

**IN THE COURT OF MS. ANJU BAJAJ CHANDNA  
PRINCIPAL DISTRICT & SESSIONS JUDGE-CUM-SPECIAL  
JUDGE (PC ACT) CBI, ROUSE AVENUE DISTRICT COURTS,  
NEW DELHI**

**Bail Matter No. 230/2024  
CNR No. DLCT11-000996-2024  
ECIR/DLZO-I/44/2021**

**Pradeep Goel**  
S/o Jai Singh Goel  
R/o 60/20, First Floor,  
Prabhat Road, Ramjas Road  
Karol Bagh, Delhi-110005

**.....Applicant**

**vs**

**Directorate of Enforcement**  
through its Assistant Director  
Pravartan Bhawan  
APJ Abdul Kalam Road  
New Delhi-110011

**.....Respondent**

**21.11.2024**

**Appearance :** Sr. Advocate Sh. Vikas Pahwa along with  
advocates Sh.Prabhav Ralli, Ms.Namisha Jain,  
Sh.Dev Vrat Arya, Sh.Naveen Sharma and  
Sh.Sushil Kumar for applicant Pradeep Goel.

Sh.Atul Tripathi, Ld. Special PP for ED along  
with Advocate Sh.V. K. Attri.

1. The applicant Pradeep Goel seeks anticipatory bail under the provisions of Section 482 Bhartiya Nagrik Suraksha Sanhita 2023 (erstwhile Section 438 Cr.P.C) read with Section 45 of Prevention of Money Laundering Act 2002. According to the applicant, he has reasonable apprehension for being arrested in ECIR/DLZO-I/44/2021.

2. The brief facts as stated are that on 28.06.2021 Bank of India being the consortium leader of six banks, lodged a complaint with Central Bureau of Investigation (CBI) with respect to credit facilities advanced in favour of M/s Shree Raj Mahal Jewellers Pvt. Ltd (in short SRMJPL). It was alleged in the complaint that 'fraud' had taken place in the account of M/s SRMJPL which was initially constituted as partnership firm in the year 2008 and later on converted into private limited company in the year 2009. The complainant bank sanctioned / disbursed Rs.45 crores in 2010 against hypothecated stocks (gold, diamond, silver and precious stones) while in the year 2013, the credit facilities were enhanced to Rs.100 crores under the consortium arrangement and it was further increased to Rs.125 crores in the year 2014 and other banks joining as consortium members. As per the complaint, the account of M/s SRMJPL was red flagged on 03.11.2015 and special investigating audit was ordered and based on the report, the account was declared 'fraud' while investigation was for the period of two years from 01.04.2014 to

31.03.2016. The account of M/s SRMJPL was declared as NPA and proceedings under law were initiated for the recovery.

3. Based on the broad allegations, CBI registered the FIR. It was stated that no irregularity was found against any bank employee and staff accountability report against five officers has been closed and against two officers is in process for procedural lapses. The FIR was registered under Section 406, 420 IPC read with Section 120 B IPC and under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act dated 16.07.2021. The charge-sheet was filed by the CBI and Ld. Special Judge recorded that sanction has been declined under Section 17 (A) of Prevention of Corruption Act against public servants and therefore investigation was carried out only for the offences under IPC. The charge-sheet was sent to the court of ACJM-II, Rouse Avenue Court, New Delhi. However, till date documents have not been received and no cognizance has been taken on the charge-sheet.

4. The present ECIR was registered on 06.09.2021 by the ED (respondent herein) and despite the lapse of three years neither the prosecution complaint nor any closure report has been filed. So far as the predicate offence is concerned, the credit facilities were extended in favour of M/s SRMJPL on 28.04.2010 with the covenant that bank shall conduct quarterly inspection and also as and when required. The sanction was renewed vide letter dated 09.12.2011

after ascertaining that there are no lapses in the account of M/s SRMJPL. In the year 2013-2015, the Bank of India and other consortium banks enhanced the credit facilities and same were revised from time to time after due scrutiny.

5. The sanction letters dated 17.04.2013 issued by the complainant bank and letters by other banks have been relied upon. Thereafter on annual review of the credit facilities sanction limit was further enhanced to Rs.125 crores with two new consortium members vide sanction letter dated 23.01.2015 issued by the complainant bank and similar letters by other banks. On 30.06.2015 the account was declared Non-performing Asset (NPA) as the company was not in a position to meet its obligations. The efforts were made by the applicant and other members of M/s SRMJPL to regularize the bank accounts but due to the slowing down of the business, they were unable to do so. Due to the demonetization in November 2016 business also got impacted adversely and later on the introduction of GST, problems arose. The company submitted OTS (one time settlement) on 16.08.2016 and on 29.06.2021 but with no results the stand taken by the company has been that due to business problems and financial losses the account has become NPA. The company went into liquidation vide order of NCLT dated 08.09.2020. On 11.04.2023, ED conducted a search at various premises related to M/s SRMPL including the premises of applicant and his brothers and on the recovery of alleged incriminating documents, digital devices and

other movable properties, an application was filed before Adjudicating Authority dated 10.05.2023 under Section 17 (4) PMLA 2002 for retention of documents/ articles. It was contended that same are required for the purposes of investigation and adjudication under the provisions of Prevention of Money Laundering Act and vide order dated 26.09.2023, the application of ED was allowed by Adjudicating Authority. Even after the lapse of 365 days, since the order, no prosecution complaint has been filed by ED. Despite the fact that investigation is pending for more than three years, ED has failed to conclude if there are any proceeds of crime involved in the case. On 07.05.2024, again a search was carried out during which the applicant cooperated. Enforcement Directorate filed application before Adjudicating Authority dated 05.06.2024 for retention of seized records and immovable properties and for freezing of bank accounts which is pending adjudication. ED / Respondent has also passed provisional attachment order dated 10.06.2024 whereby the properties worth Rs.94 crores have been attached which is equivalent to the alleged proceeds of crime and after this attachment, arrest of the petitioner is not needed. M/s SRMJPL has paid interest to the tune of Rs.80 crores to the banks against the credit facilities. It is further contended that declaration of account as 'fraud' is under re-consideration as evident from the proceedings of WP (C) 7786/2024 wherein the declaration of fraud has been challenged. Therefore, very basis of initiating criminal proceedings by CBI becomes *void ab-initio*.

6. The applicant further submits that he is 42 years old and suffering from life endangering ailments requiring special medical care and attention. The applicant has a strong family history of Chronic Liver Disease (CLD) and is suffering from Grade-II Fibrosis and is on medication and strict diet schedule. The applicant is also an acute patient of anxiety disorder and he is having depressive suicidal tendencies and suffering from frequent panic attacks. On account of ongoing medical and special condition, petitioner claims to be sick and infirm person. The applicant claims to have joined and cooperated in the investigation on various dates from April 2023 to June 2024. The Director of M/s SRMJPL namely Ashok Goel (brother of the applicant) was arrested by the respondent while he had gone to join the investigation. The applicant received summons on 10.10.2024 for appearance before the investigating officer. The entire case of the Enforcement Directorate is based upon the documentary evidence and particularly when there is no fraud, the question of generation of proceeds of crime does not arise as the investigation under Prevention of Money Laundering is dependent upon the predicate / scheduled offence.

7. It is further stated by the applicant that he was never arrested by the CBI in the scheduled offence. The complaint is based on the forensic audit exercise and report was released on 27.05.2016. There is inordinate and unexplained delay in filing the complaint with CBI. Petitioner has further contended that there is no necessity to

arrest him under Section 19 PMLA and the judgment of **Arvind Kejriwal vs Directorate of Enforcement, Crl. Appeal No.2493/2024** has been relied upon. The period as stipulated in Section 8 (3) (a) of PMLA is over and non-filing of prosecution complaint by ED indicates that nothing material has come on record against the applicant to file a prosecution complaint against him. The documents and devices seized from the house of the applicant (confirmed vide order dated 26.09.2023 by Adjudicating Authority) are liable to be returned.

8. The applicant further claims to be the sole breadwinner of his family consisting of his wife and three minor children. The parents are also old suffering from various ailments. The applicant has got deep roots in the society and there is no possibility of applicant influencing the witnesses or interference with the process of justice.

9. Respondent / Enforcement Directorate filed reply to the anticipatory bail application with the preliminary denial of all the allegations. It is asserted that FIR was lodged on the basis of the complaint filed by Bank of India against M/s SRMJPL for not repaying the loan of Rs.125 crores which was given for business of manufacturing and trading of gold/diamond jewellery. The lending banks had declared fraud in the loan accounts of M/s SRMJPL on 30.07.2016 for various reasons one of which was suspected diversion

of funds into real estate business other than core business. It is also alleged that M/s SRMJPL stopped submitting the stock and book debt statements to the lending banks and disposed off the hypothecated stock / goods etc. The investigation conducted under PMLA 2002 revealed that M/s SRMJPL along with Directors and Promoters started illegal diversion of funds from loan accounts right from the year 2010. The said diversion were done through entities like M/s Ridhi Sidhi Gold, M/s Royal Gold, M/s Radha Jewellery House and M/s Krishna Jeweller etc which were also controlled by promoters / directors of M/s SRMJPL. Various transactions during the period from 2011 to 2016 showing diversion of funds from M/s SRMJPL have been detailed.

10. As per the investigation, in the financial year 2015-2016 M/s SRMJPL had shown huge outstanding debts to the tune of Rs.110.87 crores from various entities against sale of gold / diamond jewellery and these debts kept on increasing every year. The company went into liquidation on 24.04.2019 with the outstanding debts of Rs.156.95 crores receivable from various entities. Four major debtor companies are controlled by the Directors/ Promoters of M/s SRMJPL including the applicant. It is further contended that during the search conducted on 07.05.2024, a Mercedes Benz car owned in the name of M/s Astro Jewels Pvt. Ltd was recovered from the residential premises of the applicant to which applicant could not support his claim of having purchased the same in the year 2022. The



companies managed and controlled by Pradeep Goel have been heavily benefited by the funds diverted from M/s SRMJPL. Applicant appeared in the office in response to summons but he did not submit information of his financial affairs. Applicant has made significant investments in acquisition and development of immovable properties on commercial scale and he has earned huge profits by selling these properties. The complete details of such properties are yet to be traced. Applicant is in exclusive knowledge of properties acquired / developed by him in disguise. Documents related to these properties are also in his exclusive knowledge and he is required to be confronted with the evidence collected during the investigation.

11. An Application has already been preferred by respondent to secure the presence of applicant during investigation with the request of issuance of Non-bailable warrants. The investigation involves large number of companies and bank accounts. It is denied that M/s SRMJPL suffered any business losses and it is alleged that company failed to repay the dues due to illegal diversion of funds. The directors of company were diverting the loan funds for their personal gains. The investigation conducted by the respondent is at its crucial stage and applicant is being summoned as per requirement of the investigation. So far as re-examination of fraud of Bank of India is concerned, it is contended that same has not affected the existence of FIR involving scheduled offences. CBI has already filed charge-sheet in the scheduled offences. The applicant has not cooperated

during the investigation and he is making excuse of having medical problems, although he is living a lavish life and enjoying the proceeds of crime.

12. It is admitted that charge-sheet has been filed by the CBI only for the offences under IPC and as no sanction was received against public servants qua the offences under Prevention of Corruption Act 1988.

13. The filing of charge-sheet by CBI proves commission of the scheduled offence and generation of proceeds of crime. The independent investigation conducted by Enforcement Directorate reveals generation of proceeds of crime. The claim of the applicant about recovery of dues by the consortium bank through NCLT proceedings is denied. It is alleged that directors of M/s SRMJPL have shown bogus debtors in order to siphon off the funds for personal gains. During the liquidation proceedings, company has been bought back for an amount of Rs. 68.50 Lakhs by the entity M/s Radha Jewellery House which is controlled by them only. It is admitted that respondent has provisionally attached assets worth Rs.94 crores vide attachment order dated 10.06.2024 which is subject matter of adjudication proceedings. The issuance of summons by the respondent to the applicant does not indicate that he necessarily would be arrested. The issuance of summons is required for the investigation. The respondent cannot comment upon the investigation

conducted by the CBI relating to predicate offence while the respondent is required to trace the proceeds of crime generated from the scheduled offences which is generally subjected to multiple level of layering. It is contended that applicant has invested huge funds in real estate by diverting funds from the company and he has refrained from submitting copy of registration deed/sale agreement of such properties. It is prayed that application of the applicant be dismissed.

14. Arguments have been advanced at length on behalf of both the sides.

15. Arguing on behalf of applicant, Sr. Advocate Sh. Vikas Pahwa submitted that credit facility was approved by Bank of India in the year 2010 and same was reviewed in 2012. The credit facilities were sanctioned till the year 2014. On the basis of Forensic Audit Report for the period 01.04.2014 to 31.03.2016, the account was declared 'fraud' on 30.07.2016 but only after the gap of 5 years, the complaint was lodged with the CBI. The FIR related to predicate offences was registered and although the charge-sheet has been submitted but no cognizance has been taken on the same. No proceedings against public servant have been initiated or carried out for the reason permission under Section 17 A of PC Act, was declined.

16. Ld. Counsel forcefully argued that declaration of fraud by the Bank of India as to the account of M/s SRMJPL stands vitiated due to non-compliance to the rules of natural justice. On this aspect, Ld. Counsel has relied upon the judgment of Supreme Court of India, **State Bank of India & Ors. vs Rajesh Agarwal & Ors.**(2023) 6 SCC 1. The subject matter of this judgment has been challenge to the Reserve Bank of India (frauds Classification and reporting by Commercial Banks and Select FIs) Directions 2016 and during the course of hearing, the apex court directed that matter may not be reported to the CBI for the time being. Elaborating the principle of *audi alteram partem*, the apex court made the following observations:-

*“36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo iudex in causa sua, which means that no person should be a judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favor interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and*

*circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.*

*37. While the borrowers argue that the actions of banks in classifying borrower accounts as fraud according to the procedure laid down under the Master Directions on Frauds is in violation of the principles of natural justice, the RBI and lender banks argue that these principles cannot be applied at the stage of reporting a criminal offence to investigating agencies. At the outset, we clarify that principles of natural justice are not applicable at the stage of reporting a criminal offence, which is a consistent position of law adopted by this Court.*

*40. The process of forming an informed opinion under the Master Directions on Frauds is administrative in nature. This has also been acceded to by RBI and lender banks in their written submissions. It is now a settled principle of law that the rule of audi alteram partem applies to administrative actions, apart from judicial and quasi-judicial functions. It is also a settled position in administrative law that it is mandatory to provide for an opportunity of being heard when an administrative action results in civil consequences to a person or entity.”*

17. In concluding portion of the judgment, Hon’ble Supreme Court made the following directions:-

*“95...In light of the legal position noted above, we hold that the rule of audi alteram partem ought to be read in Clauses 8.9.4 and 8.9.5 of the Master Directions on Fraud. Consistent with the principles of natural justice, the lender banks should provide an opportunity to a borrower by furnishing a copy of the audit reports and allow the borrower a reasonable opportunity to submit a representation before classifying the account as fraud. A reasoned order has to be issued on the objections addressed by the borrower. On perusal of the facts, it is indubitable that the lender banks did not provide an opportunity of hearing to the borrowers before classifying their accounts as fraud. Therefore, the impugned decision to classify the borrower account as fraud is vitiated by the failure to observe the rule of audi alteram partem. In the present batch of appeals, this Court passed an ad-interim order restraining the lender banks from taking any precipitate action against the borrowers for the time being. In pursuance of our aforesaid reasoning, we hold that the decision by the lender banks to classify the borrower accounts as fraud, is violative of the principles of natural justice. The banks would be at liberty to take fresh steps in accordance with this decision.”*

18. Ld. counsel further relied upon the judgment of Punjab & Haryana High Court, **AGR Steel Strips Pvt. Ltd & Ors. vs Reserve Bank of India & Ors., CWP 34297/2019** wherein coercive action drawn against the petitioners pursuant to the circular of RBI dated 01.07.2016 (updated on 03.07.2017) was under challenge and the court on relying upon the judgment of **SBI & Ors. vs. Rajesh Agarwal & Ors. (supra)** and the principles laid down in the said

judgment, held that FIRs, if any, registered against the petitioners concerned, in terms of tainted declaration of 'fraud' being made of the accounts concerned, there is plenitude of jurisdiction vested in the court to construe that such lodged FIRs are also required to be quashed and set aside. The court clearly held that declaration of fraud and consequent registration of FIR without adherence to the principles *audi alteram partem* would be the FIR born from such stained declarations and therefore required to be quashed and set aside. However, liberty was given to lending institutions to proceed to draw such actions, after adherence to the principles of natural justice. Ld. Counsel also relied upon various orders of High Court of Delhi, wherein declaration of fraud and consequential proceedings or actions initiated have been stayed, due to non-compliance of the above judgment.

19. Ld. Counsel further contended that in this case, Bank of India in order to make compliance, a fresh show cause notice was issued by Bank of India on 23.04.2024 to the company M/s SRMJPL and its directors stating therein that in order to re-examine the matter, written submissions be presented. The said notice was immediately replied on behalf of company on 10.05.2024 seeking copy of Forensic Audit Report dated 27.05.2016, however, vide its communication dated 13.05.2024, the Bank again advised the company and its directors to provide written submissions and in the event of non submission, to be presumed that company has nothing to say in the

matter and bank would proceed with examination of fraud angle in terms of RBI Master Circular / Banks Guidelines on fraud classification and reporting. The applicant Pradeep Goel filed a writ petition (WP (C) No. 7786/2024) challenging the wrongful and arbitrary classification of account of the company as fraud and during the proceedings (as evident vide order dated 28.05.2024), the counsel for Bank of India (respondent no.1) submitted that accounts of petitioners and respondent no.2 company have still not been declared as 'Fraud' and that only SCN (Show Cause Notice) has been issued. It was also submitted that case is under re-consideration as the bank is re-considering its earlier decision, by which the account of the company had been declared 'Fraud'. The court specifically noted that the account of the company, have still not been declared as 'Fraud' and that earlier declaration of 'Fraud' is under reconsideration in the light of the judgment, **State Bank of India & Ors. vs Rajesh Agarwal & Ors (supra)**. The court also ordered the bank to provide copy of Forensic Audit Report and documents to the petitioner (applicant herein).

20. Ld. Counsel further contended that another director of the company namely Praveen Gupta has already filed a petition for quashing of FIR of scheduled offence before the High Court of Delhi wherein notice has been issued. The offences under PMLA are dependent upon scheduled offence and since the scheduled offence is under re-consideration by the complainant bank, it cannot be



concluded that applicant is guilty of offence of money laundering. Secondly, the judgment of Supreme Court of India, in the matter of **Karnataka EMTA Coal Mines vs CBI, 2024 SCC OnLine SC 2250** has been relied upon wherein the order on charge passed by Ld. Special Judge (PC Act), CBI was under challenge and the Supreme court took into consideration that sanction was denied by Sanctioning authority and CBI having accepted the decision of sanctioning authority, cannot be permitted to argue that these were merely the administrative decisions and even if permission to prosecute the public servants has been denied, the department can still proceed against the appellants (private persons) based on the very same set of evidence. It was held that simply because the said senior functionaries / public servants, to whom respondent CBI described as co-accused in a criminal conspiracy and attributed similar motives and if they have been let off the hook, the respondent CBI has not challenged the said decision, there is no reason to proceed against the appellant on the very same set of facts. CBI having accepted the decision of sanctioning authority / competent authority was not justified to press the charges against the appellants. In conclusion, appeals were allowed and order of framing of charge was set aside. According to Ld. Counsel, in this case also, the public servants were not charge-sheeted despite registration of RC by CBI, as no permission under Section 17A of PC Act could be obtained and applying the ratio of above judgment, the charges against accused persons (who are directors of M/s SRMJPL) cannot be pressed.

21. Thirdly, Ld. Counsel argued that applicant is entitled to relaxation so far as the stringent conditions under Section 45 of Prevention of Money Laundering Act 2002 is concerned, in view of his medical condition. Ld. Counsel relied upon the certificate issued by Dr. Nikhil Raheja dated 08.10.2024 and to the diagnostic reports and medical prescriptions showing applicant being the patient of severe fibrosis and Anxiety Disorder with Panic Attacks and Depressive features.

22. Further, Ld. Counsel has relied upon the judgments of **Sanjay Chandra vs CBI, AIR 2012 SC 830**, **Satender Kumar Antil vs CBI, (2022) 10 SCC 51**, **Manish Sisodia vs ED, 2024 SCC Online 1920** to contend that bail is the rule and jail is the exception even in the cases relating to special statutes. In view of delay in filing the complaint by Bank and further delay caused by Enforcement Directorate, there is no possibility that proceedings may be concluded in near future. The valuable right of the applicant as to his personal liberty and freedom cannot be deprived. Ld. Counsel for applicant has relied upon the following judgments in support of his arguments:-

1. State Bank of India & Ors. vs. Rajesh Agarwal & Ors. 2023 SCC OnLine SC 342.
2. Vijay Madanlal Choudhary vs. Union of India (2023) 12 SCC 1.
3. S. Martin vs. Directorate of Enforcement (SLP CrI No.4768/2024).

4. Prakash Industries Ltd. vs. Directorate of Enforcement, 2022 SCC OnLine Del 2087.
5. Rajiv Channa vs. Union of India (Misc. Appeal (PMLA) 13/2023, High Court of Delhi.
6. Arvind Kejriwal vs. Directorate of Enforcement, Crl. Appeal No.2493/2024, Supreme Court of India.
7. Mahender Kumar Khandelwal vs. Directorate of Enforcement & Anr. [W. P. (C) 10993/2023], High Court of Delhi.
8. Amit Aggarwal vs Enforcement Directorate (2024) 1 HCC (Del) 288, High Court of Delhi.
9. Bikash Kumar vs The State of Bihar & Ors. Criminal Miscellaneous No.24928 of 2022 of High Court of Patna.
10. Dr. G.S.C Rao vs Directorate of Enforcement, Criminal Misc. Anticipatory Bail Application No.138 of 2023, High Court of Allahabad.
11. Ranji Singh vs. Directorate of Enforcement, Criminal Misc. Anticipatory Bail Application No.1518 of 2023, High Court of Allahabad.
12. Karnataka EMTA Coal Mines Ltd. Vs Central Bureau of Investigation 2024 SCC Online SC 2250.
13. AGR Steel Strips Pvt. Ltd. vs. Reserve Bank of India, CWP 34297/2019, High Court of Punjab and Haryana
14. M/s Rajshree Cotex & Ors. vs. Bank of Baroda & Ors, writ petition no. 22497 of 2023, High court of Madhya Pradesh.
15. Madanlal Goyal & Ors. vs IDBI Bank Ltd 2024 SCC OnLine MP 1782.
16. Sanjay Tiku & Ors. vs. Reserve Bank of India & Anr. 2024 SCC OnLine Del 1345.
17. Vijay Kumar Jain & Ors. vs Reserve Bank of India & Ors. 2024 SCC OnLine MP 1199.
18. Basant Bansal vs State (NCT of Delhi) & Ors. 2023 SCC OnLine Del 3589.
19. Pankaj Bansal vs State (GNCTD) & Ors. 2023 SCC OnLine Del 3590.
20. Ankit Aggarwal vs DOE 2021 SCC OnLine Del 4820

21. Simanchala Mishra vs Enforcement Directorate Bail Application No. 3820/2021, High Court of Delhi
22. Chandra Sekhar Panda vs. Enforcement Directorate, Bail application No.3307/2021, High Court of Delhi.
23. Sanjay Pandey vs. DOE 2022 SCC OnLine Del 4279.
24. Kewal Kishan Kumar vs. Enforcement Directorate 2023 SCC OnLine Del 1547.
25. Amit Arora vs Enforcement Directorate 2024 SCC OnLine Del 6496.
26. Dheeraj Wadhwan vs CBI, 2004 SCC OnLine Del 6263.

23. Arguing on behalf of Enforcement Directorate, Ld. Special Prosecutor Sh.Atul Tripathi submitted that although the issue of declaration of fraud is pending re-consideration with the Bank of India in terms of judgment of **SBI & Ors. vs Rajesh Agarwal & Ors. (supra)** but the existence of predicate offence/scheduled offence is not disputed. The principle of *audi alteram partem* need not be complied with while filing a criminal complaint before the investigating authority. The investigation conducted by Enforcement Directorate is independent and the requirements of Section 3 Prevention of Money Laundering Act are altogether different from the ingredients of the scheduled offence. Applicant has joined the company M/s Shree Raj Mahal Jewellers Pvt. Ltd. since its inception and with full authority to carry out all functions of the company and was actively involved in running the company. There were irregularities and illegitimate transactions from the very beginning which ultimately resulted in wrongful loss to the Bank of India and consortium members. The transactions have been conducted in a manner that ultimately the

proceeds of crime landed in the hands of the applicant through which real estate assets were created. The bank loans were diverted through various entities, controlled and managed by the applicant and his relatives. The company continued diverting the funds through the period from 2010 to 2016 which ultimately led to default and the loan account was declared as Non-Performing Asset (NPA). The role and participation of the applicant Pradeep Goel is not less than the other Directors. In order to divert the loan funds and to deal in proceeds of crime various entities were floated through the relatives and family members and the applicant is in possession of proceeds of crime which he got invested in other assets to his own benefit. The charge-sheet has been submitted in predicate offence before the court and the applicant has been impleaded as an accused. On the aspect of the medical condition of the accused, Ld. Counsel has submitted that applicant is taking shelter of his ailments in order to avoid and delay the investigation. The claim with respect to medical ailments has been denied by Ld. Special PP for ED and it is prayed that bail may not be granted. Ld. Special Prosecutor for Directorate of Enforcement has relied upon the following judgments:-

1. Vijay Madanlal Choudhary & Ors. vs Union of India & Ors., 2022 LiveLaw (SC) 633.
2. Pavana Dibbur vs Directorate of Enforcement, Criminal Appeal No.2779 of 2023 dated 29.11.2023 of Supreme Court of India.
3. Directorate of Enforcement vs Aditya Tripathi, Criminal Appeal No.1402 of 2023 dated 12.05.2023 of Supreme Court of India.

4. P. Chidambaram vs Directorate of Enforcement Criminal Appeal No.1340 of 2019 dated 05.09.2019 of Supreme Court of India.
5. Amanatullah Khan vs Directorate of Enforcement, Bail application No.795/2024 dated 11.03.2024 of Delhi High Court.

24. I have analysed the contentions of both the sides and given due consideration to the relevant legal position on the issues involved.

25. Money Laundering is the process of hiding the source of money obtained from illegal sources and converting it into a clean source. It is an illegal exercise that converts black money into white money. Through money laundering, a criminal transforms the monetary proceeds derived from criminal activity into funds with apparently legal source. In simple words, money laundering disguises as to where the money has come from, who it belongs to, where it has come from and where it is going. The process of money laundering involves three steps:- (i) placement (ii) layering and (iii) integration.

26. The scope and ambit of Section 3 of Prevention of Money Laundering Act 2002 is wide enough and any person who deals with proceeds of crime in any manner is responsible for committing the offence.

27. Before discussing the facts and merits of the present case, it is important to mention the relevant provisions of Prevention of Money Laundering Act 2002 as follows :-

***Section 2 (u) in The Prevention of Money-Laundering Act, 2002.***

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

*[Explanation: For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]*

***Section 3 in The Prevention of Money-Laundering Act, 2002***

***3. Offence of money-laundering.***

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

*[Explanation.--For the removal of doubts, it is hereby clarified that,-*

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

- (a) concealment; or*
- (b) possession; or*
- (c) acquisition; or*
- (d) use; or*
- (e) projecting as untainted property; or*
- (f) claiming as untainted property,*  
*in any manner whatsoever;*

*(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]*

***Section 19 in The Prevention of Money-Laundering Act, 2002***

***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 1[Special Court or] Magistrate's Court.*

***Section 45 in The Prevention of Money-Laundering Act, 2002***

*45. Offences to be cognizable and non-bailable.*

*(1) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] [Substituted by Act 20 of 2005, Section 7, for certain words (w.e.f. 1.7.2005).] shall be released on bail or on his own bond unless]*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule shall be released on bail or on his own bond unless:-*

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

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

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

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

*(i)the Director; or*

*(ii)any officer of the Central Government or 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.*

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

*(2)The limitation on granting of bail specified in [The words "clause (b)" omitted by Act 20 of 2005, Section 7 (w.e.f. 1.7.2005).] of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2*

*of 1974) or any other law for the time being in force on granting of bail.*

*Explanation: For the removal of doubts, it is clarified that expression “Offences to be cognizable and non-bailable” shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under Section 19 and subject to the conditions enshrined under this section.]*

28. It is no doubt true that the predicate offence is the very basis of registration of ECIR by Enforcement Directorate. In the absence of scheduled offence, the law relating to money laundering cannot come into play. The observations of **Vijay Madan Lal Chaudhary, 2022 SCC OnLine SC 929**, make it clear that provisions of Prevention of Money Laundering Act are dependent upon scheduled offence as it must be shown that proceeds of crime were derived or obtained as a result of criminal activity. The observations are as under:-

*“253...Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property*

*recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.*

*281...The next question is: whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event*

*of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.”*

*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.”*

29. Coming to the case in hand, so far as scheduled offence is concerned, it has been the contention of CBI that irregularities and illegalities were committed by M/s SRMJPL qua the loan funds as they were diverted for other purposes thereby violating the conditions of cash credit limit. M/s SRMJPL defaulted and failed to repay the loan despite various legal notices. It is, however, evident that loan funds were disbursed till 2015 on the basis of review and checking of balance sheets and stock statements and sanction letters were issued by the Bank (s) on various occasions. Although ED has shown various entries of diversion of loan funds through other entities with the specific allegations that credits were diverted to these entities immediately on receiving from bank and these entities immediately transferred the funds to other entities controlled by the applicant as Director or by his relatives and ultimately the funds were used to create real estate assets, but they have been countered by the applicant by stating that these entries were duly done and returned from time to time even before registration of RC by CBI and were being scrutinized on behalf of bank and consortium members on regular basis. These transfer of funds was not for the purpose of layering or integration but they were genuine business transactions. The pertinent questions have been raised that if account was being serviced through fraudulent practices from the inception itself, how banks continued sanctioning and disbursing the credit facilities till 2015 and why after more than 10 years complaint of fraud was lodged in 2021. The valid point is raised as to whether the offence

under PMLA can precede the scheduled offence and if fraud is committed by M/s SRMJPL by diverting the funds, then money laundering is attributable to the entities through which funds were used allegedly to create real estate assets but none of those entities or their directors have been impleaded as accused either by CBI or by ED.

30. On examining the nature of allegations as contained in the complaint of predicate offence or as contained in the proceedings of ED, it is clear that allegations are similar and identical. The main focus is on the diversion of loan funds to create real estate assets through various other entities. So far as the predicate offence is concerned, it is the very basis of the proceedings under Prevention of Money Laundering Act 2002. It is an admitted position that while declaring the account of M/s SRMJPL as 'fraud' no opportunity was given to company or its directors to explain various transactions and entries. In terms of judgment of **SBI & Ors. vs Rajesh Agarwal & Ors. (supra)**, the rule of *audi alteram partem* has been held to be an integral part of such proceedings and not merely a formality. In conclusion, the specific direction has been recorded that borrower must be given reasonable opportunity to submit a representation before classifying the account as fraud and reasoned order has to be issued on the objections addressed by the borrower. The decision as to declaration of fraud has been held to be vitiated due to the failure to observe the rule of *audi alteram partem*.

31. The judgment of **SBI & Ors. vs Rajesh Agarwal & Ors. (supra)** is a judgment in rem and is applicable across all cases. In terms of the said judgment, the matter was brought under re-consideration by the complainant bank and therefore fresh show-cause notice dated 23.04.2024 was issued to the accused company. It is also true that due to non-compliance of *audi alteram partem*, the cases are being quashed by the court wherein criminal action has been initiated. Although banks can take fresh steps in order to make compliance to the judgment of **SBI & Ors. vs Rajesh Agarwal & Ors. (supra)**, but it cannot be denied that these compliances are not merely a formality but has to be carried out in its true spirit. In this case, the very basis of declaration of fraud is brought under cloud and complainant bank is re-considering the whole issue. The Bank of India has accepted in the proceedings before High Court (in writ petition No.7786/2024 order dated 28.05.2024) that entire matter is under re-examination and in view thereof the accounts of the company cannot be taken as ‘fraud’ at this point of time. The relevant portion of the said order is as under:-

*“11. Having heard learned counsels for the parties, this court notes the statement made by learned counsel for respondent no.1-bank, that the account of the petitioners and respondent no.2-Company, have still not been declared as ‘Fraud’. The said statement is taken on record. The submission made by learned counsel for respondent no.1-bank is noted, that earlier declaration of ‘Fraud’ is under re-consideration and that the account of the petitioners and respondent no.2-Company, have still not*



*been declared as 'Fraud' in the light of the judgment passed in the case of State Bank of India & Others Versus Rajesh Agarwal & Others, 2023 SCC OnLine SC 342."*

32. The clear situation that comes forth now is that declaration of fraud is under re-consideration and the exercise of issuing show cause notice for compliance of natural justice principles is under way. The question that arises is, as to what extent, weightage be given to the scheduled offence and to the money laundering proceedings initiated in pursuance thereof. The answer would depend upon further course of action adopted by both the sides and resultant outcome. However, as of now, it cannot be disputed that existence of scheduled offence is tentative and has been brought under doubt and even the quashing of FIR is pending consideration before High court of Delhi. If at any point of time, FIR is quashed or decision of fraud is recalled by the bank, it would be unjust to allow the respondent / ED to proceed with the arrest of the applicant. It is important to note that no arrest has been effected by the CBI for the scheduled offences and the charge-sheet has only been submitted under the offences of IPC. No public servant has been investigated and the proceedings are closed qua the offences under Prevention of Corruption Act 1988. From the view point of legal preposition of **Karnataka EMTA Coal Mines Ltd (supra)**, the proceedings against private persons can also be brought into question and action against applicant might fail before the court.

33. Ld. Sr. Advocate has aptly argued that every default is not a cheating. The company was involved in high risk business and without offering an opportunity of explaining the circumstances or the transactions, accounts of company cannot be termed as 'fraud'. The company has already paid interest to the tune of Rs. 65 crores and collateral securities through which the account was secured and other properties have already been attached. It is an admitted position that while obtaining cash credit facility from the Bank of India and consortium members, no misrepresentation was done by the company. Therefore it is not the case that cash credit facility was obtained through fraudulent practices. Since the matter is under re-consideration with the Bank of India and co-accused has filed the case to get the FIR of the scheduled offence quashed, wherein already notice has been issued to the CBI on 05.09.2023 (writ petition no.2534/2023), therefore applicant must be released on bail.

34. Delay is an important aspect to be considered as also the need to arrest. It is important to note that there is delay in lodging the complaint as after the lapse of 'five years' of declaration of fraud, the bank reported the matter to CBI. CBI opted not to arrest the applicant for fraud. At this belated stage, no useful purpose would be served with the arrest or custody of the applicant. In reply, ED has failed to show substantial reasons to arrest the applicant or for his custodial interrogation particularly when it has been more than 10 years since the offence and more than 3 years since the registration of ECIR and more than one year since search and seizure by the ED.

The charge-sheet for scheduled offence has been casually submitted and even after several months, documents have not been placed on record by CBI to secure the cognizance. There is clear delay in prosecuting the case of scheduled offence by CBI. It is thus clear that there is no possibility of investigation and the trial being concluded within reasonable timelines. In above circumstances, denying bail and leaving the applicant to the discretion of investigating officer, may result in misuse of the powers.

35. The bail jurisprudence heavily favours the valuable rights of freedom and liberty of an individual. The judicial approach towards fundamental rights of freedom and liberty has to be reasonable, just and transparent. The concept of due process of law must be adhered to in its true spirit and state's action must be evaluated in the manner that the rule of law prevails. Hon'ble Justice B. R. Gavai in the matter of **Manish Sisodia vs Directorate of Enforcement (supra)** specifically reminded the trial courts to recognize the time honoured principle that the bail is not to be withheld as a matter of punishment.

36. Under Section 45 of Prevention of Money Laundering Act 2002, the bail conditions are stringent and when the bail is opposed by the Public Prosecutor, the court must be satisfied that there are reasonable grounds for believing that accused is not guilty of such offence but the condition can be relaxed in favour of a sick or infirm person. In this case, so far as element of guilt in the process of

alleged money laundering is concerned, when commission of scheduled offence itself has been tentative, the assessment of guilt would be a pre-mature exercise. Although the claim of the applicant that he is sick or infirm is denied but documents relied upon by the applicant on this aspect have not been disputed or described as forged or fabricated. On examining the documents so relied upon, apparently the applicant requires special diet and care.

37. The applicant has joined the investigation on various occasions in response to the summons issued by ED. The search and seizure has already been done under the provisions of Prevention of Money Laundering Act 2002 as well as properties have been attached. There is no categorical statement coming from the investigating officer or from the Ld. Special Prosecutor that custodial interrogation of the applicant is needed. It is clear from the contentions of the reply filed by Enforcement Directorate that they require presence of applicant to join the investigation as and when called for. Even the apprehension of the applicant qua arrest has been questioned on behalf of Enforcement Directorate. After a lapse of more than ten years since the alleged offence and more than three years since registration of FIR and ECIR and in view of search and seizure already done, nothing is to be recovered or discovered at the instance of the applicant. The applicant is having roots in the society and there is nothing on record to suggest that he can interfere with the process of justice or is at flight risk.

38. In the totality of above facts and circumstances, I am of the opinion that applicant is entitled to anticipatory bail, accordingly, it is ordered that in the event of arrest, the applicant be released on furnishing personal bond and surety bond of Rs.2,00,000/- to the satisfaction of investigating officer/ arresting officer, subject to the following conditions:-

- (i) Applicant is directed to join the investigation as and when required by the IO/Competent Officer of ED.
- (ii) Applicant is directed not to contact or influence any of the witnesses of the case.
- (iii) Applicant is directed not to leave the country without taking permission of the court.
- (iv) Applicant is directed to inform the IO/ Competent Officer of ED in case of change of address (residential and official) and contact number.
- (v) Applicant is directed to attend the court as and when required.
- (vi). Applicant is directed to mark his appearance at ED office before IO/ Competent Officer, once in a month.

39. Nothing stated hereinabove would be taken as final expression as to the merits of the case.

40. The application is disposed off in above said terms.

**(Anju Bajaj Chandna)**  
Principal District & Sessions Judge-  
cum-Special Judge (PC Act) (CBI),  
Rouse Avenue District Court  
**New Delhi/21.11.2024**