

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Reserved on: 24.03.2025
Pronounced on: 22.05.2025

CRM(M) No. 140/2025
CrIM Nos. 286 & 287/2025

Niket Kansal age 27 years, S/o Rajeev Kansal
R/o 303-1, 1st Floor, Sant Nagar, Near East of KailashPetitioner(s)
Delhi-110065

Through: Mr. Sunil Sethi, Sr. Advocate with
M/s Nitin Parihar & Siddharth Jamwal, Advocates

Vs

Union of India through Enforcement Directorate,
Jammu. Respondent(s)

Through: Mr. Vishal Sharma, DSGI

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

GIST

- 1) The petitioner has sought quashing of Enforcement Case Information Report (ECIR) No. JMSZO/02/2024 under the Prevention of Money Laundering Act, 2002 (PMLA), summons issued under Section 50 PMLA, and related search/seizure actions. The petitioner had been discharged in predicate NDPS offences (Crime Nos. 2/2024 and 11/2024) by the Special NDPS Court, which found no evidence linking him to the alleged offences. The entire edifice of the petitioner's case is that without a scheduled offence, there could be no "proceeds of crime" to sustain PMLA proceedings.

Key Legal Issues

- a) Whether discharge in the predicate offence invalidates PMLA proceedings?
- b) Whether PMLA proceedings are independent of the predicate offence?
- c) Validity of summons under Section 50 PMLA when the predicate offence is discharged.

FACTUAL MATRIX

- 2) It is the case of the petitioner that he serves as the operational head of M/s N. K. Pharmaceuticals Pvt. Ltd and is engaged in the marketing and transportation of the Codeine-Based Cough Syrup "Cocrex." The petitioner's Chartered Accountant received summons dated January 10, 2025, in which the respondent requested information and property details pertaining to the petitioner. In August 2024, the Narcotics Control Bureau filed Complaint No. 7/2024 titled "*Union of India Th. NCB vs Rayees Ahmed Bhat & Ors*" and Complaint No. 11/2024 titled "*Union of India Th. NCB vs Manzoor Ahmed Mir & Ors*" before the Learned Special Judge, NDPS, Jammu (hereinafter referred to as 'the Trial Court'), alleging the petitioner's involvement in the illicit manufacturing, marketing, and transportation of the Codeine-Based Cough Syrup "Cocrex".
- 3) The Learned Trial Court, by order dated 13.12.2024, discharged the Petitioner while laying charges against the other accused individuals in both complaints. The essential portion is reproduced as follows:

"81. Though at the stage of framing of charge the critical appraisal of the evidence of the prosecution cannot be

undergone into, however, it is also true that this Court is not expected to merely act as post office and frame the charge just because of the NCB wants the Court to believe it. This Court is within its power to sift the evidence brought on record by the complainant as to test out whether un-rebutted evidence placed on record fulfils the ingredients of evidence or not. Once the strong suspicion is found lacking the accused deserves to be discharged and consequently upon going through the record, it is noticed that here there is absolutely no material evidence on record against accused No.2 Sumesh Sareen, accused No.3 Niket Kansal, accused No.4 Neeraj Bhatia, as discussed above. Thus, from the material of the complaint of NCB Jammu there exists no cogent substantive evidence to establish the participation in any conspiracy against accused No.2 Sumesh Sareen, accused No.3 Niket Kansal and accused No.4 Neeraj Bhatia, thus they are discharged from the offences under Section 8, 8-A, 21, 26, 27-A, 29, 38 & 80 of the NDPS Act.

82.....There is absolutely no evidence against accused No.2 Niket Kansal, accused No.3 Sumesh Sareen and accused No.4 Neeraj Bhatia as discussed above. It is noticed that there is nothing on record against them except confession statements recorded under section 67 of the NDPS Act during their custody of NCB officials and also not supported by any other corroborated evidence to establish they have committed the offences for which the charge sheet is laid against them. In the circumstances, accused No.2 Niket Kansal, accused No.3 Sumesh Sareen and accused No.4 Neeraj Bhatia are discharged and crime complaint No.11 pertaining to them shall stand dismissed."

- 4) The petitioner asserts that the respondent is engaging in harassment through an egregious abuse of authority and misuse of power, driven by ulterior motives, by claiming that the property owned and possessed by the petitioner qualifies as "proceeds of crime" as defined in Section 2 (1)(u) of the PMLA. The petitioner asserts that, according to the judgment/order rendered on 13.12.2024 by the Learned Trial Court, the charges against him were dismissed on the basis that the purported articles do not constitute "manufactured drugs," and hence, no offence under the NDPS was applicable. Consequently, the petitioner has not obtained any property, directly or indirectly, from any criminal activity associated with a scheduled offence; hence, his prosecution, including unlawful search

and seizure, is inadmissible and should be annulled as arbitrary and devoid of merit.

SUBMISSIONS OF PETITIONER

- 5) The petitioner's counsel, Mr. Sunil Sethi, Sr. Advocate, argues that the money laundering procedures should end if a person is freed from the scheduled offence. He further claims that PMLA proceedings are based on the scheduled crime. Under PMLA section 2(y) (1), a scheduled offence is one mentioned in the Schedule, which includes crime under other laws. Section 3 of PMLA defines money laundering as involving proceeds of crime from a scheduled offence. Discharge in the scheduled offence breaks the foundational link needed to sustain proceedings under PMLA.
- 6) He further argues that proceeds of crime, as defined by PMLA Section 2(1)(u), must come from a scheduled offence. If the trial court establishes no *prima facie* case against the accused in the scheduled offence and gives a discharge, there can be no legally recognised proceeds of crime, making PMLA proceedings unsustainable. If the predicate offence does not exist, any attachment, seizure, or prosecution under PMLA would be an arbitrary police action. Counsel argues that for the Enforcement Directorate (ED) to prove "proceeds of crime," a predicate (scheduled) offence must be registered. The petitioner has not committed any scheduled offence, thus the basis for investigating or summoning him to determine if a given amount is proceeds of crime is impermissible in law.

- 7) The counsel emphasised that proceeds of crime are inherently related to an underlying offence and cannot exist independently. The ED cannot investigate whether the purported sum is proceeds of crime without a scheduled offence. It has also been argued that the Enforcement Directorate is not authorised to investigate the scheduled offence. Only after a scheduled offence is committed, the ED investigate if proceeds of crime were generated. Thus, the ED cannot initiate proceedings without a scheduled offence.
- 8) Mr. Sethi has relied on a recent judgment delivered by this Court in the case titled *"Anil Kumar Aggarwal v. Enforcement Directorate Through its Assistant Director, Jammu," in WP (Crl) No. 9/2024, decided on 15-03-2024, 2024 SCC Online J&K337*. For ease of reference, paragraph 14 of the judgment is reproduced below:-

"14. That takes us to the other contentions raised by the learned counsel for the parties. As already stated, the main ground urged by the learned Senior Counsel appearing for the petitioner is that it was not open to the respondent to undertake investigation in respect of the offences under PMLA once FIR relating to predicate offences had been stayed by the High Court of Punjab and Haryana. In this regard, learned Senior Counsel has placed heavy reliance upon a Division Bench judgment of the High Court of Madras in the case of B. Shanmugam v Karthik Dasari, Deputy Director Directorate of Enforcement, 2022 SCC Online Mad 4417. In the said judgment, the High Court of Madras, while considering the effect of stay order in a predicate offence, observed as under:

"What is the effect of a stay order?"

17. The effect of an order of stay means that the operation of the impugned order is stayed or stands

stalled as if the impugned order does not exist. Therefore, to bring the parties to the proceedings from taking further action in relation to the subject matter pending the final adjudication, stay order is granted in the interest of both parties. During the currency of stay order, if any proceedings are permitted to go on and in the meanwhile, if any damage has been caused to the reputation or the goodwill of the parties, the same cannot be compensated. Whereas if the Department waits for the final outcome of the proceedings, no prejudice would be caused to them. In all these cases, the admitted case of the respondent Department is that the ECIR has been initiated based on the three First Information Reports in Crime Nos.441 of 2015, 298 of 2017, 344 of 2018, which culminated in the proceedings in C.C.No.24 of 2021, C.C.No.19 of 2020 and C.C.No.25 of 2021 respectively and the proceedings in C.C.No.25 of 2021 culminating from Crime No.344 of 2018 have been quashed. The calendar cases arising out of the other two First Information Reports have been stayed. As stated supra, since the ECIR itself was only on the basis of the said three First Information Reports, when the proceedings pursuant to the said First Information Reports have been stayed by the High Court, whether the ECIR, which is also pursuant to the First Information Reports, can be proceeded with, is a question that stares at open. Our considered answer is in the negative.

18. Because, it is not the case of the respondent that apart from the above three First Information Reports, there are other materials based upon which they have initiated the proceedings under the Prevention of Money laundering Act. Hence, in our view, when the calendar cases which culminated from the said two First Information Reports also have been stayed, the respondent Department should also refrain itself from proceeding any further, as it is their admitted case that the summons issued to the petitioners are pursuant to the initiation of ECIR based upon the three First Information Reports.

19. Learned Senior Counsels appearing for the petitioners in extenso argued that there is no jurisdictional facts to initiate the proceedings

under the Prevention of Money-laundering Act. According to them, the following jurisdictional facts have to be there for initiating proceedings under the Prevention of Money- laundering Act.

20. Firstly, there must be predicate/scheduled offence.

21. Secondly, there must be a criminal activity.

22. Thirdly, there must be proceeds of crime which is quintessential to connect the first and second i.e. Scheduled offence and criminal activities.

23. According to them, except for the three First Information Reports indicating commission of scheduled offence, there is no document or pleading on the side of the respondent to substantiate that there are proceeds of crime as per Section 2(1)(u) of the Prevention of Money-laundering Act and that proceeds had a link with the scheduled offence. According to them, out of three calendar cases, one has been quashed and two Calendar Cases have been stayed. Therefore, in the eye of law, firstly, there is no scheduled offence as per section 2(y) of the Prevention of Money-laundering Act, 2002 as on this date for the respondent to proceed under the said Act.

24. On the contrary, Mr. R. Sankaranarayanan, learned Additional Solicitor General strenuously contended that it is true that the proceedings have been stayed, but that does not mean the offence has been wiped out. Till it is quashed by a competent Court or the person is discharged or acquitted, the offence continues to be alive and the respondent has the authority to proceed under the Act.

25. Let us see what is the jurisdictional fact to be taken into account by a Court before assuming jurisdiction over a particular matter. The Hon'ble Supreme Court explaining the above facts in Arun Kumar and others v. Union of India and others, (2007) 1 SCC 732, has held as follows:-

"74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court,

a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

26. Further, the Apex Court in the case of State of Punjab v. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770, has held that if a foundation is being removed, structure/work falls.

27. A mere perusal of the above judgment clearly shows that the existence of jurisdictional fact is a condition precedent for the exercise of power by a Court of limited jurisdiction. Therefore, in the cases on hand, when there is no cause of action, since the proceeding in one of the calendar cases was quashed by the order dated 30.07.2021 in Criminal Original Petition No.13374 of 2021 and the proceedings in two other calendar cases have been stayed by this Court, there is no jurisdictional fact or cause of action for the respondent/department to initiate any proceedings during the period of order of stay operating against the two FIRs. Viz. C.C.No.19/2020 and C.C.No.24 of 2021.

28. Secondly, as already held by us, when the basis, namely, the proceedings which culminated through the First Information Reports had been stayed, the

respondent should await the result of such proceedings before continuing any further under the Prevention of Money-laundering Act. It is the further case of the learned Additional Solicitor General that the Hon'ble Supreme Court in Vijay Madanlal Choudhary and others has held that the summons issued to the individual is to collect factual evidence as regards to the offence of money-laundering. It is his further case that only after concluding such inquiry, the authorities under the Prevention of Money-laundering Act could proceed any further as provided under the Act, that is, after ascertaining the proceeds of crime and its nexus with the scheduled offence. Till the First Information Report is quashed, the scheduled offence continues to be alive."

- 9) Consequently, the Learned Sr. Counsel contends that once an accused is discharged in the predicate offence, the Enforcement Directorate (ED) cannot initiate an investigation under the Prevention of Money Laundering Act (PMLA). Without an active predicate offence, the jurisdictional basis for PMLA is rendered null and void. Furthermore, it elucidates that, according to the aforementioned legal precedent, three jurisdictional facts must be established to invoke PMLA, viz.

- a) Existence of a scheduled offence*
- b) Criminal activity arising from the scheduled offence*
- c) Proceeds of crime linked to the above mentioned two elements.*

- 10) Additionally, the learned counsel has cited paragraph 17 of the *Vijay Madanlal Choudhary case (supra)*, which is reproduced as follows:

17. From the aforesaid analysis of law on the subject, it is clear that though offences under PMLA are stand-alone offences, yet their origin is the Scheduled offences. Once the Scheduled offence ceases to exist or

is extinguished, an accused cannot be proceeded against in respect of offences under PMLA. It is for this reason that the Supreme Court has, in Vijay Mandanlal Choudhary's case (supra) clearly laid down that if a person is finally discharged/acquitted of the scheduled offences or a criminal case against him is quashed, there cannot be any offence of money laundering against him. As an obvious corollary to this is that once investigation in FIR relating to predicate scheduled offences is stayed, the proceedings in the said FIR would get eclipsed. The same will definitely have a bearing upon the offences of money laundering as the said offences owe their origin to the predicate offences. Therefore, the said offences would also stand eclipsed till such time the stay of investigation is in operation.

52. 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.

53. *Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money- laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of “proceeds of crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.*

54. *Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money- laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.*

55. *In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money- laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of “proceeds of crime”. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.*

...187. (v)(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.

- 11) Thus, from the foregoing analysis of the legal provisions, the learned counsel contends that although offences under the Prevention of Money Laundering Act, 2002 (PMLA) are regarded as standalone offences, their existence is fundamentally connected to the scheduled offences. The basis of any proceedings under the PMLA is the presence of a predicate (scheduled) offence. Therefore, if the scheduled offence is nullified or extinguished, the accused cannot be prosecuted for money laundering under the PMLA. The Hon'ble Supreme Court, in *Vijay Madanlal Choudhary v. Union of India (above)*, has unequivocally determined that if an individual is ultimately discharged or acquitted of the scheduled offence, or if the criminal case against them is quashed, the offence of money laundering under the PMLA cannot persist. The proceedings under the PMLA are thus dependent on the existence of the scheduled offence. It is asserted that a logical extension of this principle indicates that when an investigation in a FIR related to a

scheduled offence is stayed, the continuation of such proceedings is effectively halted. The stay of investigation operates as a legal impediment, prohibiting any more actions related to the scheduled offence. The alleged offence of money laundering originates from the predicate offence, so effect of stay also extends to the proceedings under the PMLA. The enforcement action under PMLA is consequently suspended for as long as the stay on the predicate offence remains in force. Consequently, any proceedings commenced under the PMLA in relation to an FIR whose investigation is stayed would be deemed premature and lacking jurisdiction. The Enforcement Directorate must await the final adjudication of the predicate offence before proceeding further under PMLA.

AT WHAT STAGE SUMMONS CAN BE ISSUED

- 12) It is asserted that the Hon'ble Supreme Court in *Vijay Madanlal Choudhary v. Union of India* elucidates the scope and procedure of enforcement actions under the Prevention of Money Laundering Act, 2002 (PMLA). The judgment addresses the stage at which summons may be issued in PMLA proceedings. Under the PMLA framework, summons are issued under Section 50 of the Act, which empowers the authorities to summon individuals, document statements, and collect evidence pertaining to money laundering investigations. The Hon'ble Supreme Court in *Vijay Madanlal Choudhary* (above) has established explicit

criteria for the issuing of summons related to an alleged act of money laundering.

(i) Summons Can Be Issued Only When There Exists a Predicate Offence

- *The Court has held that the existence of a predicate offence (scheduled offence) is a sine qua non (essential requirement) for the initiation of PMLA proceedings.*
- *If there is no scheduled offence or if the accused has been discharged/acquitted in the predicate offence, there can be no offence of money laundering, and consequently, the ED cannot issue summons for investigation.*
- *If the FIR or charge sheet relating to the predicate offence is quashed, then the ED's jurisdiction to summon individuals under PMLA ceases to exist.*

13) To substantiate his claim Mr. Sethi has placed reliance upon para 159 of the judgment.

“159. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime,

if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information 680 Supra at Footnote Nos.120 (also at Footnote No.41) 681 Supra at Footnote No.43 and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money- laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the notice. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.”

- 14) It has been further submitted that Section 50 of the PMLA, 2002 deals with “powers of authorities regarding summons, production of document and to give evidence, etc” which is reproduced as under;

1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;*
- (c) compelling the production of records;*
- (d) receiving evidence on affidavits;*
- (e) issuing commissions for examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code .

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not

- (a) impound any records without recording his reasons for so doing; or*
- (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.*

No Prosecution on a Notional Basis

15) The learned counsel has argued that for a person to be prosecuted under PMLA, it is essential that:

1. *A scheduled offence (predicate offence) must have been committed and properly registered.*
2. *There must be proceeds of crime, i.e., property derived from the scheduled offence.*
3. *There must be involvement in the process or activity connected with proceeds of crime, as defined under Section 3 of PMLA.*

16) Thus, it has been submitted, a prosecution cannot rely solely on assumption or speculation regarding the commission of a scheduled offence and the existence of proceeds of crime. This principle has been reiterated by the Supreme Court of India in various judgements, notably ***Vijay Madanlal Choudhary v. Union of India***. The Enforcement Directorate (ED) cannot commence or maintain a PMLA case based on assumptions, suspicions, or unsubstantiated allegations there must be a clear evidence connecting the accused to a scheduled offence and the proceeds of crime. He asserts that, according to Section 2(1)(u) of PMLA, “proceeds of crime” denote property acquired, either directly or indirectly, as a consequence of criminal activity relating to a scheduled offence. If no property is identified as associated with a scheduled offence, then no charge of money laundering can be established. An individual cannot be prosecuted under the PMLA merely because they own property, unless it is proven that the property originated from a scheduled offence, as money laundering requires concrete evidence of a scheduled offence and the

existence of proceeds of crime. The ED cannot act capriciously or initiate investigations without a valid basis. He contends that, according to Article 21, (Right to Life and Personal Liberty), unlawful prosecution under the PMLA infringes upon an individual's right to liberty. If no scheduled offence exists, then the entire basis for the ED's action is nullified. If the ED commences an investigation without proving the existence of a scheduled offence, it amounts an abuse of authority. The Enforcement Directorate must comply with due process and ensure the existence of a predicate offence before taking coercive measures. The ED cannot call persons, freeze assets, or apprehend suspects without unequivocal proof connecting them to a scheduled offence.

ARGUMENTS ON BEHALF OF RESPONDENTS:-

- 17) *Per contra*, Mr. Vishal Sharma, learned DSGI, has filed reply on behalf of the respondent, the Directorate of Enforcement. In this response, it is asserted that the enquiries in this matter under the PMLA commenced at the Directorate of Enforcement, Jammu Zone Office, where Case No. ECIR/JMSZO/02/2024 was initiated on 03.10.2024, based on FIR No. 02/2024 dated 14.01.2024 by NCB Jammu. A charge-sheet dated July 11, 2024, under Sections 8, 21, 22, 26, 27-A, 29, and 38 of the NDPS Act, was filed by the NCB to the Special NDPS Court in Jammu. Sections 21, 22, 27-A, and 29 of the NDPS Act, invoked in the FIR/Charge-sheet, are 'scheduled crimes' under Section 2(1)(y) of the PMLA. The case pertains to the unlawful diversion of a codeine-based cough syrup (CBCS), "Cocrex," from the manufacturer, Vidit Healthcare (Neeraj Bhatia,

resident of Delhi), to fictitious entities, namely S S Industries (Owner Sumesh Sareen, resident of Faridabad) and N. K. Pharmaceuticals (NiketKansal, resident of Delhi), after which the CBCS was illicitly sold to individuals Maqbool and Shabir.

18) During the course of investigation under PMLA, various information and documents relating to the case have been collected as under:-

i) NCB chargesheet dated 11.07.2024 against Raees Ahmed Bhat R/o Srinagar J&K, Mohd Sabir R/o Jamia Nagar, Delhi, PardeepSinghSodi R/o Badgam J&K, Mohd Maqbool R/o Batla House, Jamia Nagar, Delhi, NiketKansal, M/s N K Pharmaceuticals R/o Sant Nagar Delhi, Sumesh Sareen, M/s SS Industry, R/o Faridabad, details of seizure by NCB in the case, details of purchase orders of CBCS placed by M/s SS Industry with M/s Vidit Healthcare and other relevant documents.

ii) Statements of NiketKansal, Raees Ahmed Bhat, Pradeep Singh Sodhi, Sumesh Sareen, Mohd Maqbool and Mohd Sabir recorded u/s 50(2) and (3) of PMLA during 08.11.2024 to 14.11.2024 wherein leads in the investigation were found.

iii) Details of evidences collected during search proceedings including the quantum of CBCS procured by entities, controlled by NiketKansal and diverting the same.

iv) Correspondences and replies received from various Drug Licensing Authorities and NCB.

v) ***Bank account statements of M/s Vidit Healthcare, M/s Kansal Industries, M/s Kansal Pharmaceuticals, M/s N K Pharmaceuticals, M/s Noveta Pharma, M/s SS Industries and others.***

19) It is further submitted that Codeine, an opium derivative, is rigorously governed by the Drugs and Cosmetics Act of 1940 (hence referred to as 'the Act of 1940') and the Narcotic Drugs and Psychotropic Substances Act of 1985 (hereinafter referred to as 'the Act of 1985'). Designated as a Schedule H medicine under the 1940 Act, its sale is restricted and requires meticulous record-keeping and reporting. The respondents have asserted that a prescription from a licensed medical practitioner is necessary for its sale. Manufacturers, distributors, and pharmacies must comply with the regulations of the Drugs and Cosmetics Act, which includes maintaining accurate records, assuring adherence to prescriptions, and following sales restrictions. The respondents further assert that CBCS possesses significant potential for abuse and diversion, frequently falling into the hands of drug addicts and being misused as an intoxicant.

20) The investigation under the PMLA disclosed that M/s SS Industry, represented by Sumesh Sareen, was functioning under the orders of NiketKansal, who manages M/s N K Pharmaceuticals, to acquire CBCS from M/s Vidit Healthcare, Sirmaur, HP. The CBCS was subsequently redirected from N K Pharmaceuticals to Raees Ahmed Bhat in Srinagar, with the assistance of Mohd Maqbool and Mohd Sabir, both of whom

reside in Delhi. The search proceedings under Section 17 of the PMLA, dated 13.02.2025, were executed at many locations, including the residence of NiketKansal, and further analysis of the documents, valuables etc, recovered is ongoing.

- 21) Upon the submission of the reply, the income tax returns of NiketKansal, MamtaKansal (mother), and Rajeev Kansal (father) were obtained, revealing the acquisition of immovable and movable properties inconsistent with their declared financial profiles. During the investigation, it was determined that NiketKansal engaged in criminal activities pertaining to scheduled offences under the NDPS Act to acquire, possess, and utilise the proceeds of crime linked to the illicit diversion and sale of CBCS.

LEGAL ANALYSIS:

- 22) Before delving into the substantive elements of the case, it is essential to first clarify the definition outlined in Section 2 of the Act, specifically with the phrase "proceeds of crime," as well as Section 3 concerning the "Offence of money-laundering."

Section: 2(1)(u): “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property ¹⁵[or where such property is taken or held outside the country, then the property equivalent in value held within the country] ¹⁶[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. 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 ¹[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.]

- 23) In the seminal ruling of *Vijay Madanlal Choudhary & Others v. Union of India & Others*, the Hon'ble Supreme Court provided an extensive interpretation of the word "proceeds of crime." The Court elucidated and broadened the definition of proceeds of crime under the relevant legal framework, providing guidance on its scope and application in cases related to money laundering and financial offences. The relevant paragraph is reproduced as follows:

"32. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition

“proceeds of crime”. The definition of “property” also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.”

- 24) The Hon'ble Supreme Court elucidated that "proceeds of crime" under the PMLA encompasses not only property directly acquired from criminal activities associated with a scheduled offence but also property indirectly generated, including assets purchased or exchanged utilising such illicit earnings. The 2019 Explanation merely clarifies this point and does not expand the definition. Thus, any property, including that obtained subsequently with illicit funds, is deemed tainted and may be subject to legal action, thereby supporting the objective of effectively combating money laundering.

- 25) The concept of “proceeds of crime” is central to the offence of money laundering. The law regarding proceeds of crime, as outlined in

the applicable legislative framework, must be interpreted with full compliance to its words. The term “proceeds of crime” should not be broadly defined; instead, its scope and application must be ascertained within the specific context of legislative intent.

- 26) It is, therefore, imperative to understand this definition within the framework of the overarching legislative intent, which aims to disrupt and dismantle the financial infrastructure underpinning illegal enterprises. This interpretation guarantees the legislative aim of mitigating economic crimes and redirecting the proceeds of crime into legitimate economic avenues is successfully achieved.

- 27) This Court, in the instant matter while exercising its jurisdiction confines itself strictly to examining the legal issues raised. The issue at hand does not pertain to the determination of facts but rather focusses on a fundamental legal question: whether the summons issued against the petitioner can be annulled solely on the basis of his discharge in the predicate offence. It is well-established in legal precedent that an individual's discharge in the predicate offence does not inhibit the authorities from pursuing additional legal actions or enforcement measures, including the issuance of a summons. The issuance of a summons constitutes a separate procedural action that is not inherently invalidated by a discharge in a different yet related case (predicate crime). Furthermore, the legal provisions governing the issuance and enforcement of summons are intended to uphold the integrity of the legal process, and

it is not the Court's function to intervene in the lawful execution of this process unless unequivocal and compelling grounds for such intervention are demonstrated. Consequently, the authorities retain the right to execute the issued summons, as these acts are regulated by separate legal principles that are unaffected by the result of the underlying offence.

- 28) Additionally, the Hon'ble Supreme Court in the case *Director, Enforcement Directorate & Anr v. VilelieKhamo in SLP [CRL.] NO. 15189/2024*, decided on 19-12-2024, has annulled the High Court's order that quashed the summons on the grounds that the respondent had been discharged in the predicate offence, with the pertinent details as follows:

"We are limiting ourselves to the question of law. What has been issued to the respondent is merely a summons. Simply because he has been discharged in the predicate offence, a Court cannot quash the summons. The questions as to whether the respondent would be arrayed as an accused or not, is a matter which has to be decided at a later stage. In that eventuality, it is well open to the respondent to raise all relevant contentions for the aforesaid purpose including the submissions that since the predicate offence has been quashed, the subsequent action of the appellant arraying him as an accused in the PMLA proceedings would not be sustained in the eyes of law."

Suffice it is to state that at this stage we are dealing with a summons that has been issued.

In such view of the matter, the impugned order stands set aside and the appellant is at liberty to proceed in pursuance to the summons that had been issued. However, we make it clear that all issues are left open to the

respondent, in the event of him being arrayed as an accused.”

29) In *Vijay Madanlal Choudhary case (supra)*, the Hon’ble Supreme Court has held as follows:

“269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of moneylaundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of moneylaundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of moneylaundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of

commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of moneylaundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of moneylaundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.”

- 30) The above observation of the Hon’ble Supreme Court implies that **money laundering itself is a separate crime**, distinct from the original (or scheduled) offence like corruption, drug trafficking, fraud, etc. Even if the scheduled offence is tried under Indian Penal Code, Narcotic Drugs and Psychotropic Substances Act, 1985 Act, etc., money laundering is prosecuted separately under PMLA. The offence under

Section 3 is dependent on the scheduled offence, but it is a separate and independent offence **once the activity of laundering begins.**

31) Evidently, the offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002, is distinct from the scheduled offence which generates the proceeds of crime. While the commission of a scheduled offence is necessary to give rise to proceeds of crime, the act of laundering those proceeds through concealment, possession, acquisition, use, or projection as untainted property constitutes a separate crime under the PMLA. This means a person can be prosecuted for money laundering even if they are not directly involved in the commission of the scheduled offence, so long as they are involved in the laundering process. The offence is investigated and tried independently under the PMLA by the Enforcement Directorate and Special Courts designated for such matters. Therefore, the legal provisions of issuance and enforcement of summons are specifically designed to facilitate the effective collection of evidence for the purpose of investigation, thereby ensuring the integrity and efficacy of the judicial process is maintained throughout

32) This court is also fortified by the judgment passed by the Hon'ble Supreme Court in the case titled as *PavanaDibbur v. The Directorate of Enforcement* reported in **2023 INSC 1029**, wherein, the Hon'ble Supreme Court clarified that a person accused of an offence under Section 3 of the Prevention of Money Laundering Act (PMLA) need not necessarily be shown as an accused in the scheduled offence. The judgment clarified that

a person, unconnected to the scheduled offence but knowingly assisting in the concealment of the proceeds of crime, can be held guilty of committing an offence under Section 3 of the PMLA. Relevant para is reproduced as under:

16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected.

- 33) Again in the case of *Vijay Madanlal Choudhary & Others (supra)* the Hon'ble Supreme Court has expounded the purpose of the Act of 2002 and the following has been held:

81. Concededly, the 2002 Act provides for an inquiry to be conducted by the Authorities and with power to collect evidence for being submitted to the Adjudicating Authority for consideration of confirmation of provisional attachment order passed by the Authorities in respect of properties being proceeds of crime involved in the offence of money-laundering. In that sense, the provisions in 2002 Act are not only to investigate into the offence of money laundering, but more importantly to prevent money-laundering and to provide for confiscation of property related to money-laundering and matters connected therewith and incidental thereto.

82. The process of searches and seizures under the 2002 Act are, therefore, not only for the purposes of inquiring into the offence of money-laundering, but also for the purposes of prevention of money laundering. This is markedly distinct from the process of investigating into a scheduled offence.

34) The Enforcement Directorate's authority to summon individuals under Section 50 is intended for the acquisition of factual evidence pertaining to money laundering offences; obtaining a summons under this section does not inherently indicate that one is an accused in a money laundering investigation. This indicates that the individual may have information or documents pertinent to the investigation.

35) The petitioner's discharge does not constitute a legitimate ground for nullifying the summons. The authorities may execute the summons issued pursuant to the applicable legislative laws and procedural regulations.

The issuance of summons is a fundamental component in the execution of

a fair and unbiased investigation. It affords the relevant parties an opportunity to be heard, to articulate their case, and to address the allegations levied against them. These procedural safeguards are crucial for preserving the integrity of the investigative and adjudicatory processes established by the Act. The aim is to guarantee the presence of individuals or companies for scrutiny while ensuring the process is transparent, equitable, and lawful. The summons mechanism compels individuals to come before authorities, so ensuring the accurate collecting of evidence, assisting in the revelation of truth, and ultimately preserving the effectiveness and integrity of the judicial process. Consequently, the issuance of summons under the PMLA should be regarded as an essential element of due process, intended to advance the rule of law and bolster public trust in the legal system. The discharge in the predicate offence, albeit substantial, does not, as a legal principle, impact the ongoing validity of the summons.

- 36) The petitioner's discharge in the predicate offence indicates a determination concerning the merits of that particular accusation; nonetheless, it does not nullify the overarching legal structure governing the issuance of the summons. The discharge should not be regarded as a legal obstacle to the authorities' capacity to forward with the summons.
- 37) Furthermore, in the present case, the order of discharge has been formally contested by the respondents, and a criminal revision, numbered as Crl R No. 21/2025, is currently pending before this Court, wherein

Notice has been issued. The proceedings in relation to the discharge order will be depend upon the outcome of the revision petition, which will effectively settle the issues relating to the legitimacy of the discharge.

- 38) Thus, the issuance of a summons is a procedural action executed within the Court's jurisdiction, and its legitimacy remains intact despite the respondent's discharge in the predicate offence.

CONCLUSION

- 39) Consequently, the sequitur to the aforementioned discussion is to acknowledge that the summons issued to the petitioner constitutes a procedural measure within the legal framework, and its validity persists despite the petitioner's discharge in the predicate offence. The mere discharge of the petitioner concerning the predicate offence does not, in itself, grant the Court the power to annul the summons. The ruling issued by the Hon'ble Supreme Court in *Vijay Madanlal Choudhary & Ors. (supra)* is binding for all subordinate courts. Nonetheless, the implementation of the concepts established therein cannot be mechanical or abstract. The judgment must be applied with careful consideration of the specific factual context and legal matters unique to each case, necessitating a case-by-case analysis.

- 40) This Court holds the opinion that the mere discharge or quashing of a FIR by a competent court does not automatically result in the

quashing of an Enforcement Case Information Report (ECIR) filed under the Prevention of Money Laundering Act, 2002. The two proceedings, while factually linked by the scheduled offence, are legally independent and governed separately.

- 41) The ECIR, pursuant to the PMLA, is not simply an extension of the FIR; rather, it is founded on the exclusive aim of investigating and prosecuting money laundering offences. The scheduled offence serves as the foundation for commencing action under the PMLA, whereas the offence of money laundering under Section 3 of the Act is a distinct and ongoing offence that must be evaluated independently. Consequently, the discharge in the predicate offence may influence the procedures under the PMLA; however, it cannot be regarded as an automatic or definitive basis for nullifying the ECIR. The decision to uphold or annul an ECIR necessitates a detailed and fact-oriented examination, considering the stage of investigation, grounds for discharge, any challenges to the discharge order, evidence collected by the Enforcement Directorate, and the identification or tracing of proceeds of crime as defined in Section 2(1)(u) of the Act. A mechanical or blanket approach in treating the discharge in a FIR as conclusive for the outcome of an ECIR would contradict the objectives and framework of the PMLA and could, in certain instances, undermine the legislative intent, which is to prevent, control, and prosecute money laundering offences that pose a significant threat to the financial systems and integrity of the nation.

42) Consequently, this Court holds that the matter of nullifying an ECIR must be evaluated independently and on a case-by-case basis, considering the legal principles established in *Vijay Madanlal Choudhary & Ors (Supra)* and other authoritative precedents, without regarding the discharge in the FIR as an automatic or exclusive basis for analogous relief under the PMLA. This Court, consequently, abstains from intervening in the lawful actions of the authorities regarding the issuance and enforcement of the summons.

43) For the aforementioned reasons, this Court finds no merit in this petition. The matter is hereby dismissed along with all connected applications.



सत्यमेव जयते

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
22.05.2025
Vijay/Mubashir

Whether the order is speaking: Yes
Whether the order is reportable: Yes