**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**B.A. No. 7233 of 2023**

Dilip Kumar Ghosh @ Dilip Ghosh ..... Petitioner(s)

**Versus**

Union of India through Directorate of Enforcement
..... Opposite Party(s)

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**CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN**

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For the Petitioner(s) : Mr. S.Nagamuthu, Sr. Advocate
Mr. Suraj Prakash, Adv.
Mr. Rohit Ranjan Sinha, Adv.
Mr. Abhishek Agrawal, Adv.
Ms. Amrita Sinha, Adv.
Mr. Aashish Kumar, Adv.

For the UOI : Mr. Anil Kumar, ASGI
Ms. Chandana Kumari, AC to ASGI

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**C.A.V. On 09.11.2023** **Delivered on 28/11/2023.**

Heard learned counsel for the parties.

**2.** The instant bail application has been preferred by the petitioner for grant of regular bail for the offences registered under Sections 3 read with Section 70 and punishable under section 4 of the Prevention of Money Laundering Act, 2002 (herein after to be referred as PMLA).

**3.** Learned senior counsel for the petitioner submits that Section 19 of the PMLA consists of two parts. While the first part speaks of reason to believe to be recorded in writing; the second part mandates that grounds of arrest of the accused have to be informed to the accused.

As per the recent judgment passed by the Hon'ble Apex Court in the case of ***Pankaj Bansal Vs. Union of India*** r reported in ***2023 SCC online SC 1244***, such grounds of arrest have to be furnished to the accused in writing against acknowledgment. He further submits that the expression "henceforth" employed in paragraph 35 of the aforesaid

judgment does not mean that the judgment is prospective in nature. In this regard he referred another judgment delivered by the Division Bench of Punjab & Haryana High Court in the case of ***Roop Bansal Vs. Union of India*** *(CWP 23005 of 2023).*

He contended that non-compliance of the mandate of Section 19 PMLA would vitiate the very arrest itself. On this issue he further relied the order passed in the case of ***V. Senthil Balaji Vs. State rep. by Deputy Director*** reported in ***2023 SCC onLine SC 934*** and reiterated that non-compliance of the mandate of Section 19 of the PMLA Act would vitiate the very arrest itself.

**4.** Learned senior counsel further draws attention of this court towards Section 45 of PMLA and submits that Section 45(1)(ii) stipulates that where the public prosecutor opposes the application, then if the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail and only in that case the bail should be granted. Referring the aforesaid provision, he submits that the aforesaid provision of Section 45 (1)(ii) of PMLA has been clarified in the case of ***Vijay Madanlal Choudhary & Ors versus Union of India,*** reported in ***2022 SCC online SC 929***, inasmuch as, no meticulous examination is required and

only *prima facie* satisfaction that the accused is not guilty is to be invoked by the Court and in the instant case while going through the facts of the case it would transpire that the petitioner has satisfied both the conditions engrafted in section 45 (1)(ii) of the PMLA.

**5.** On merits of the case, learned sr. counsel submits that there is no document/material on record to implicate the petitioner in forging and/or manipulating the title deeds being Deed of Sale No. 4369 dated 11.10.1932 of the property in question in the office of the Registrar of Assurances at Kolkata. Nor is there any allegation that the petitioner was party to the manipulation which took place in the office of the Registrar of Assurances, Kolkata.

He further submits that the petitioner is not figuring as an accused in the F.I.R No. 137/2023 dated 10.05.2023 under Sections 120B, 465, 467, 468 and 471 IPC which was registered at Hare Street Police Station, Kolkata on the report of the fact-finding committee of the Registrar of Assurances, Kolkata in connection with forgery of Deed of Sale No. 4369 dated 11.10.1932. There is no allegation that the petitioner was involved in obtaining certified copy of the title deeds being Deed of Sale No. 4369 dated 11.10.1932 from the office of the Registrar of Assurances, Kolkata.

There is also no material on record to show that the

petitioner was involved in obtaining holding numbers by accused Pradeep Bagchi by submitting forged Aadhaar Card, forged electricity bill and forged possession letter to the office of the Ranchi Municipal Corporation. For such acts committed by Pradeep Bagchi, one F.I.R. No. 141/2022 dated 04.06.2022 has been registered by the Police of Bariatu Police Station, Ranchi under Sections 420, 467, 471 IPC against Mr. Pradeep Bagchi (which are scheduled offences under the PMLA). It is pertinent to mention here that the petitioner is not named as an accused/suspect in the said FIR.

As a matter of fact, after obtaining holding number in respect of the property in question, the said property was offered to M/s. Jagatbandhu Tea Estate Pvt. Ltd., of which the petitioner is a Director, and upon obtaining legal opinion with regard to due-diligence of the title documents of the said property, the said company purchased the said property for an agreed amount of Rs.7.00 crore. The price of the said property was negotiated for Rs.7.00 crore as against the prevailing value of over Rs.20.00 crore since there was ongoing litigation with regard to the said property with the Indian Army.

Learned counsel strenuously contended that there is no *mens rea* on part of the petitioner while executing

the sale-deed on behalf of M/s. Jagatbandhu Tea Estate Pvt. Ltd. being purchaser of the said property since neither the petitioner nor M/s. Jagatbandhu Tea Estate Pvt. Ltd. had any knowledge that the said Pradeep Bagchi was not the owner of the property and was claiming his ownership on the basis of forged documents.

He further submitted that three cheques of Rs. 7.00 crore were issued by the company named M/s. Jagatbandhu Tea Estate Pvt. Ltd. in favour of accused Pradeep Bagchi, out of which one cheque of Rs.25.00 lakh was encashed and as per the mutual understanding the remaining amount was payable upon handing over the physical possession of the property in question.

The fact remains that three legal notices were issued to the M/s. Jagatbandhu Tea Estate Pvt. Ltd. of which this petitioner is a director for payment of balance amount of Rs.6.75 crore but the same was duly replied by the company that unless and until the physical possession will not be handed over to the purchaser-Company; the remaining part will not be paid. As a matter of fact, the petitioner and the company are the victim of this crime. The company M/s. Jagatbandhu Tea Estate also lodged complaints dated 10/11.05.2023 & 05.06.2023 against Pradeep Bagchi for cheating.

**6.** Learned Sr. counsel for the petitioner categorically

submitted that the amount of Rs.25.00 lakh paid by M/s. Jagatbandhu Tea Estate Pvt. Ltd. to Mr. Pradeep Bagchi was not secured by committing any offence but the same was paid out of sale of tea leaves from the tea garden of M/s. Jagatbandhu Tea Estate Pvt. Ltd. and the account of the company was duly audited and in absence of any proceeds of crime, there cannot be any allegation of laundering thereof. He further submitted that the financial dealings between M/s. Jagatbandhu Tea Estate Pvt. Ltd. and M/s. Rajesh Auto Merchandise Pvt. Ltd. are in the nature of borrowing/lending which has also been admitted in the statements recorded under Section 50 of the PMLA.

Further, all such amounts borrowed/ lent/ expenditure made are duly recorded in the books of accounts of M/s. Jagatbandhu Tea Estate Pvt. Ltd. He lastly submits that for no offence, the petitioner is lying in custody since 07.06.2023 and the prosecution complaint has already been filed by the respondent Enforcement Directorate and since there are 31 charge-sheeted witnesses cited by the Enforcement Directorate; certainly the trial would not be completed in a short time and since the petitioner is a reputed businessman and resides with his family at Kolkata, so there is no chance

for absconding or tampering with the evidence and he also undertakes to abide by all the terms and conditions that may be imposed by this court while granting bail to this petitioner. Relying upon the aforesaid submission learned Sr. counsel prays that the privilege of bail may be granted to this petitioner.

**7.** Mr. Anil Kumar, learned ASGI vehemently opposed the prayer for bail and submits that the cases cited by learned Sr. counsel for the petitioner will not be applicable in the instant case, inasmuch as, in the case of ***Pankaj Bansal*** *(Supra)* at para-35, it has been directed by the Hon'ble Apex Court that henceforth, copy of such written grounds of arrest should be furnished as a matter of course and without fail. As such, the very word "Henceforth" & "Without Fail" indicates that the judgment passed by the Hon'ble Apex Court is prospective in nature.

In support of his contention, he also relied upon the dictionary meaning of "Henceforth" and submits that this is a word of futurity.

He further submits that Section 45 of PMLA starts with non-obstante clause which starts with the word notwithstanding anything contained in

the Code of Criminal Procedure, no person accused of an offence under this Act shall be released on bail or on his own bond unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and the entire complaint case indicates that the petitioner was involved in the entire conspiracy and as such there is every likelihood that he will be declared guilty for the offence for which he has been charged.

On merits of the case he relied upon the complaint itself and reiterated that the petitioner is involved in the entire conspiracy, as such the bail of the petitioner should be rejected and the judgment passed by the Hon'ble Apex Court in the case of ***Pankaj Bansal*** (supra) shall not be taken into consideration by this court because in the case of ***Pankaj Bansal*** (supra) even the facts were entirely different and the Hon'ble Apex Court has observed that there was colorable exercise of power and in that background the Enforcement Directorate was directed to serve the copy of the grounds of arrest henceforth and without fail to every accused.

**8.** Having heard learned counsel for the parties

and after going through the various documents available on record, it appears that a Prosecution complaint was lodged against this petitioner by the Enforcement Directorate. For brevity relevant part of the prosecution complaint filed by the Enforcement Directorate before the learned Special Court is quoted herein below:

> "Complaint filed under section 45 read with Section 44 of Act (PMLA), 2002 for commission of offence of Money Laundering as defined under Prevention of Money Laundering Section 3 and punishable under section 4 of PMLA, 2002 read with section 70 of PMLA 2002 .
>
> ……..
>
> ***3. BRIEF FACTS OF THE OFFENCE/ ALLEGATION/ CHARGE/ AMOUNT INVOLVED UNDER PMLA***
>
> *3.1 An FIR bearing no. 141 of 2022 dated 04.06.2022 was registered by the Bariatu Police Station, Ranchi under Section 420, 467 and 471 of IPC against one Pradeep Bagchi, Resident of ward no. 21, Lotus Garden Complex Block B, PS Bariatu, Dist. Ranchi based on a complaint of Shri Dilip Sharma, Tax Collector, Ranchi Municipal Corporation (RUD No. 2). The complainant stated that Pradip Bagchi obtained two holding numbers 0210004194000A1 and 0210004031000A5 by way of submitting forged papers i.e., Aadhaar Card, Electricity Bill and Possession Letter of one Flat no. 101, Block B, Lotus Garden Complex, Bariatu Road, Morhabadi, Ranchi. The documents submitted by Pradip Bagchi and addresses declared by him were verified and was found that they were fake. Pradip Bagchi did not reside in the above address and he submitted forged and fictitious documents to obtain the holding numbers.*
>
> *3.2 Since offences under sections 420, 467 and 471 of IPC are scheduled offences under Part A of Schedule of PMLA, 2002, an ECIR bearing No. RNZO/18/2022 was therefore recorded on 21.10.2022 (RUD No. 1). and an investigation under the provisions of the Prevention of Money Laundering Act (PMLA) was initiated.*
>
> ***3.3 Investigation revealed that the above-stated two holding Nos. 0210004194000A1 and 0210004031000A were obtained for property - plot no. MS 557, Morabadi Mouza, ward no. 21/19, having an area of 455.00 decimals at Ranchi. It also revealed that the above-stated property was later Sold by the said Pradeep Bagchi (Aadhaar no. 511337882315, PAN (AMBPB1317J) to one company M/s Jagatbandhu Tea Estate Pvt. Ltd (PAN AABCJ3705F, represented by its Director Dilip Kumar Ghosh having Aadhaar no. 912605787465) and it is registered at the office of the SRO Ranchi, bearing deed No 6888, Vol No 919, Page No 525-576, year 2021. From the sale deed of this property registered on 01.10.2021 (RUD No. 7)., it is seen that the declared government value/Market value of the said property is Rs 20,75,84,200/whereas the said property has***

***been sold for an amount of Rs 7,00,00,000 /which is highly undervalued*** *as compared to the declared government rate.*

*3.4 The sale deed bearing no. 6888 of 2021 between the said Pradip Bagchi and M/s Jagatbandhu Tea Estate Pvt. Ltd, in respect of the above property was executed on 1st October, 2021 (RUD No. 7). The government value/Market Value of the said property in the sale deed is shown as Rs. 20,75,84,200/but* ***the consideration amount of the property has been shown as Rs. 7 crores which are shown to be paid by 11 cheques of IDFC First Bank, account No 10060532973 of M/s Jagatbandhu Tea Estate Pvt. Ltd. Investigation has further revealed that only one part payment amounting to Rs 25,00,000/was made into State bank of India account number 10301956970 of Pradip Bagchi through IDFC First Bank, Cheque No 461153 and rest of the money was falsely shown to be paid in the deed no. 6888 of 2021 through other cheques.*** ***Although no further payments were done****, the purchasers and sellers have mentioned on page 04 of the sale deed that -*

> *"यह भी विदित हो कि प्रतिफल की कुल राशी मोवलिग 7,00,00,000/–(सात करोड रूपया) मात्र प्राप्त किये है। जिसकी प्राप्ति विक्रेता स्वीकार व समपुष्ट करते हैं। अब विकय संपत्ति के मूल्य में किसी भी प्रकार की प्राप्ति विक्रेता को खरीदार से शेष नही रहा"*

***Thus, it is evident that the declaration of payment of the full amount of Rs 7 (seven) crores by the purchaser and its receipt by the seller is deliberate, thoughtful and planned to give a legitimate appearance to the bogus transactions recorded in the sale deed for acquiring the above said property.***

*3.5 Investigation conducted into this case has also revealed that the above stated property situated at MS 557, Morabadi Mouza, ward no. 21/19, having an area of 455.00 decimals at Ranchi has been under the possession and occupation of Defence before independence. As per the documents provided by the defence, it is revealed that defence had been paying a monthly rent to one Jayant Karnad, a purported descendant/claimant of B.M Lakshman Rao and his son B.M Mukund Rao. The documents and records collected states that B.M Lakshman Rao died in the year 1946 and B.M. Mukund Rao passed away in the year 1998. Jayant Karnad started receiving rent from the defence as a claimant of the property after B.M Mukund Rao in the year 2008. In the year 2019, Jayant Karnad further sold this property to the following 14 persons by way of 16 deeds at a very negligible amount. Initially Jayant Karnad frivolously managed to get the rent from the defence without any valid succession certificate and later in the year 2009 succeeded to get the land released in his favour from the defence. Investigation reveals that all documents which helped Jayant Karnad to get land from defence and favourable orders from High Court were arranged and provided by an advocate. Jyant Karnad first time received the rent from the army, in the year 2008 amounting to Rs. 417 in his HUF Account 450110110002549 maintained in Bank of India. After this, he received Rs. 50,640/as an arrear of due rent from 1998 to 2008 in account number 4501101000299692204. He has been receiving rent from Defence Estate Office, till 28th December, 2021 in HUF account bearing no 450110110002549 held in Bank of India. Jayant Karnad finally sold the land to 14 different persons for a total sum of Rs. 2.55 crores which was received in his Bank of India account bearing no. 450110110002549 (RUD No. 11 & 12).*

***3.6 As stated above that there were ongoing litigations regarding the possession of this property between Army and the purported claimant Jayant Karnad who had sold the land to 14 persons by way of 16 deeds (RUD No. 115 to KON 130) on strength of the order obtained from the High Court of Jharkhand by concealing and manipulating facts. <u>The accused persons namely Afshar Ali Pradip Bagchi and his accomplices meanwhile prepared a fake deed from the office of the Registrar of Assurances, Kolkata.</u>*** *In the name of Prafulla aa Bagchi F/o Pradip Bagchi (RUD No. 108 & 113). It was projected that his father Prafulla Bagchi had given the land orally to the Army and as on day Pradeep Bagchi is the purported rightful claimant of the property. These persons contacted Prem Prakash for selling this land (Accused in illegal mining case and presently in judicial custody). Prem Prakash Is a power broker and a very influential person who was access to highly placed government officials and ministers in Jharkhand. Prem Prakash is also very close to Mr. Chhavi Ranjan, the Ex-D.C Ranchi and Amit Kumar Agarwal who is also a very influential person in Jharkhand. In connivence with Prem Prakash and Amit Kumar Agarwal, Mr. Chavi Ranjan influenced the officials of Circle office and District Sub Registrar, Ranchi and managed to procure & favourable report (RUD No. 27) for Pradeep Bagchi and the property was subsequently acquired in a dishonest manner by Jagatbandhu Tea Estates Pvt. Ltd. Both persons namely Amit Kumar Agarwal and Prem Prakash weré aware that the owner Pradip Bagchi was a fake person and the deed was false which is evident from the fact that they acquired property worth several crores of rupees by paying only Rs 25 lakhs (which was, in fact, a commission). Instead, Amit Kumar Agarwal, the beneficial owner of M/s Jagatbandhu Tea Estate Pvt. Ltd. knowingly acquired the abovesaid property in the name of Jagatbandhu Tea Estate Pvt. Ltd. Mr. Chhavi Ranjan, then DC of Ranchi assisted these persons to acquire the above property by misusing his official position and overlooking the records available in his office/subordinate offices. Mr. Chhavi Ranjan had knowledge that the abovesaid property is disputed as one dispute between Defence and Jayant Karnad was aiso pending before his disposal i.e. in the court of the District Magistrate, Ranchi which he used to preside during his tenure. Yet on receipt of the application of Pradeep Bagchi, who falsely claimed himself to be the rightful owner of the property, the then Deputy Commissioner, Mr. Chhavi Ranjan assisted Prem Prakash, Amit Kumar Agarwal, Afsar Ali, Saddam Hussain and others verbally directed the Circle officer to visit the office of Registrar of Assurances (Records), Kolkata and verify the original deeds for ascertaining actual owner of the property. Investigation has revealed that the original registers in the records of Registrar of Assurances, Kolkata were already forged/tampered with and falsified In favour of Pradeep Bagchi and the direction to visit Kolkata to verify the records available with Registrar of Assurances was a well-executed plan so that the property could be transferred to Amit Kumar Agarwal through his company Jagat Bandhu Tea Estates Pvt. Ltd.*

*3.7 The amount involved i.e.; proceeds of crime acquired by the above criminal activities can be summarized as follows :-……..”*

**<u>Emphasis Supplied</u>**

**9.** Having perused the prosecution complaint quoted herein above now this Court will look into

the contention raised by learned Sr. counsel for the petitioner which in substances are as follows:-

**(i)** Non-compliance of section 19 of PMLA by the Enforcement Directorate;

**(ii)** The Petitioner has satisfied both the conditions of section 45(1)(ii) of the PMLA.

**(iii)** The petitioner had no knowledge that the accused Pradeep Bagchi committed forgery in order to impersonate himself as owner of the property in question.

**(iv)** It is the Company of which the petitioner is Director was the victim of cheating for which they also lodged complaint against Pradeep Bagchi;

**(v)** Even assuming the entire allegation made in the complaint to be true, no case under section 3 punishable under section 4 PMLA is made out as the allegations fall short for essential ingredients for offence of money laundering under section 3 of PMLA Act.

**10.** So far as first contention of the petitioner is concerned with regard to non-compliance of Section 19 of PMLA by the Enforcement Directorate; it would be profitable to quote Section 19 of the Act itself:-

> "**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."

Ongoing through the aforesaid provision, it appears that sub-section (i) consists of two parts; while the first part speaks with respect to reason to believe to be recorded in writing and the second part mandates that the grounds of arrest of the accused have to be informed to the accused. The issue with regard to informing the accused has been deliberated in detail in the case of ***Pankaj Bansal*** (Supra) wherein at para 37 & 39 the Hon'ble Apex Court has held as under:-

> ***"37.*** *The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person.* ***Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present***

***a case before the Court under Section 45 to seek release on bail****, if he/she so chooses. In this regard, the grounds of arrest in V. Senthil Balaji (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her.* ***The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest,*** *irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.*

***39.*** *On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest,* ***we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.*** *The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it*

> *reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.***"**
>
> ***Emphasis Supplied***

After perusing the aforesaid judgment, it is clear that the Hon'ble Apex Court in unequivocal term has directed that henceforth, copy of grounds of arrest is to be furnished to the arrested person as a matter of course and without exception.

**11.** Now coming to the contention of learned ASGI that as to whether the said judgment is prospective in nature as the word *"Henceforth"* is used by the Hon'ble Apex Court or whether the direction of the Hon'ble Apex court is clarificatory in nature. In this regard, learned Sr. counsel for the petitioner has also relied upon the judgment passed in the case of ***Roop Bansal*** *(Supra)* wherein Punjab & Haryana High Court has clarified that since in the case of ***Pankaj Bansal*** (supra) the petitioners were not supplied with the document and petitioners of that case were granted relief then admittedly, the case of ***Pankaj Bansal*** (supra) has to be read as having retrospective effect. For brevity, para-28 of ***Roop Bansal*** (supra) is quoted herein below:

> ***"28.*** *The argument of the respondents that since the grounds of arrest would be required to be supplied henceforth, the arrest in the present case would not be affected, is devoid of merit. No doubt, the Hon'ble Apex Court held that the grounds of arrest would "henceforth" be furnished in writing to the accused but at the same time, it declared the arrest*

> *and the consequential remand of Pankaj Bansal and Basant Bansal to be illegal. Had the intention been to make the condition only prospective, the Hon'ble Apex Court would not have declared the arrest of Pankaj Bansal and Basant Bansal to be illegal.***"**

**12.** At this stage it is also pertinent to mention that the law is no more *res integra,* inasmuch as, the normal rule is that the judgment is always retrospective in nature unless it is declared prospective and amended provision of law is always prospective unless it is declared retrospective. By examining the relevant paragraph of the Hon'ble Apex Court in the judgment rendered in the case of ***Pankaj Bansal*** (Supra) it appears that the word *"Henceforth"* has been used as a direction for the future cases but it cannot be construed by any imagination that the said judgment will not affect the cases in which the arrest has been done without service of grounds for arrest. The intention of the Hon'ble Apex Court was not to condone the illegalities committed by the Enforcement Directorate prior to passing of the judgment.

At this stage it is also profitable to observe that like in any judgment there is a ratio, obiter and direction; by perusing the said paragraph of the Judgment of ***Pankaj Bansal*** (Supra) it is evident that ratio has been laid down by the Hon'ble Apex Court that *"no arrest can be made without serving of copy of grounds of arrest to the accused"* and the direction is given to the ED that *"henceforth the ED should not commit that mistake and without fail in every case it must*

*serve the copy of grounds of arrest".* Thus, this court is of the considered view that the ratio laid down in the case of ***Pankaj Bansal*** (supra) will be squarely applicable in the instant case also. This Court also respectfully accepts the reasoning given in the case of ***Roop Bansal*** (supra) passed by the Division Bench of Punjab and Haryana High court which has been referred to herein above.

**13.** Regarding compliance of Section 19(1) of the PMLA w.r.t. serving of copy to the accused, learned ASGI has also argued that the grounds of arrest were read over to the accused and that the petitioner has also signed the same. In this regard, once again it would be profitable to refer para-37 & 39 of the judgment of ***Pankaj Bansal*** *(supra)* wherein the Hon'ble Apex Court has clarified this issue and also held as under:- "…….*The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest……*

*……. we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception."*

Having regard to the discussions made herein above, on this score alone, i.e. non-compliance of section 19(1) of PMLA by the Enforcement Directorate, the petitioner deserves to be enlarged on bail.

**14.** Now coming upon the merits of the case and the

other contentions of learned counsel for the rival parties; after going through the prosecution complaint, relevant part of which is quoted in the preceding paragraph; *prima facie* it appears that the Enforcement Directorate have reason to suspect but not reason to believe that the petitioner is an accused of conspiracy in the instant case.

For example; one of the allegations is that the property in question was of 20 Crore but the company through the petitioner has negotiated and purchased it in only 7 Crore. This allegation itself transpires that it is mere a suspicion as it is well established principle that the market value and the government value of any property cannot in every case be equal. Another allegation is that only one part of total payment amounting to Rs 25,00,000/- was made into State Bank of India account number 10301956970 of Pradip Bagchi through IDFC First Bank, Cheque No 461153 and rest of the money was falsely shown to be paid in the deed no. 6888 of 2021 through other cheques. However, in the complaint itself it is mentioned that no further payments were done. This allegation is also more of suspicion; rather than belief. Another allegation is that the property in question was litigated land. Thus, this court is of the view that the entire allegation as contained in the prosecution complaint is more of reason to suspect; rather of reason to belief.

At this stage it is pertinent to mention that reason

to suspect and reason to believe are two different things and one of the conditions in Section 19 speaks of reason to believe. Reason to suspect is subordinate to reason to believe and cannot be equated with reason to believe. The expression reason to believe is made by two words i.e. reason and believe the word reason means cause or justification and the word believe means to accept as true or to have faith; thus, the officer has to have faith or accept a fact to exist and further there must be justification for such faith or acceptance.

The information received by the ED *prima facie* appears to be allegation only which can raise suspicion in the mind of the authorities based on the information an enquiry can be triggered to find whether there is any material leading to formation of reason to believe. It is well settled that expression "reasons to believe" must be conditioned on the existence of tangible material and that reasons must have a live link with the formation of the belief. Reference in this regard may be made to the case of ***Radha Krishan Industries*** v. ***State of H.P.***; reported in (2021) 6 SCC 771 wherein at para 52 it has been held by the Hon'ble Apex Court as under:-

> ***"52.*** *We adopt the test of the existence of "tangible material". In this context, reference may be made to the decision of this Court in CIT v. Kelvinator of India Ltd. [CIT v. Kelvinator of India Ltd., S.H. Kapadia, J. (as the learned Chief Justice then was) while considering the expression "reason to believe" in Section 147 of the Income Tax Act, 1961 that income chargeable to tax has escaped assessment inter alia by the omission or failure of the*

*assessee to disclose fully and truly all material facts necessary for the assessment of that year, held that the power to reopen an assessment must be conditioned on the existence of "tangible material" and that "reasons must have a live link with the formation of the belief". This principle was followed subsequently in a two-Judge Bench decision in CIT v. Techspan (India) (P) Ltd. While adverting to these decisions we have noticed that Section 83 of the HPGST Act uses the expression "opinion" as distinguished from "reasons to believe". However for the reasons that we have indicated earlier we are clearly of the view that the formation of the opinion must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of the government revenue***."***

**15.** Applying the above principle to the facts of the present case, the following would appear: -

(i) There is no document/material on record to implicate the petitioner in forging and manipulating the title deeds being Deed of Sale No. 4369 dated 11.10.1932 of the Property in question in the office of the Registrar of Assurances at Kolkata. Nor is there any allegation that the petitioner was party to the manipulation which took place in the Office of the Registrar of Assurances, Kolkata.

(ii) There is no allegation that the petitioner was involved in obtaining certified copy of the title deeds being Deed of Sale No. 4369 dated 11.10.1932 from the Office of the Registrar of Assurances, Kolkata.

(iii) There is no material on record to show that the petitioner was involved in obtaining holding numbers by accused Pradeep Bagchi by submitting

forged Aadhaar Card, forged electricity bill and forged possession letter to the Office of the Ranchi Municipal Corporation. For such acts committed by Pradeep Bagchi, F.I.R. No. 141/2022 dated 04.06.2022 has been registered by the Police of Bariatu Police Station, Ranchi under Sections 420, 467, 471 IPC against Mr. Pradeep Bagchi (which are scheduled offences under the PMLA. It is pertinent to mention here that the petitioner is not named as an accused/suspect in the said FIR.

It is trite that only the author who manufactures a false document can be held guilty for the offence of forgery. Reference in this context is made to the case of ***Sheila Sebastain*** v. ***R.Jawaharaj and Anr.*** Reported in *[(2018) 7 SCC 581 (para 25)]* wherein it was inter alia held that making of a document is different than causing it to be made and for constituting an offence under section 464 IPC it is imperative that a false document is made and the accused person is the maker of the same.

(iv) The cheques for Rs.7.00 crore was issued by M/s. Jagatbandhu Tea Estate Pvt. Ltd. in favour of accused Pradeep Bagchi, out of which one cheque for Rs.25.00 lakh was encashed by Pradeep Bagchi. As

per the mutual understanding the remaining amount was payable upon Pradeep Bagchi handing over possession of the said Property to M/s. Jagatbandhu Tea Estate Pvt. Ltd. As per Section 54 of the Transfer of Properties Act, the said transaction is valid.

(v)It is pertinent to mention here that M/s. Jagatbandhu Tea Estate Pvt. Ltd. is not making any claim over the said property and gave its no objection to the Adjudicating Authority under the PMLA for attachment of the property and the said property has already been attached vide order-dated 08.11.2023 passed by the Adjudicating Authority.

(vi) There is no material on record to show, even remotely, that any proceeds of crime have been generated by the petitioner. The amount of Rs.25.00 lakh paid by M/s. Jagatbandhu Tea Estate Pvt. Ltd. to Mr. Pradeep Bagchi was not secured by committing any offence but the same was paid out of sale of tea leaves from the tea garden of M/s. Jagatbandhu Tea Estate Pvt. Ltd. and the account of the company was duly audited.

**16.** Even otherwise, for any offence *mensrea* has to exist unless the statute expressly excludes the same {Refer ***People's Union for Civil Liberties*** v. ***Union of India***; ***(2004) 9 SCC 580*** (para 48)}. The PMLA does not

expressly exclude *mensrea* and hence it has to be present to make a person liable to be punished thereunder.

Moreover, the amount of Rs.25 Lakh was debited by the company and there is no whisper in the allegation that the said amount has not been shown in its books of account.

It is well settled that in absence of any proceeds of crime, there cannot be any allegation of laundering thereof. Reference in this regard may be made to the judgment of ***Vijay Madanlal Choudhary*** (supra), at Paragraph 467(d)]. For better appreciation paragraph 467(d) is quoted hereinbelow:

> ***"467(d)*** *The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him****..."***

Thus, in the instant case, even if the allegations levelled against the petitioner in the Prosecution Complaint are accepted at its face value and in their entirety; *prima facie,* the same do not make out a case under Section 3,

punishable under Section 4 of the PMLA, inasmuch as, such allegations fall short of the essential ingredients for offence of money-laundering under Section 3 of the PMLA Act.

**17.** Now coming to the argument of learned ASGI w.r.t. section 45 of the PMLA, it would be beneficial to quote Section 45 (1) (ii) of PMLA Act;

> ***"(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 reupees], 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 State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.***"**

At this stage it is profitable to refer to the judgment passed in the case of ***Vijay Madanlal Choudhary*** (supra); wherein the Hon'ble Apex Court has clarified the intent as well as the effect of Section 45 of PMLA Act. For brevity para-400 to 403 is quoted herein below:

> ***"400.*** *It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act. While dealing with a similar provision prescribing twin conditions in MCOCA, this Court in Ranjitsing Brahmajeetsing Sharma, held as under:*
>
> *"**44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must***

***arrive at a positive finding that the applicant for bail has not committed an offence under the Act.*** *If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature.* ***Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial.*** *Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*

> ***45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.***
>
> ***46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in sub-section (4) of Section 21 of the Act, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby"***
>
> *(emphasis supplied)*

***401.*** *We are in agreement with the observation made by the Court in Ranjitsing Brahmajeetsing Sharma. The Court*

*while dealing with the application for grant of bail need not delve deep into the merits of the case and only a view of the Court based on available material on record is required. The Court will not weigh the evidence to find the guilt of the accused which is, of course, the work of Trial Court. The Court is only required to place its view based on probability on the basis of reasonable material collected during investigation and the said view will not be taken into consideration by the Trial Court in recording its finding of the guilt or acquittal during trial which is based on the evidence adduced during the trial. As explained by this Court in Nimmagadda Prasad, the words used in Section 45 of the 2002 Act are "reasonable grounds for believing" which means the Court has to see only if there is a genuine case against the accused and the prosecution is not required to prove the charge beyond reasonable doubt.*

***402.*** *Sub-section (6) of Section 212 of the Companies Act imposes similar twin conditions, as envisaged under Section 45 of the 2002 Act on the grant of bail, when a person is accused of offence under Section 447 of the Companies Act which punishes fraud, with punishment of imprisonment not less than six months and extending up to 10 years, with fine not less than the amount involved in the fraud, and extending up to 3 times the fraud. The Court in Nittin Johari, while justifying the stringent view towards grant of bail with respect to economic offences held that-*

*"**24.** At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the CrPC.* ***Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences****. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy-*

> *"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."***
>
> *(emphasis supplied)*
>
> ***403.*** *This Court has been restating this position in several decisions, including Gautam Kundu and Amit Kumar. Thus, while considering the application for bail under Section 45 of the 2002 Act, the Court should keep in mind the abovementioned principles governing the grant of bail. The limitations on granting bail as prescribed under Section 45 of the 2002 Act are in addition to the limitations under the 1973 Code."*

By going through the aforesaid judgment, it is clear that the Hon'ble Apex Court has clarified that at the stage of hearing the bail application, the court would have to see the prima facie case only.

**18.** In view of the aforesaid discussions and looking to the allegation made in the prosecution complaint and the factual scenario that there is no document on record, at least at this stage, to implicate the petitioner in forging and manipulating the title deed being Deed of Sale No. 4369 dated 11.10.1932 of the property in question in the office of Registrar of Assurances at Kolkata and doing conspiracy of laundering out of proceeds of crime; hence this Court is of the opinion that at least at this stage, the allegations fall short of essential ingredients of offence of money laundering under section 3 of the Act which clearly states that the proceeds of crime has been used in any manner; however, in the case at

hand Rs. 25 lakhs which was paid by the company was out of sale of Tea leaves from the Tea Garden and the account of the company was duly audited.

**19.** Thus, on both the counts; i.e., with regard to non-compliance of section 19 of PMLA by the Enforcement Directorate and also on merits of the case, *prima facie* with the available records produced before this court it does not transpire that the petitioner has committed the crime under the Act and/or is likely to commit any offence while on bail as the prosecution has not produced any material which would impress this Court that the petitioner might commit a similar offence. It has not been disputed that the petitioner does not have any criminal antecedent and since it is difficult to predict the future conduct of the petitioner, the lack of criminal antecedent, his propensities and the nature and manner of his involvement as demonstrated have been considered by this court to decide on the second limb of section 45 (1)(ii) of the PMLA {Refer ***Ranjit sing Brahmajeet Sing Sharma Versus State of Maharastra*** reported in ***(2005) 5 SCC 294*** at paragraph 44}.

**20.** It goes without saying that this is only stage of bail and this Court is not sitting under its inherent power under section 482 for quashing the entire proceeding; further there are 31 charge-sheeted witnesses and the petitioner is in custody since 07.06.23. Reference may be made to the recent

judgment dated 30.10.2023 of the Hon'ble Apex Court of India rendered in the case of ***Manish Sisodia*** versus ***Central Bureau of Investigation,*** reported in ***2023 SCC online SC 1393,*** wherein at paragraphs 27 and 29 it was held as under:

> ***"27.*** *However, we are also concerned about the prolonged period of incarceration suffered by the appellant - Manish Sisodia. In P. Chidambaram v. Directorate of Enforcement, 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 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, 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 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, 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.*

> ***29.*** *Detention or jail before being pronounced guilty of an offence should not become punishment without trial. If the trial gets protracted despite assurances of the prosecution, and it is clear that case will not be decided within a foreseeable time, the prayer for bail may be meritorious. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985, murder, cases of rape, dacoity, kidnaping for ransom, mass violence, etc. Neither is this a case where 100/1000s of depositors have been defrauded. The allegations have to be established and proven. The right to bail in cases of delay, coupled with incarceration for a long period, depending on the nature of the allegations, should be read into Section 439 of the Code and Section 45 of the PML Act. The reason is that the constitutional mandate is the higher law, and it is the basic right of the person charged of an offence and not convicted, that he be ensured and given a speedy trial. When the trial is not proceeding for reasons not attributable to the accused, the court, unless there are good reasons, may well be guided to exercise the power to grant bail. This would be truer where the trial would take years."*

Having regard to the number of oral and the documentary evidences and the present stage of trial and the period of custody undergone, this court is inclined to grant this petitioner on bail.

**21.** Accordingly, the petitioner is directed to be released on bail on furnishing bail bond of Rs. 100,000/- (One Lakh Only) with two sureties of the like amount each to the satisfaction of learned Special Judge, CBI-cum-PMLA at Ranchi, in connection with ECIR Case No. 01 of 2023 [arising out of ECIR/RNZO/18/2022 dated 21.10.2022].

However, the bail granted by this Court is subject to following conditions:-

**(i)** The petitioner shall surrender his passport before the

learned trial court and if he wishes for release of the same, he shall make proper application before the concerned court who shall decide the application for release of passport on its on merit.

**(ii)** The petitioner will not tamper with any evidence and/or will not threaten any of the witnesses.

**(iii)** The petitioner shall appear before the Ld. Special Judge on each and every date unless exempted by the learned Trail court on being satisfied with the causes shown by the petitioner in this regard.

It goes without saying that the findings recorded by this court are tentative in nature and will not have any bearing on the merits of the case and the learned Trial court would be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced by the findings given hereinabove.

**22.** As a result, the instant application stands allowed.

**(Deepak Roshan, J.)**

Amardeep/