



**CWP-22688-2024 and
other connected cases**

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2024:PHHC:143784-DB



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

- 1. CWP-22688-2024
Reserved on: 22.10.2024
Date of decision: 13.11.2024**

DILBAG SINGH @ DILBAG SANDHU

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents

- 2. CWP-24522-2024**

BHUPINDER SINGH

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents

- 3. CWP-24530-2024**

MANOJ KUMAR

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents

- 4. CWP-24532-2024**

RAJINDER SINGH

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents



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5. **CWP-24585-2024**

KULWINDER SINGH

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents

6. **CWP-24617-2024**

PARAMJEET SINGH

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents

7. **CWP-28070-2024**

KULWINDER SINGH

..Petitioner

Versus

UNION OF INDIA AND OTHERS

..Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Anshul Mangla, Advocate
Ms. Shifali Goyal, Advocate
Mr. Vinay Arya, Advocate
Mr. Ritvik Garg, Advocate
and Mr. Himanshu Chauhan, Advocate
for the petitioner(s).

Mr. Zoheb Hossain, Special Counsel (through v.c.)
Mr. Lokesh Narang, Advocate for the respondents

ANIL KSHETARPAL, J.

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1. Factual Matrix:-

1.1 With the consent of learned counsel for the parties, as many as six writ petitions involving common issues shall stand disposed of by this common order. The facts in this case have been derived from CWP-22688-2024, in which the arguments were made.

1.2 The petitioner has raised the following issues:-

*“A. Whether any property of the petitioner can be attached which were acquired prior to the scheduled offence and cannot be said to have any connection with the proceeds of crime in view of the Hon'ble Supreme Court judgment in **Pavana Dibbur vs. Directorate of Enforcement 2023 SCC Online 1586** as well as the Division Bench judgment in **Seema Garg vs. Deputy Director, Directorate of Enforcement 2020 (2) RCR (Criminal) 701** upheld by the Hon'ble Supreme Court and followed by various High Courts?*

*B. Whether the impugned PAO is also without jurisdiction on account of non-compliance of mandatory provisions of Section 5(1) i.e. “reason to believe” as was held by the Hon'ble Supreme Court in **Vijay Madanlal Choudhary & others v. Union of India & others 2022 SCC Online SC 929** and **Radha Krishan Industries Vs. State of Himachal, 2021 (6) SCC 771?***



C. Whether the impugned order is liable to be set-aside on account of non-compliance of various provisions of PMLA Act:

i. In gross violation of First Proviso to Section 5(1) as no final report was submitted in 3 of the 8 FIRs coupled with the fact that cancelation report was presented in 2 FIRs and the petitioner was not charge sheeted in the other 3 FIRs;

ii. In gross violation of Section 5(2) read with Rule 3 & 5 of 2005 Rules, as the copy of the Impugned PAO alongwith the material in possession of respondent ED was not “immediately” forwarded to Ld. Adjudicating Authority since the Impugned PAO was passed on 09.08.2024 and the compliance of Section 5(2) was admittedly made only on 12.08.2024;

iii. Completely false plea taken in the Impugned PAO with regards to violation of the Orders of the Hon’ble NGT while raising allegations with regards to illegal mining;

iv. While passing the Impugned PAO, respondent ED illegally placed reliance upon FIR No. 21 dated 19.01.2019 (P-24/Pg.394) registered at the behest of respondent ED since the same was not a part of the scheduled offences and the investigation was still pending in the said FIR;”

1.3 As per the petition, the petitioner is involved in following cases involving schedule offences:-

S. No.	FIRs	Schedule Offences	Status
1.	0226 dt. 14.10.2022 P.S. Pratap Nagar	Sections 120-B & 420 of IPC, 1860	Yet to present report.
2.	0116 dt. 23.03.2023 P.S. Bilaspur	Sections 120-B, 411 & 420 of IPC, 1860	Final Report Submitted.
3.	0111 dt. 01.06.2023 P.S. Pratap Nagar	Sections 420, 467 & 471 of IPC, 1860	Yet to present report.
4.	0206 dt. 19.09.2022 P.S. Pratap Nagar	Sections 420 of IPC, 1860	Yet to present report.
5.	0216 dt. 30.09.2022 P.S. Pratap Nagar	Sections 471 of IPC, 1860	Final Report Submitted.
6.	0204 dt.	Sections 120-B	Final Report



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	14.09.2022 P.S. Pratap Nagar	& 420 of IPC, 1860	Submitted.
7.	0033 dt. 10.02.2023 P.S. Pratap Nagar	Sections 420, 467 & 471 of IPC, 1860	Cancelation report presented.
8.	0054 dt. 16.02.2023 P.S. Bilaspur	Sections 420, 467 & 471 of IPC, 1860	Cancelation report presented.
9.	001 dt. 19.01.2024	Sections 120-B & 420 of IPC, 1860 and Section 15 of Environmental Protection Act, 1986	Pending investigation.

1.4 It is evident that out of 9 FIRs, 7 are pending, whereas, the final report in 3 FIRs has already been submitted. On 23.09.2023, the ECIR was registered. Between 04.01.2024 to 08.01.2024, search was carried out, which ultimately led to the petitioner's arrest on 08.01.2024. FIR No.21 dated 19.01.2024, was registered against the petitioner and others on a complaint made by the Enforcement Directorate, however, his arrest was declared illegal by the High Court on 08.02.2024, whereas the special leave petition filed to challenge the order was withdrawn. On 09.08.2024, the Deputy Director passed a 'Provisional Attachment Order' (in short 'PAO'), attaching the property of the petitioner and others after observing that the investigation reveals that total proceeds of crime worth Rs.337,12,74,800/- through illegal mining activities till date have been found and the beneficiaries were the petitioner, his brother Rajinder Singh, Manoj Wadhwa, Kulwinder Singh etc. These six writ petitions have been filed under Article 226/227 of the Constitution of India, challenging the correctness of the aforesaid PAO in which Enforcement Directorate (in short 'ED') has already filed its reply.



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2. Submissions made by the rival parties:

2.1 Learned counsel representing the parties have also filed their written submissions apart from oral arguments.

2.2 The Petitioner's counsel while referring to the definition of proceeds of crime in Section 2(1)(u) of Prevention of Money Laundering Act, 2002 (in short '2002 Act'), relying upon judgments in *Pavana Dibbur Vs. Directorate of Enforcement, 2023 SCC (online) 1586*, *Seema Garg Vs. Deputy Director, Directorate of Enforcement, 2020(2) RCR (Criminal) 701*, *Abdullah Ali Balsharaf Vs. Directorate of Enforcement, 2019(3) RCR (Criminal) 798*, *Kumar Pappu Singh Vs. Union of India, 2021(3) ALT 571*, *HDFC Bank Limited Vs. Government of India and others, 2021 Criminal Law Journal 3969*, *M/s Himachal Emta Power Limited Vs. Union of India, WP (Civil)5537 of 2018, decided on 23.08.2018* and *Hemanshu Rajnikant Shah Vs. Assistant Director, Enforcement Directorate, 2023 Criminal Law Journal 1999*, submits that the attached properties were purchased before the alleged scheduled offences and were untainted properties, hence could not be attached. He asserts that the impugned PAO is without jurisdiction as it has been passed without complying with the mandatory provisions of Section 5(1) of '2002 Act'. Section 5(1) allows the Director or any other officer not below the rank of Deputy Director to temporarily attach the property after recording 'reasons to believe'. He asserts that as the legal requirement as provided in Section 5(1) is violated as the authority has failed to record 'reasons to believe', hence the impugned PAO is illegal. He firmly contended that the impugned order along with the material in possession of Enforcement Directorate was not 'immediately forwarded' to the adjudicating authority and ED has taken false plea before this Court.

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2.3 Per contra, the Enforcement Directorate's counsel has defended the impugned order while relying upon the judgments of the Supreme Court passed in *Vijay Madanlal Chaudhary and others Vs. Union of India and others, 2022 SCC (Online) (SC) 729 (para 298), Deputy Director, Directorate of Enforcement Vs. Axis Bank and others, 2019 SCC (Online) (Delhi) 7858 (paras 103 to 107) and Prakash Industries Limited and another Vs. Directorate of Enforcement, WP (Civil) 14999 of 2021, decided on 19.07.2022.*

3. Analysis and Discussion:-

I. PROCEEDS OF CRIME: DEFINITION, AMENDMENT AND JUDICIAL INTERPRETATION:-

3.1 The transformatory history of definition of proceeds of crime in Section 2(1)(u) of 2002 Act has been elucidated by the Delhi High Court in *Prakash Industries case (supra)* in a chart, which is reproduced below:-

Section	2009 Amendment	2015 Amendment	2013 Amendment	2018 Amendment	2019 Amendment
Section 2(1)(u) "proceeds of crime, means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to the scheduled offence or the value of any such property"		"proceeds of crime, means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to the 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] "		proceeds of crime, means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to the 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]	"proceeds of crime, means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to the 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 removal of doubts, it is hereby clarified that "proceeds of crime" including 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

3.2 In light of the Division Bench's judgment in *Seema Garg's case (supra)*, this Bench would have been obligated to either follow it or refer the matter to a Larger Bench. However, the Supreme Court in *Vijay*



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Madanlal Chaudhary's case (supra) has interpreted the provision in para 298, which is extracted as under:-

“It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India. This argument, in our opinion, is tenuous. For, the definition of “proceeds of crime” is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property. If the property is taken or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. The definition of “property” as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money-laundering.”

3.3 The aforesaid observations made by the Supreme Court enable this Bench to re-examine the entire issue, as in the considered opinion of this Bench, the judgment passed in *Seema Garg's case (supra)* is no longer a good law. This Court has taken this view due to the subsequent interpretation by the Supreme Court, which has superseded the legal principles established in *Seema Garg's case (supra)*.

3.4 It is evident that the original (unamended) definition of phrase ‘proceeds of crime’ was structured into two distinct parts. The first part relates to the property derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence, whereas, the second part relates to the value of any such property where the proceeds of crime are not traceable. This clearly means that if the property derived or obtained, directly or indirectly, from the proceeds of a crime of scheduled offence is not traceable, then any property of equivalent value falls within the scope of the expression ‘proceeds of crime’. In 2015, the amendment restructured the definition into three parts to cover the property



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taken or held outside the country. The concept of the property of equivalent value was introduced with respect to the aforementioned properties. The amendment enabled the authorities to go after any other property of a person of equivalent value. In 2019, the scope of the phrase ‘proceeds of crime’ was further expanded so as to include other properties which were not directly or indirectly the proceeds of crime, but were held abroad, to be liable to attachment. In 2019, the explanation has been added so as to give a wider scope to the authorities. From the objects and reasons of the ‘2002 Act’, it becomes evident that the money laundering posed a serious threat not only to the financial system of the countries but also to their integrity and sovereignty. The ‘2002 Act’ was enacted to prevent money laundering and connected activities. The act of money laundering is a multi-layered, complex and complicated diversion of the property, which is required to be prevented. Consequently, the definition of proceeds of crime has undergone transformative changes from time to time so as to include all the complex acts involved in the offence of money laundering.

3.5 In *Axis Bank’s case (Supra)*, the Delhi High Court has dissected the definition in three parts while covering tainted property and untainted property held in India; and the ‘proceeds of crime’ taken out of the country or any other property of equivalent value thereof. However, this Court is of the considered view that the definition can be divided into two broader categories namely tainted properties and untainted properties. The first part provides about the tainted properties derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. Thereafter, the untainted properties are further divided into two parts; the first part deals with a situation where the property derived or obtained from ‘proceeds of crime’ is not traceable. In the aforesaid



situation the competent authority is authorized to attach or confiscate any other property of accused, which is of the same value as that of the 'proceeds of crime'. The second sub-category is a result of amendment brought in 2015 and 2019 in the Act. It provides that if the property derived or obtained from the proceeds of crime has already been taken out of the Country then the property equivalent in value held within the Country or abroad can be made liable to be attached. This position has been explained by the Delhi High Court in an elaborate manner in *Axis Bank's case (supra)* and *Prakash Industries case (supra)*.

3.6 It is not disputed that the Supreme Court in *Vijay Madanlal Chaudhary's case (supra)* was examining the scope of the '2002 Act' including definition of phrase 'proceeds of crime'. The submission put forth by the learned counsel that the phrase 'or the value of any such property' is superfluous was rejected by the Court and it was held that the definition of 'proceeds of crime' is wide enough to not only include to the property derived or obtained as a result of criminal activity related to a schedule offence but also any other property of equivalent value.

3.7 While interpreting a statutory provision, it is the bounden duty of the Courts to interpret it in manner so that each word used by the statute conveys a meaning it was assigned by the Legislature. The words used in statute are of utmost significance. The Court cannot widen or restrict the provisions on its own whims and fancies. When a statute's language is clear and unambiguous, the general rule of interpretation of statute is to read the provision as a whole and the Court must adhere strictly to the ordinary, plain meaning of the words used. The words in a statute are used precisely, not loosely, and efforts must be made to interpret them in a literal manner to give effect to the objective of the Act. This approach of interpretation is



based on the idea that the legislature's intent is best reflected in the exact words of the statute.

3.8 Moreover, the reasoning adopted in *Seema Garg's case (supra)* to the effect that there was no need to insert third part in the definition of the 'proceeds of crime' and that 'value of such property' is superfluous does not appear sound. It appears that transformative journey of the definition of phrase 'proceeds of crime' was not brought to the notice of the Division Bench in *Seema Garg's case (supra)*. In *Abdullah Ali Balsharaf's case (supra)*, Delhi High Court inadvertently overlooked the sub-category (i) of second part of definition of 'proceeds of crime'. Similarly, Andhra Pradesh High Court in *Kumar Pappu Singh's case (supra)* was not properly assisted. Furthermore, the attention of Patna High Court was not drawn to part 2(i) in *HDFC Bank's case (supra)*. Similar is the position in *M/s Himachal Amta Power Limited's case (supra)*. In this case, the attention of the Bench was not drawn to the second broader category of the definition. In *Hemanshu Rajnikant Shah's case (supra)* the Court relied upon *Seema Garg's case (supra)* and held that the properties acquired before the alleged crime and before the enforcement of the '2002 Act' cannot be attached.

3.9 On the other hand the judgments passed in *Vijay Madanlal Chaudhary's case (supra)*, *Axis Bank's case (supra)* and *Prakash Industries case (supra)* completely answer the question in favour of ED.

3.10 The petitioner's counsel has also heavily relied upon *Pavana Dibbur's case (supra)*. This Bench has carefully read the aforesaid judgment. The aforementioned case involved attachment of property falling under the category of 'direct' or 'indirect' proceeds of crime. The complaint under Section 44-45 of 2002 Act was quashed by the Supreme Court. The Bench was never called upon to analyse the contentions based upon Section



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2(i)(u) of 2002 Act, whereas, in *Vijay Madanlal Chaudhary's case (supra)* the Court directly answered the aforesaid question. Hence, there is no substance in the first argument of learned counsel for petitioner.

II. ALLEGED FAILURE TO RECORD REASONS TO BELIEVE:- KEY NUANCES AND IMPLICATIONS:-

3.11 The next argument of the learned counsel for petitioner is with respect to the alleged failure to record 'reasons to believe'. On careful reading of Section 5(1), it is evident that the PAO can be passed only where the Director or any other officer not below the rank of Deputy Director authorized by the Director, for the purpose of this action has 'reasons to believe' which are required to be recorded in writing on the basis of material in his possession. The provision mandates the 'reasons to believe' to be recorded. On perusal of the PAO passed on 09.08.2024, it becomes evident that the Deputy Director has passed the impugned order after recording 'reasons to believe' in writing; on the basis of material in his possession. An elaborate order has been passed by recording sufficient and detailed reasons. It is not in dispute that as of now seven FIRs are pending that involve scheduled offences, out of which final reports under Section 173 Cr.P.C. have already been filed in three.

3.12 The team of ED carried out search of the petitioner's premises between 04.01.2024 to 08.01.2024, resulting in recovery of INR 5.29 Crores, gold worth Rs.1.89 crore, fake e-Rawana bills, blank signed cheques and various dummy entries have been created including GM company to route the cash proceeds by layering such money into personal accounts to give it the colour of legitimate money. While investigating the case, huge discrepancy has been found in the mined minerals that were sold. It is recorded in the order that more than Rs.337 crores have been laundered and



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provisional attachment of property worth Rs.122 crores was ordered.

3.13 Dilbag Singh, Rajinder Singh, Manoj Wadhwa, Kulwinder Singh have already transferred some of the properties to their children/spouses or sold to third parties. It is recorded in the impugned order that the proceeds are likely to be concealed, transferred or otherwise dealt with in some manner after the search was conducted. After the search was carried, the vehicles were found transporting mined material without e-Rawana bills. There has been a mention of large scale illegal mining by using heavy machinery to mine boulders, gravel, sand being carried out during the odd hours while diverting the flow of Yamuna river despite being banned by the National Green Tribunal.

3.14 In the considered opinion of the Court, the 'PAO' has fulfilled the mandatory requirement of recording the 'reasons to believe'. This is only a provisional attachment order, which is subject to adjudication and confirmation within a period of 180 days by the competent authority in which opportunity has been provided to the petitioner. The reliance placed on para 287 of *Vijay Madanlal Chaudhary's case (supra)* is not appropriate because it has been observed that the authorized officer can order provisional attachment only upon recording satisfaction regarding two requirements. Specifically, the officer has to form his opinion and provide written reasons for such belief, which must be based on material in his possession rather than on mere assumptions. In this case, the electronic record has been seized and there was sufficient material apart from fake e-Rawana bills to substantiate this satisfaction.

3.15 The further reliance placed on *Radha Krishan Industries Vs. State of Himachal Pradesh 2021(6) SCC 771*, is not appropriate because in that case the Court was considering the provisions of Himachal Pradesh



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Goods and Services Tax Act, 2017 and Central Goods and Services Act, 2017. The Court found that the officer had ordered provisional attachment under Section 83 of Himachal Pradesh Goods and Services Tax Act, 2017, by attaching the receivables of the assessee and the commissioner failed to form an opinion that it is necessary so to do for the purpose of protecting the interest of government revenue. Hence, this judgment is not applicable to facts of the present case. Similarly, reliance placed on para 45 to 48 of *Seema Garg's case (supra)* is also in the peculiar facts of that case and is not a declaration of law.

**III. EVALUATION OF FULFILLMENT OF FIRST
PROVISO TO SECTION 5(1) IN LIGHT OF THE
CHALLENGE:-**

3.16 The next argument of petitioner's counsel is based upon perceived non-compliance of the Ist proviso of Section 5(1) of the 2002 Act. It is contended that filing of final report under Section 173 Cr.P.C. in the jurisdictional Court with respect to scheduled offences is *sine qua non* in order to enable the competent authority to pass the 'PAO'. It is also contended that the petitioner is not named as an accused in any of the first 8 FIRs in the table, which constitute the scheduled offences and cancellation report has been presented in two FIRs, whereas, investigation in three is pending. The final report has been submitted in only three FIRs, but the petitioner is not named as an accused, and the ED has also failed to disclose any material implicating the petitioner, either directly or indirectly, with the scheduled offences or proceeds of crime.

3.17 Section 5 of '2002 Act' does not provide that the property liable to attachment should be in possession of only the accused named in the FIR relating to scheduled offences, Section 5(1)(a) refers to any person and not only the accused. Secondly, Clause (a) and (b) provide for two conditions



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namely the person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating the proceedings related to confiscation of such proceeds of crime.

3.18 The first proviso to Section 5(1) is divided in the following three parts:-

(i) The order of attachment shall be made only if a report has been forwarded to a Magistrate under Section 173 of Cr.P.C. in relation to a scheduled offence.

(ii) The attachment order shall not be made unless a complaint has been filed by a person authorized to investigate the offence mentioned in the schedule before a Magistrate or Court for taking cognizance of the scheduled offence as the case may be.

(iii) The attachment shall not be made unless a similar report or complaint has been made or filed under the corresponding law in any other Country.

3.19 Thus, it is evident that forwarding of a report to a Magistrate under Section 173 of Cr.P.C. is not sine qua non for ordering provisional attachment. Moreover, such report is required to be filed against a person who is in possession of 'proceeds of crime'. The petitioner in CWP-22688-2024, is an accused in FIR No.21, dated 19.01.2024, registered under Section 120B, 420 IPC and Section 15 of the Environmental Protection Act, 1986. In the subsequent FIR that has been registered pursuant to the search carried out by the Enforcement Directorate substantial material has been found to prima facie establish not only the offence of money laundering but also large scale illegal mining of boulders, gravel, sand on the basis of fake,



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invalid e-Rawana invoices. There is material on record to show that the mined material has been transferred without e-Rawana invoices. There is a huge discrepancy in the minerals mined and sold. This FIR has been filed on the complaint filed by a person authorized to investigate the offences mentioned in the schedule. Hence, requirement of first proviso to Section 5(1) stands fulfilled. Additionally, it is evident that out of the 9 FIRs, cancellation report in only two has been filed and the final report has been submitted in as many as three FIRs, which involved the scheduled offences. As previously noted, for a provisional attachment order, it is not necessary for the person in possession to be an accused alleged to have committed a scheduled offence.

3.20 Moreover, the learned counsel for petitioner is not factually correct while contending that 'PAO' does not refer to any material to remotely suggest the petitioner's involvement. A careful reading of PAO shows that petitioner Dilbag Singh along with his brothers and various more accomplices was involved in illegal mining of mineral including boulders, gravel and sand in violation of various orders passed by the National Green Tribunal. It was found that the petitioner Dilbag Singh is the kingpin and has substantial share in the business, which is run by creating various fake entities in fictitious names including GM company. Electronic as well as physical record has been seized during the search. Moreover, at this stage only a 'PAO' has been issued, which is subject to decision by the adjudicating authority after granting opportunity as provided in Section 6 of 2002 Act. Hence, the third argument put forth by the petitioner is insubstantial.



IV. SIGNIFICANCE OF THE EXPRESSION
“IMMEDIATELY” AND ITS INTERPRETATION:-

3.21 The next argument with respect to the failure of the Enforcement Directorate to immediately forward the impugned PAO along with the material in its possession to the adjudicating authority cannot be accepted because the PAO was passed on Friday evening i.e. 09.08.2024. On 10.08.2024 and 11.08.2024, the offices were closed on account of holidays. The POA along with the material in possession was forwarded to the adjudicating authority by Enforcement Directorate on 12.08.2024. Though, learned counsel for respondent has made reference to Section 10 of General Clauses Act, 1897, which provides for computation of time, however, in this case, no time limit has been prescribed. In fact this issue will not restrict the Court in light of a recent judgment passed by the Supreme Court in ***Shento Varghese Vs. Julfikar Husen and others, Criminal Appeal No.2531-2532 of 2024, decided on 13.05.2024***, wherein, the word ‘forthwith’ as used in Section 102(3) of Cr.P.C. has been explained in the following manner:-

“19. The meaning of the word ‘forthwith’ as used in Section 102(3) has not received judicial construction by this Court. However, this Court has examined the scope and contours of this expression as it was used under the Maintenance of Internal Security Act, 1971; Preventive Detention Act, 1950; Section 157(1) of the Cr.P.C.; and Gujarat Prevention of Anti-Social Activities Act, 1985 in the case of Sk. Salim v. State of West Bengal, Alla China Apparao and Others v. State of Andhra Pradesh and Navalshankar Ishwarlal Dave v. State of Gujarat.

20. This Court, in Rao Mahmood Ahmad Khan v. Ranbir Singh, has held that the word ‘forthwith’ is synonymous with the word immediately, which means with all reasonable quickness. When a statute requires something to be done ‘forthwith’ or ‘immediately’ or even ‘instantly’ it should probably be understood as allowing a reasonable time for doing it.

21. The expression ‘forthwith’ has been defined in Black’s Law Dictionary, 10th Edition as under:

“forthwith, adv. (14c) 1. Immediately; without



delay. 2. Directly; promptly; within a reasonable time under the circumstances; with all convenient dispatch”

Wharton’s Law Lexicon, 17th Edition describes ‘forthwith’ as extracted:

Forthwith, When a defendant is ordered to plead forthwith, he must plead within twenty four hours. When a statute or rule of Court requires an act to be done ‘forthwith’, it means that the act is to be done within a reasonable time having regard to the object of the provision and the circumstances of the case [Ex parte Lamb, (1881) 19 Ch D 169; 2 Chit. Arch. Prac., 14th Edition]

22. From the discussion made above, it would emerge that the expression ‘forthwith’ means ‘as soon as may be’, ‘with reasonable speed and expedition’, ‘with a sense of urgency’, and ‘without any unnecessary delay’. In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

23. We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot be a straight-jacket formula prescribed in this regard. In that sense, the interpretation of the word ‘forthwith’ would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.

24. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3) Cr.P.C., the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, ‘forthwith’ as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/ wanton negligence, then it may direct for appropriate departmental action to be initiated



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against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail herein above.”

3.22 It is evident that in ***Rao Mahmood Ahmed Khan Vs. Ranbir Singh, 1995 (supp.) (4) SCC 275***, the word ‘immediately’ and ‘forthwith’ were treated as synonyms. Moreover, if failure to follow the statutory provision provides no express consequences, the procedural requirement shall be considered to be ‘directory’.

V. DISPUTED QUESTIONS OF FACT:-

3.23 The next argument of the petitioner’s counsel is factual and involves disputed questions of fact. Perusal of PAO (Annexure P-1) reflects that various orders passed by the National Green Tribunal and their violation have been delineated in para 1.3, from page 55 to 66 of the paperbook. It has been alleged that mining has been conducted beyond the area under lease and no CCTV cameras have been installed at various vulnerable points. Vehicles carrying mined material have not been provided with the GPS system and mining has been carried out beyond the permissible depth and National Green Tribunal has imposed penalty of Rs.2.5 crore, Rs.4.2 crore and Rs.12 crore on M/s Delhi Royalty Company, M/s Development Strategies India Pvt. Ltd. and M/s Mubarikpur Royalty Company, respectively. Moreover, it is stated that against the order dated 18.11.2022, the matter is pending before the Supreme Court. In this situation, it would not be appropriate to quash the ‘PAO’ particularly when an appropriate order after considering all aspects is yet to be passed by the adjudicating authority as provided under Section 8 of ‘2002 Act’.

VI. SUBSEQUENT COMPLAINTS TO BE A PART OF THE ORIGINAL COMPLAINT:-

3.24 The next argument of petitioner’s counsel is no more res integra



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in view of the judgment passed in ***Civil Writ Petition No.29265 of 2023, titled as “M/s IREO Private Limited Vs. Union of India and another, decided on 04.09.2024:-***

*“3.8 In the considered opinion of this Bench, this argument of the learned counsels suffer from a fundamental flaw. It is evident that out of 32 FIRs, one remains open. According to Explanation II to Section 44 of the 2002 Act, any subsequent complaint should be incorporated into the pending complaint for further investigation to gather additional evidence against any accused, as reflected in the statutory language. The legislative intent in cases involving multiple FIRs is thus quite clear. Consequently, it can be concluded that even if all FIRs except one have been resolved through compromise or other means, the investigation under the same ECIR will continue. This is because Explanation II to Section 44 of the 2002 Act mandates that subsequent complaints be considered part of the original complaint by the Special Court. Moreover, sine qua non to proceed under the 2002 Act is the offence of money laundering which is wholly dependent upon the proceeds of crime. It is evident that the proceeds of crime should be the result of criminal activity related to a scheduled offence included in the Schedule attached to the Act which includes offence under Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”). In that context, the offence of money laundering is dependent upon the proceeds of crime from criminal activity relating to a scheduled offence, however, the registration of FIR in the scheduled offence is not sine qua non for initiating the proceedings under the 2002 Act. Section 66 of the 2002 Act is not dependent on the predicate offence as explained by the Supreme Court in ***Pavana Dibbur v. Directorate of Enforcement 2023 SCC Online SC 1586.***”*

**VII. AVAILABILITY OF AN EFFICACIOUS
ALTERNATIVE REMEDY:-**

3.25 The Enforcement Directorate’s counsel has contended that the petitioner has efficacious remedy before the adjudicating authority under Section 8 of ‘2002 Act’. He asserts that the petitioner has an alternative remedy of appeal that can be filed against the order to be passed by adjudicating authority under Section 8 of ‘2002 Act’, consequently, the Court should not entertain the writ petition.

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3.26 Though there is some substance in the argument of ED's counsel, however, the writ petition cannot be held to be not maintainable.

3.27 The question of whether the writ petition can be entertained is one that the Court must consider based on the facts of each case. Availability of alternate statutory remedy is one of the grounds that dissuade the Constitutional Court to interfere. The petitioner has filed the writ petition based upon the interpretation given by a Division Bench in *Seema Garg's Case (supra)*, hence, this Court has considered it appropriate to entertain the writ petition and to adjudicate.

4. Decision:

4.1 Keeping in view the aforesaid discussion, the writ petitions lack merit and hence dismissed.

4.2 Needless to observe that the adjudicating authority would proceed with the matter and pass appropriate orders in accordance with law uninfluenced by the observations made by this Court in this order.

**(ANIL KSHETARPAL)
JUDGE**

**(SHEEL NAGU)
CHIEF JUSTICE**

13th November, 2024

Ayub

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No