

2025:PHHC:011209



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CRM M-60553-2024 (O&M)

Date of Decision: 16.01.2025

Harsh Yadav

... Petitioner

Versus

Directorate of Enforcement

... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. R.S. Rai, Senior Advocate and
Mr. Anand Chiber, Senior Advocate
Ms. Rubina Virmani, Advocate
Mr. Shikhar Sarin, Advocate
Mr. Arjun S. Rai, Advocate
Ms. Prachi Gupta, Advocate
for the petitioner.

Mr. Zoheb Hossain, Special Counsel (through V.C.) with
Mr. Lokesh Narang, Senior Panel Counsel
for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the instant petition under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to grant a regular bail in ECIR No. ECIR/04/STF/2019 dated 31.05.2019 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002, (hereinafter to be referred as '**the PMLA 2002**') registered by the Directorate of Enforcement, New Delhi.

2. Learned senior counsel appearing on behalf of the petitioner has vehemently argued that the petitioner had no concern with the commission of the offence, as alleged by the prosecution and

has been falsely involved in the present case without any due cause and reason. He further contends that in the present case, the ECIR was recorded by the Directorate of Enforcement-respondent on 31.05.2019. The investigation was initially initiated against Amit Kumar, Sanjay Singh, Archana Sharma, M/s Zatak Softech Private Limited, M/s Farma Glow, M/s Sanjay Enterprises, M/s Archit Biotech and M/s Amit Enterprises under the PMLA, 2002 on the basis of 'Narcotics Control Bureau' (NCB), Crime Case No. 18/2018 dated 02.08.2018 invoking scheduled offences under Sections 22, 23 and 29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 (hereinafter to be referred as '**the NDPS Act, 1985**').

3. As per the investigation, the proceeds from illegal export and sale of psychotropic substances to individuals outside India amounting to Rs. 23.32 crores, were received in the bank accounts of the M/s Zatak Softech Private Limited (hereinafter to be referred as '**M/s ZSPL**'), M/s Sanjay Enterprises, Amit Kumar and Archana Sharma. These funds were disguised as payments for software services to Jesch LLC, USA. Certain psychotropic substances covered under the NDPS Act 1985 were illegally exported by Amit Kumar alongwith other medicines after receiving online orders on various websites created by him. The illegal export of psychotropic substances was done by Amit Kumar through his firm M/s Farma Glow in which he and his wife Archana Sharma were the partners. Amit Kumar and Archana Sharma were the directors in M/s ZSPL and

the company was used as facade of an IT Company to camouflage the illicit trafficking of psychotropic substances. Amit Kumar prepared forged and fabricated documents for illegal exports of psychotropic substances and used the fake/forged stamps of different Government Departments. Amit Kumar also created a bogus agreement between Jesch LLC, USA and M/s ZSPL. On the basis of the said fake agreement, the bills were raised by M/s ZSPL in the name of Jesch LLC, USA for providing software services and in the guise of providing software services, the proceeds of illegal export and sale of psychotropic substances amounting to Rs. 23.32 crore was received from Jesch LLC, USA by M/s ZSPL, M/s Sanjay Enterprises, Amit Kumar and Archana Sharma. Even, Sanjay Singh, driver of Amit Kumar also aided in the commission of the scheduled offences and the proceeds of crime were also received in Sanjay Singh's proprietary concern M/s Sanjay Enterprises. The proceeds of crime were layered through multiple bank transfers among their personal bank accounts and those of their business entities and were thereafter integrated by Amit Kumar, Archana Sharma and Sanjay Singh in the mainstream business activities of the entities owned/controlled by them. Parts of the proceeds of crime were also utilized by Amit Kumar & Archana Sharma through acquisition of immovable properties. It was also alleged that complaint in ECIR was filed before the Court on 23.02.2022 and the cognizance of the offence of money laundering against all the 12 accused, namely M/s Farma Glow,

M/s Sanjay Enterprises, M/s Amit Enterprises, Amit Kumar, Sanjay Singh, Archana Sharma, Arti Sharma, Ragini Sharma, Pankaj Kumar Sharma, M/s Suryakant Sharma and Amit Sharma, vide order dated 29.03.2022. A property, i.e. IT Office premises bearing No.343, Tower-B3, 3rd Floor, Spaze-I, Tech Park, Sector-49, Gurugram, Haryana registered in the name of Arti Sharma was attached vide PAO dated 31.08.2020 as direct proceeds of crime. The Adjudicating Authority, confirmed the attachment on 25.02.2021 and the possession was taken by the Directorate of Enforcement under Section 8(4) of the PMLA 2002, on 31.03.2021. The respondent received a letter dated 25.08.2021 from maintenance agency of IT Spaze Park stating that the seal affixed by the respondent on the property had been removed by someone. Upon enquiry, the Manager of Spaze IT Park had mentioned in the respondent's enquiry letter dated 16.09.2021 that the present petitioner had de-sealed the Unit No.343 on 25.08.2021. The respondent-ED also sent an officer at the said property on 18.07.2024. As per the visit report, it was found that said property has been leased out to a company namely M/s Eminent Land and Investment Planner Pvt. Ltd. The officer enquired from the maintenance agency of IT Spaze Park and he was informed that the said property has been leased out by Smt. Babita Yadav, mother of petitioner Harsh Yadav. The respondent further alleged that with regard to the incident of breaking of the seal affixed by the respondent-ED, one FIR No.246 dated 25.08.2024 under Sections

188, 448 and 453 of IPC, Police Station Sector-50 Gurugram was got registered by respondent-ED. Thereafter, on 10.09.2024, the petitioner was summoned under section 50 of the PMLA, 2002 for examination. During the course of interrogation, it was revealed that the petitioner was aware of the fact that the said property, i.e., Unit No.343, Tower-B3, 3rd Floor, Spaze-I, Tech Park, Sector-49 Gurugram, had been purchased from the money derived by illicit trafficking of psychotropic substances. Even, the petitioner was completely aware of the fact that the said property had been attached by the respondent-ED and the possession had also been taken by the ED by way of sealing and affixation of eviction notice and notice for taking possession. During the course of examination under section 50 of the PMLA 2002, it was also found that mobile phone of the petitioner contained multiple incriminating documents and the screenshots of the same were submitted by him under Section 50 of the PMLA, 2002.

4. The statement of the petitioner was recorded under Section 50 of the PMLA, 2002 and it has been disclosed that the petitioner had control over the property and he had further rented it out to Nishant Sirohi. He disclosed that his mother was owner of the property on paper only and he used to handle the collection of rent for the property. The value of the above mentioned property bearing No.343, Tower-3B, 3rd Floor, Spaze-1, Tech Park, Sector-49, Gurugram and of the property bearing No.12-B Floor, Spaze IT Park,

Gurugram, is Rs.85,60,000/- each. The petitioner was gaining rent from Nishant Sirohi to the extent of Rs.30,000/- per month since December 2022, which also amounts to proceeds of crime.

5. It was further alleged by the respondent-ED that the petitioner was associated with Arti Sharma and Archana Sharma, the main accused in the present case since 2018-2019. Thus, by way of taking/attempting to take illegal possession of the properties, knowing well that the above properties were direct proceeds of crime generated from the scheduled offences of illicit drug trafficking and had been attached and taken possession thereof by the respondent-ED under the PMLA 2002, the petitioner had also actively indulged in dissipation of the proceeds of crime acquired from the offence of drug trafficking by Amit Kumar and Archana Sharma in the present case. Even, the petitioner was utilizing the proceeds of crime to his benefit by illegally possessing the above properties and had illegally given the attached property on rent to Nishant Sirohi. Apart from that, he had projected the property as untainted property by way of giving it further on rent and the petitioner was involved in various processes and activities connected to proceeds of crime, as defined under Section 2(1)(u) generated out of the scheduled offences including its possession, concealment, use as well as projecting or claiming it as untainted property. Thus, the petitioner had committed offence of money laundering as defined under Section 3 of the PMLA 2002, which was made punishable under Section 4 of the PMLA 2002.

6. Learned senior counsel has vehemently argued that the petitioner had no concern with the business, financial affairs, various transactions and business activities of the 12 accused, namely, M/s Farma Glow, M/s Sanjay Enterprises, M/s Amit Enterprises, Amit Kumar, Sanjay Singh, Archana Sharma, Arti Sharma, Ragini Sharma, Pankaj Kumar Sharma, M/s Suryakant Sharma and Amit Sharma. In fact, he had been falsely involved only by alleging that he had broken the seals of the property, which was attached by the respondent-ED and consequently, one FIR No.246 dated 25.08.2024 under Sections 188, 448 and 453 of IPC, Police Station Sector-50 Gurugram (Annexure P-6) was registered against him. It was also further alleged that the petitioner had leased out the said property to one Nishant Sirohi and was receiving the rent @ Rs.30,000/- per month since December 2022. Except that no other role has been assigned to the petitioner and no offence, as alleged is made out against the petitioner.

7. Learned senior counsel for the petitioner further submits that the property in question, i.e., property bearing No.343, Tower-B3, 3rd Floor, Spaze-I, Tech Park, Sector-49, Gurugram, was leased out in June 2018 by Arti Sharma to Unnativesh India Pvt. Ltd., wherein, Babita Yadav, mother of petitioner is a Director. The petitioner or his mother had no idea that the property had been purchased by Arti Sharma by using proceeds of crime of any scheduled offences. As per the lease agreement, the parties had followed due procedure and the petitioner handed over few security cheques of rent to Arti Sharma.

After few months, Arti Sharma offered to sell the property to the mother of the petitioner and she agreed to purchase property in the name of her company Unnativesh India Pvt. Ltd. Rs. 30 lakh were paid as part payment to Arti Sharma for said property and an agreement to sell dated 14.12.2018 was entered into between mother of the petitioner and Arti Sharma. It was agreed between the parties that the above lease shall come to an end upon the execution of agreement to sell and Arti Sharma shall return the advance cheques which were given to her at the time of execution of lease deed. Thus, possession was acquired from Arti Sharma by the mother of the petitioner in a legal manner. At that time, Arti Sharma or any of her family members were not facing any case of Enforcement Directorate. Even, the petitioner and his family members had no connection with Arti Sharma and her family and they were completely unaware about the activities of Arti Sharma as well as also of the facts as to how those persons had purchased said property. Even, an agreement to sell dated 14.12.2018 and a receipt (Annexure P-1) were executed in this regard.

8. The possession of the property was taken over by the mother of the petitioner on 14.12.2018 vide possession letter (Annexure P-2). Arti Sharma failed to return the cheques to the petitioner and stated that she would return after some time. However, Arti Sharma later on misused the cheques and filed cases under Section 138 of the Negotiable Instruments Act 1881 against the

company of the mother of the petitioner at Haldwani Courts, District Nainital and the mother of the petitioner was wrongly arrayed as an accused in the criminal complaint (Annexure P-3). Thus, the mother of the petitioner was compelled to compound the cases by paying the amounts in the said complaints as warrants were issued against her by a Court.

9. Learned senior counsel further vehemently argues that at the time of entering into lease agreement, agreement to sell and receipt dated 14.12.2018 with regard to the property in question, no ECIR was pending against Archana Sharma, Amit Sharma and others. Even, the petitioner was never aware of any such cases nor about any activities, which later led to the registration of the case. Still further, by this time, the petitioner and his mother had regularly reached out to Arti Sharma for execution of the sale deed, in terms of the agreement to sell dated 14.12.2018, for which, Arti Sharma, had already received a sum of Rs. 30,00,000/- from the petitioner and his mother. Arti Sharma refused to honour the agreement to sell and consequently, the mother of the petitioner was constrained to file suit for specific performance for execution of the sale deed in favour of the Company, on payment of the remaining sale consideration in the Court of Civil Judge (Senior Division) Gurugram (Annexure P-4). The notices were issued to Arti Sharma by the Court of Civil Judge (Junior Division), Gurugram, vide order dated 18.02.2021 (Annexure P-5).

10. Learned senior counsel has further argued that the petitioner had no idea that the property had been attached by the respondent-ED or the property had been barred from any use as the ED officials had visited the property in question and had witnessed the Company being operated from the said premises. Even, the attachment notice was pasted on other property, which is also under dispute in the civil suit between the mother of the petitioner and Arti Sharma. Further, the property in question was leased out by M/s Unnativesh India Private Limited to Nishant Sirohi, for which, the Company was getting the monthly rent. However, the monthly rent can never be termed as tainted money or proceeds of crime. Later on, respondent-ED got one FIR No.246 dated 25.08.2024 under Sections 188, 448 and 453 of IPC, Police Station Sector-50 Gurugram (Annexure P-6) registered against the petitioner.

11. Ultimately, the petitioner was called for questioning under Section 50 of the PMLA Act 2002 on 10.09.2024 with regard to ECIR/4/STF/2019 and the petitioner appeared before the respondent-ED as he was sure that he had no connection with the alleged scheduled offences nor he or his family members were aware about the activities of Arti Sharma and her associates and had never received any proceeds of crime. Learned senior counsel further submits that the petitioner had no concern with any alleged placement, layering or integration of proceeds of crime as alleged in the ECIR. The transactions between Arti Sharma, the petitioner/his

mother were completely independent of the crime. Moreover, the petitioner had always cooperated with the respondent-ED and had tendered all the documents required by them. Learned senior counsel has further argued that the petitioner was illegally arrested by the respondent-ED on 11.09.2024 only on the basis of his own statements, which were taken under duress. However, even on the basis of the statements made by the petitioner himself, no offence of money laundering was made out against the present petitioner. The petitioner was neither named nor arrayed as accused in the FIR of the scheduled offences, not named in the ECIR and had been prosecuted only for breaking the seals of the attached properties, which as per his bonafide impression was already owned by him. Thus, even the arrest by the respondent-ED was wholly unwarranted and illegal. Apart from that, the respondent-ED had failed to show that the petitioner may abscond or may not appear before the authorities as he always cooperated with the respondent-ED. Even, the petitioner was the bonafide occupier of the property, for which, the mother of the petitioner had already filed a civil suit before the Court of Civil Judge, Junior Division, Gurugram for specific performance and Arti Sharma had filed a written statement in the said suit. However, even Arti Sharma did not mention anything about the attachment. Thus, the petitioner was in possession of the property and the funds had been procured from legal and genuine transactions for purchasing the said property. The proceeds of crime, if any, remained in possession of Arti

Sharma and her family members. He further contends that the petitioner had been booked for the offences under Section 188, 448 and 453 of IPC, however, none of these offences are scheduled offences and the petitioner was illegally arrested in the present case. Learned counsel further contends that even it has been admitted case of the respondent-ED that the petitioner had been in possession of the property, which was allegedly attached and the property was never confiscated. By referring to the ratio laid down by the Hon'ble Supreme Court in the matter of *Vijay Madanlal Choudhary and others Vs. Union of India and others 2022, SCC Online SC 929*, learned senior counsel has argued that even confirmation of attachment would not amount to confiscation and ultimately, no order of confiscation has been passed for the property in question. Thus, the petitioner has been wrongly arrested in the present case. Learned senior counsel further contends that Amit Sharma applied for the concession of bail and vide order dated 31.05.2022 (Annexure P-12), he was granted the concession of regular bail by the Court of Sessions Judge-cum-Special Judge, Gurugram. Similarly, other accused in the ECIR, namely, Arti Sharma, Ragini Sharma and Suryakant Sharma had approached the Special Judge under the PMLA, 2002 for grant of regular bail and their petition was allowed vide order dated 09.09.2022 (Annexure P-13). The respondent-ED never challenged the orders (Annexures P-12 and P-13), whereby, the bail has already been allowed to the main accused in the present case.

12. Learned senior counsel has further contended that the mother of the petitioner is undergoing treatment for cancer and being the only son, the petitioner is taking care of his mother. He has a wife and a seven month old child at home, who need his support for proper care of both of them. He is the only person, who is taking care of all the family members and his case deserves sympathetic consideration by this Court.

13. On the other hand, learned counsel appearing on behalf of the respondent submits that Amit Kumar, accused had found a scheme to seal the tainted origin of immovable properties by transferring them in the name of his relatives and three properties located at Spaze-I, Tech Park in Gurugram were acquired directly from proceeds of crime. These properties were subsequently attached vide two separate attachment orders, which were confirmed by Adjudicating Authority and these properties are IT Office Premises bearing No. 13A, Tower-B3, Floor-0, Spaze-I, Tech Park, Sector-49, Gurugram, Haryana, IT Office premises bearing No. 343, Tower-B3, 3rd Floor, Spaze-I, Tech Park, Sector 49, Gururam, Haryana and 12-B, Floor-0, Spaze 1 Tech Park, Sohna Road, Gurugram, Haryana. The prosecution complaint was filed before the Special Court on 23.02.2022 and the cognizance of offence of money laundering was taken against 12 accused, namely, namely M/s Farma Glow, M/s Sanjay Enterprises, M/s Amit Enterprises, Amit Kumar, Sanjay Singh, Archana Sharma, Arti Sharma, Ragini Sharma, Pankaj Kumar

Sharma, M/s Suryakant Sharma and Amit Sharma. Even, subsequently the prosecution complaint was also filed on 16.07.2024 and it was requested that the property located at 12-B, Floor-0, Spaze I Tech Park, Sohna Road, Gurugram, Haryana may be confiscated. The possession of attached property at IT Office, bearing No. 343, Tower-B3, 3rd Floor, Spaze-I, Tech Park, Sector 49, Gurugram registered in the name of Arti Sharma was taken by the ED on 31.03.2021 and on 25.08.2021, a communication was received from the maintenance agency of IT Spaze Park that the seal affixed by the respondent had been removed by one person and it was also discovered that the petitioner desealed the property. Even an officer visited the spot on 18.07.2024 and it was found that the property had been leased out by the petitioner to Nishant Sirohi for a sum of Rs. 30,000/- per month. Even, another property was in possession of Harsh Yadav, petitioner and was given on rent for a sum of Rs. 40,000/- per month. Thus, the petitioner had desealed the properties and was questioned under Section 50 of the PMLA, 2002. After recording his statement under Section 50 of the PMLA, 2002, it was revealed that the petitioner and his mother were completely aware that the property situated at Unit No. 343, Tower-B-3, 3rd Floor, Spaze-I, Tech Park, Sector 49, Gurugram was a direct proceed of crime and the ED had attached the said property. Even, his phone was impounded and various incriminating evidence was recovered from the same. Still further, the search and seizure action under Section 17

of the PMLA 2002 was carried out at his residential premises and certain incriminating documents were recovered from there. From the accounts of the petitioner and his mother, it is found that they had earned income as rent, i.e., the generated proceeds from the attached proceeds of crime and their bank accounts clearly reflected the receipt of rent payment from Nishant Sirohi. Thus, the total rent earned by the petitioner/mother amounting to Rs. 4,40,000/- and a supplementary complaint qua the petitioner and two others was filed on 08.11.2024. Thus, there was ample material on record to show the commission of offence of money laundering by the petitioner and the petition deserves to be dismissed by this Court.

14. I have heard learned counsel for the parties and perused the record.

15. From a perusal of the record, it is apparent that ECIR was recorded by the respondent ED on 31.05.2019 and the investigation was initially initiated against Amit Kumar, Sanjay Singh, Archana Sharma, M/s Zatak Softech Private Limited, M/s Farma Glow, M/s Sanjay Enterprises, M/s Archit Biotech and M/s Amit Enterprises under the PMLA, 2002 on the basis of 'Narcotics Control Bureau' (NCB), Crime Case No. 18/2018 dated 02.08.2018 invoking scheduled offences under Sections 22, 23 and 29 of the NDPS Act 1985 and it was alleged that the proceeds of illegal exports and sale of psychotropic substances amounting to Rs. 23.32 crores were received in the bank accounts of M/s JSPL, M/s Sanjay Enterprises, Amit

Kumar and Archana Sharma. The illegal export of psychotropic substances was done by Amit Kumar through his firm M/s Farma Glow in which he and his wife Archana Sharma were the partners. Even, the complaint in ECIR was filed before the Court on 23.2.2022 and the cognizance of the offence of money laundering was taken against 12 accused, namely M/s Farma Glow, M/s Sanjay Enterprises, M/s Amit Enterprises, Amit Kumar, Sanjay Singh, Archana Sharma, Arti Sharma, Ragini Sharma, Pankaj Kumar Sharma, M/s Suryakant Sharma and Amit Sharma, vide order dated 29.03.2022. Still further, a property of Arti Sharma was attached vide PAO dated 31.08.2020 as direct proceeds of crime and the Adjudicating Authority had confirmed the attachment on 25.02.2021 and the possession was taken by the respondent-ED under Section 8(4) of the PMLA 2002 on 31.03.2021. However, the petitioner had allegedly de-sealed the property and had leased out the property illegally to a company, namely, M/s Eminent Land and Investment Planner Private Limited. It was further alleged that with regard to the incident of breaking of the seal affixed by the respondent-ED, one FIR No. 246 dated 25.08.2024 under Sections 188, 448 and 453 of IPC, Police Station Sector 50 Gurugram was got registered by the respondent against the present petitioner. It was further alleged that the petitioner was aware of the fact that the said property had been purchased from the money derived by illicit trafficking of psychotropic substances. It was also further alleged that the mobile phone of the petitioner contained

multiple incriminating documents and the screenshots of the same were submitted by him under Section 50 of the PMLA 2002. However, it is also an admitted case that the petitioner had no concern with the business, financial affairs, various transactions and business activities of 12 accused, namely M/s Farma Glow, M/s Sanjay Enterprises, M/s Amit Enterprises, Amit Kumar, Sanjay Singh, Archana Sharma, Arti Sharma, Ragini Sharma, Pankaj Kumar Sharma, M/s Suryakant Sharma and Amit Sharma. The only allegation against him that he had broken the seals of the property, which was attached by respondent-ED and one FIR No. 246 dated 25.08.2024 under Sections 188, 448 and 453 of IPC, Police Station Sector 50 Gurugram was registered against him and he had leased out the said property to one Nishant Sirohi and had been receiving the rent at the rate of Rs. 30,000/- per month since December 2022 and except that no other role has been assigned to the petitioner.

16. It is also an admitted fact that the above referred accused, namely, Amit Sharma has been granted the concession of regular bail by the Court of Special Judge under the PMLA, 2002, Gurugram, vide order dated 31.05.2022 (Annexure P-12). Still further, all other main accused, namely, Arti Sharma, Ragini Sharma and Suryakant Sharma have also been granted the concession of regular bail by the Court of Special Judge under PMLA 2002 Gurugram on 09.09.2022 (Annexure P-13). While granting the

concession of bail to Arti Sharma, Ragni Sharma and Suryakant, the Special Court, PMLA, had made the following observations:-

“38. In the present case one of the crucial component to be determined by this Court is as to whether the conditions prescribed under section-45 of “Prevention of Money Laundering Act 2002” are necessary to be complied with before enlarging the applicants/accused on bail and secondly, whether the applicants/accused have been able to meet out the above mentioned conditions or not.

39. In this regard the most important element to be taken into consideration is that during the course of enquiry/investigation the accused were not arrested by the respondent/complainant. With regard to arrest of an accused, Section-19(1) of the “Prevention of Money Laundering Act 2002” provides that;

“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.

40. A bare perusal of above mentioned provision shows that a Director, Deputy Director, Assistant Director or any other officer of the complainant is authorized to arrest an accused only when he has the reason to believe (to be recorded in writing) that the accused has been guilty of an offence punishable under this Act.

41. *The necessary corollary of the above mentioned provision shows that if the officer of “Directorate of Enforcement” is not convinced, on the basis of material in possession, and they do not have a belief that the accused is guilty of an offence punishable under this Act, they cannot arrest a persons. The applicants/accused were not arrested in this case, which shows that the officers of respondent/complainant, who were investigating the present case, were not convinced that there were reasons to believe that the accused were guilty of an offence punishable under “Prevention of Money Laundering Act 2002”.*

42. *In the light of above mentioned factual matrix of the instant case, if provisions comprised under section-45 of the Act are looked-into it transpires that in those cases where the Public Prosecutor opposes the bail application the Court has to satisfy itself that there are reasonable grounds for believing that the accused are not guilty of such an offence and that they are not likely to commit any offence while on bail.*

43. *As far as the first component of section-45(ii) is concerned, once the complainant itself was not convinced that the accused was guilty of an offence punishable under “Prevention of Money Laundering Act 2002”, and therefore, did not arrest the applicants/accused during the course of investigation, there exist a reasonable ground for believing that the applicants/accused satisfies the first component of section-45(ii) of “Prevention of Money Laundering Act 2002”.*

44. As far as the second component, i.e. they are not likely to commit any offence while on bail, is concerned, in this context it is relevant to note that there is nothing on record to show that there is any reasonable ground to believe that if released on bail the applicants/accused are likely to indulge in similar kind of offence.

45. In this regard it is also relevant to mention here that in the case of 'Vikram Kumar Seth Vs. Directorate of Enforcement, Jalandhar, CRMM-35565 of 2021 (O&M)', the Hon'ble Punjab & Haryana High Court has observed that it is well settled principle of law that when the investigation is complete and the charge-sheet is filed in the Court, and conclusion of the trial is likely to take a long time, a persons/accused like the petitioner, who is aged about 53 years, can be released on bail, subject to his furnishing bail/surety bonds and with a condition that his passport shall remain deposited with the Court/Prosecuting Agency and he will not leave the country without seeking prior permission of the Court.

46. In the case of 'Arun Sharma Vs. Union of India and others, CRWP No.971 of 2016', the Hon'ble Punjab & Haryana High Court has observed that "the application of section 45(i) is therefore to be read in the context of section 19(3) of "Prevention of Money Laundering Act 2002" in respect of an arrested person brought in custody before Court. Second proviso to section 45(i) creates a bar on taking cognizance except upon a complaint in writing by an authorized officer. This insertion of further bar by way of a proviso instead of creating a separate independent section, clearly presupposes consideration of application for release on

bail or bond under section 45 of only such a person, who is already arrested and is in custody at a stage prior to stage of taking cognizance upon filing of a complaint.”

47. The Hon’ble Punjab & Haryana High Court in the above mentioned case has further observed that in a situation like this where the accused were not arrested under section 19 of “Prevention of Money Laundering Act 2002” during investigations and were not produced in custody for taking cognizance, section 88 of Cr.P.C. shall apply upon appearance of the accused person on his own volition before the Trial Court to furnish bonds for further appearances.

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53. In the present case the learned Special Public Prosecutor for the respondent/complainant has also referred to the principle of law laid down in the case of ‘Ajay Kumar’ (supra), which provides that the twin conditions laid down under section-45 of “Prevention of Money Laundering Act 2002” stands revived after the amendment by the legislation. However, in my opinion, the respondent/complainant is not entitled to draw any benefit from above mentioned principle of law, in view of the fact that the applicants/accused were not arrested during the course of investigation of the present case. The above said action of the investigating agency leads to an inference that in the opinion of the investigating

agency the preconditions meant for arrest of an accused under “Prevention of Money Laundering Act 2002”, as enshrined under section-19 of the Act, were not satisfied. The above scenario leads to an inference that the respondent/complainant itself was not confident of the guilt of the applicants/accused.

54.XXXX XXXX XXXX

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57. If the facts & circumstances of the instant case are analyzed in the light of above mentioned precedents, it transpires that the applicants/ accused were not arrested during the course of investigation of this case, and there is no allegation against the applicants/accused that they had ever absconded. Therefore, in my opinion, in view of the principles of law laid down in the case of ‘Arun Sharma’ (supra), ‘Vikram Kumar Seth’ (supra) and ‘Thamisharasi’ (supra), the detention of applicants/accused behind the bars is not likely to serve any purpose. Hence finding merit in the request for bail of the applicants/accused, I hold that, the above mentioned application deserves to be allowed.

58. As a sequel to above mentioned observations, but without commenting anything on the the merits of the case, the applications for bail filed by the applicants/accused are hereby allowed and the applicants/ accused, namely Smt. Arti Sharma, Smt. Ragini Sharma & Suryakant Sharma, are admitted to bail on their furnishing personal bonds in the sum of Rs.5,00,000/- each with two sureties each, in the like amount, to the satisfaction of this Court”.

17. It is an admitted fact that the orders (Annexures P-12 and P-13), whereby, the concession of regular bail was granted to Amit Sharma, Arti Sharma, Ragni Sharma and Suryakant Sharma, have not been challenged by the respondent-ED and they continue to be on bail. However, while granting the concession of bail, the Special Judge under the provisions of the PMLA 2002, Gurugram, has recorded the findings with regard to the applicability of the provisions of Section 45 of the PMLA 2002 to the cases of the aforesaid accused and the similar reasons would also apply to the facts of the present case as the petitioner had no connection with 'Narcotics Control Bureau' (NCB), Crime Case No. 18/2018 dated 02.08.2018 invoking scheduled offences under Sections 22, 23 and 29 of the NDPS Act, 1985.

18. Thus, the petition is allowed and the petitioner is admitted to bail on his furnishing personal bonds in the sum of Rs.5,00,000/- with two sureties, in the like amount, to the satisfaction of the concerned Special Court. However the above mentioned benefit of bail shall be subject to compliance of following conditions:-

(i) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or to any police officer; and

(ii) that the petitioner shall not leave India without prior permission of the concerned Special Court and shall deposit his passport in the concerned Special Court”.

16.01.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

: Yes/No

Whether reportable

: Yes/No