. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitmalji Porwal and others (1987) 2 SCC 364, it was held as under:-

“5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

79. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI (2013) 7 SCC 439, the Supreme Court held as under:-

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which





conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.” [underlining added]

80. Referring to *Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria* (1998) 1 SCC 52, in *Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora and others* (1999) 5 SCC 720, while hearing an appeal by the Enforcement Directorate against the order of the Single Judge of the Bombay High Court granting anticipatory bail to the respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

20. The judgment cited by learned Senior counsel for the applicant is distinguishable from the facts of the present case as in the present case, *prima facie* the Enforcement Directorate has collected certain material against the applicant, particularly the role played by him as he was an active member of the extortion syndicate and was focal point as all the extorted cash was deposited, stored and subsequently dispatched for utilization as per the instructions of Suryakant Tiwari. The material so collected by the investigation *prima facie* reflects that many handwritten entries in the diaries were made by the present applicant

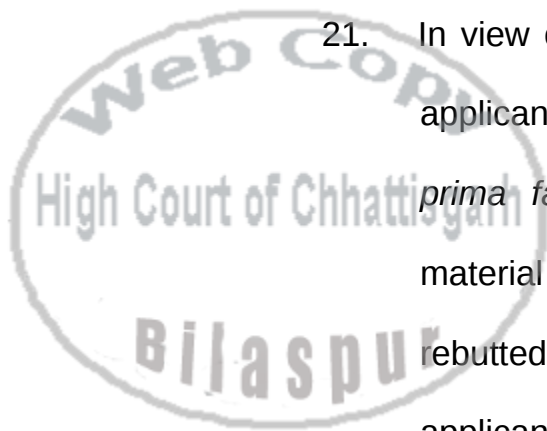




only. Thus, he was knowingly and actively participated in the extortion racket and acted as the accountant who managed the illegal cash. It is also revealed during the investigation by Enforcement Directorate that the applicant is the brother and a close associate of Suryakant Tiwari who is the mastermind behind the present illegal coal levy scam at ground level, is having strong links with politicians and businessmen in the State of Chhattisgarh as Suryakant Tiwari being closely associated with Ms. Saumya Chaurasia, who is a highly influential individual in Chhattisgarh.

21. In view of above factual and legal matrix, statement of present applicant recorded under Section 50 (2) of the PMLA, 2002, *prima facie*, involvement of the applicant is reflected. The material collected by the Enforcement Directorate has not been rebutted which also *prima facie* reflects about involvement of the applicant. The record of the case would further demonstrate that the applicant is unable to fulfill the twin conditions which are required for grant of bail under the PMLA, 2002, is equally applicable for grant of anticipatory bail, which has not been satisfied by the present applicant.

22. Considering the above stated facts and law, gravity of offence, possibility of tempering of the witnesses and *prima facie* considering the fact that the applicant is unable to satisfy twin conditions of Section 45 of PMLA, 2002 for grant of anticipatory bail, I am not inclined to release the applicant on anticipatory bail. Thus, Point No. 2 is answered against the present





applicant.

23. Accordingly, the bail application filed under Section 438 of the Cr.P.C. is liable to be and is hereby rejected.
24. However, it is clarified that the observations made in this judgment, either way, are only for disposal of the present bail application, and these would not influence the trial court on the merits of the case, which would proceed in accordance with law and decide on the basis of evidence led before it. All disputed factual and legal issues are left open.

**Sd/-
(Narendra Kumar Vyas)
Judge**



Arun