



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 27TH DAY OF JANUARY, 2025
BEFORE
THE HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR
WRIT PETITION NO. 32956 OF 2024 (GM-RES)

BETWEEN:

DR. NATESHA D.B.,
AGED ABOUT 51 YEARS,
S/O. MR. BASAVARAJAPPA,
R/AT. NO.45, BALAJI RESIDENCY,
FLAT NO. 003, 13TH CROSS,
10TH MAIN, MALLESHWARAM,
BENGALURU-560 003.

...PETITIONER

(BY SRI. SANDESH J.CHOUTA, SENIOR COUNSEL FOR
SMT. ANISHA A.AATRESH, ADVOCATE)

AND:

DIRECTORATE OF ENFORCEMENT
MINISTRY OF FINANCE AND
DEPARTMENT OF REVENUE,
BENGALURU ZONAL OFFICE,
3RD FLOOR, BLOCK B,
BMTC BUILDING, K.H.ROAD,
BENGALURU-560 027.

...RESPONDENT

(BY SRI. ARAVIND KAMATH, SENIOR COUNSEL FOR
SRI. P.PRASANNA KUMAR, SPP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO, DIRECTION-DECLARING THAT THE SEARCH AND SEIZURE CONDUCTED AT THE RESIDENCE OF THE PETITIONER FROM 28.10.2024 TO 29.10.2024 AT ANNEXURE-A AND CONSEQUENTIAL STATEMENT RECORDED UNDER SECTION 17 OF THE PMLA, 2002 OF THE PETITIONER AS INVALID AND ILLEGAL SINCE THE RESPONDENT HAD NO AUTHORITY TO RECORD ANY STATEMENT U/S 17(1)(f) THE STATEMENT DESERVES TO BE RETRACTED AND BE DECLARED AS INVALID BEING AGAINST THE PROVISIONS OF THE





PML ACT AS WELL AS ARTICLE 20(3) OF THE INDIAN CONSTITUTION; DIRECTION QUASHING THE SECTION 50 PMLA NOTICES DATED 29.10.2024 ANNEXURE-A AND 06.11.2023 ANNEXURE-B BEARING NO.PMLA/SUMMON/BGZO/2024/2643 AND VARIOUS STATEMENT RECORDED OF THE PETITIONER HEREIN UNDER SECTION 50 OF THE PMLA,DIRECT THE PROSECUTION OF THE ERRING OFFICIALS OF RESPONDENT AGENCY UNDER SECTION 62 OF THE PMLA.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE HEMANT CHANDANGOUDAR

ORAL ORDER

The petitioner, a former Commissioner of the Mysore Urban Development Authority (MUDA), seeks a declaration that the search and seizure conducted at his residence from 28.10.2024 to 29.10.2024, as well as the subsequent statement recorded under Section 17 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the PMLA, 2002), are invalid and illegal. The petitioner further seeks a writ in the nature of Certiorari to quash the issuance of summons dated 29.10.2024 and 06.11.2024, along with the various other statements recorded under Section 50 of the PMLA, 2002. Additionally, the petitioner prays for orders directing the prosecution of the erring officials of the respondent, the Enforcement Directorate (ED), under Section 62 of the PMLA, 2002.



2. The Enforcement Case Information Report (ECIR) dated 01.10.2024 was registered by the respondent based on an FIR filed by the Lokayukta concerning a predicate offence related to the illegal allotment of sites by MUDA during the petitioner's tenure as Commissioner of MUDA. Pursuant to authorization by the Joint Director of the respondent agency, the Assistant Director conducted a search of the petitioner's residence under Section 17 of the PMLA, 2002 on 28.10.2024 and 29.10.2024. During the search, the petitioner's mobile phone was seized, and its data was transferred to a hard disk. Furthermore, the respondent examined the petitioner on oath under Section 17(1)(f) of the Act.

3. On 29.10.2024, after the search was completed, the respondent served summons on the petitioner at 4.00 pm under Section 50 of the PMLA, 2002, directing him to appear before the Investigating Officer on the same day at 5:30 PM. Subsequently, the petitioner was served with another summons dated 07.11.2024, directing him to appear before the concerned officer on 08.11.2024. On that date, the petitioner was interrogated from 11:00 AM to 7:00 PM.

4. The petitioner further alleges that on 14.11.2024 and 25.11.2024, the respondent illegally summoned him via telephonic calls, and the petitioner, to show his bona fides, complied therewith and appeared for further interrogation on



15.11.2024 and 27.11.2024. Aggrieved by these actions, the petitioner has filed the instant writ petition.

5. The primary issue for consideration in this petition is, whether the impugned search and seizure conducted at the petitioner's residence, along with the recording of the petitioner's statement on oath under Section 17 of the PMLA, 2002, and the subsequent issuance of summons under Section 50 of the Act, based solely on the assumption or suspicion that the petitioner, as the former Commissioner of MUDA, might be in possession of records related to the offence of money laundering, is violative of statutory procedural safeguards, and can be sustained.

Submissions

6. Shri Sandesh J. Choutha, learned Senior Counsel appearing on behalf of the petitioner, advanced the following submissions:

6.1. The initiation of inquiry or investigation culminating in the conduct of search and seizure under Section 17 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as the PMLA, 2002), as well as the subsequent issuance of summons under Section 50 of the Act, is devoid of legal authority. The learned Counsel contended that the respondent agency lacked credible evidence to demonstrate that the "proceeds of crime" related to a predicate offence



were either concealed or projected as untainted money, as required under Section 3 of the Act. Without such credible evidence to establish the offence of money laundering, the procedural safeguards under the Act have been violated, rendering the entire process unsustainable in law.

6.2. The learned Senior Counsel submitted that, as per Section 17 of the PMLA, 2002, the Director is the competent authority to authorize any officer not below the rank of Deputy Director to conduct search and seizure operations. However, in the present case, the Joint Director, who does not possess the requisite competence under the Act, authorized the Assistant Director to conduct the search and seizure. The Assistant Director, being below the rank of Deputy Director, was not legally empowered to carry out the search and seizure. Consequently, the entire exercise of search and seizure conducted by the respondent agency stands vitiated due to the lack of authority.

6.3. It was further argued that Section 17 of the PMLA, 2002 mandates that an officer authorized to conduct a search and seizure must have "*reason to believe*," based on material in his possession, that a person is involved in the offence of money laundering. This reason to believe must be recorded in writing prior to initiating such proceedings. However, in the instant case, the respondent agency conducted the search



and seizure on the mere assumption that the petitioner, as the then Commissioner of MUDA, had illegally allotted sites. This assumption, according to the learned Senior Counsel, does not satisfy the statutory requirement of “*reason to believe*” under Section 17, thereby rendering the proceedings invalid and illegal.

6.4. He further contended that under Section 17 of the PMLA, 2002, a search and seizure can only be conducted subsequent to the attachment of property involved in money laundering, as provided under Section 5 of the Act. In the present case, no such attachment of property has been made prior to the initiation of the search and seizure proceedings. This procedural lapse undermines the legality of the search and seizure conducted by the respondent agency.

In support, reliance is placed on the following:

- i. Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 - Relevant Paras - 109, 134, 193 -
- ii. Abhishek Banerjee v. Directorate of Enforcement, 2024 INSC 668 - Relevant Paras - 16, 17
- iii. V Senthil Balaji v. Deputy Director, Directorate of Enforcement, 2024 INSC 739 - Relevant Paras - 5, 21
- iv. Pankaj Bansal v. Union of India, 2023 INSC 886 - Relevant 21, 35
- v. Opto Circuits (India) Ltd. v. Axis Bank, (2021) 6 SCC 707 - Relevant Paras - 8, 14
- vi. Arvind Kejriwal v. Directorate of Enforcement, 2024 INSC 512 - Relevant Paras - 34 & 26.



- vii. Rashmi Metaliks Limited v. Enforcement Directorate - High Court of Calcutta - W.P. No. 17454/2022 : DD 10.08.2022
- viii. Prakash Industries v. Union of India - High Court of Delhi - W.P.No.[C] - 13361/2018 - Relevant Paras - 84
- ix. Mahabir Prasad Rungta v. Directorate of Enforcement - Interim Order dated 17.09.2024 in SLP (CrI) No. 12353/2024.
- x. S Martin v. Directorate of Enforcement - Interim Order dated 10.04.2024 in SLP(CrI) No. 4768/2024.
- xi. Pavana Dibbur v. Enforcement Directorate, (2023) 15 SCC 91
- xii. Manish Sisodia v. CBI, 2023 SCC OnLine SC 1392
- xiii. Parvez Ahmed v. DoE, High Court of Delhi
- xiv. Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497
- xv. A.S. Krishnan v. State of Kerala, (2004) 11 SCC 576

7. Per contra, Shri K. Arvind Kamath, learned Additional Solicitor General, appearing on behalf of the respondent Agency, made the following submissions:

7.1. The present writ petition, challenging the summons issued under Section 50 of the PMLA, 2002, is premature and without merit. He argued that the summons merely calls upon the petitioner to produce records in his possession during the course of an ongoing investigation. The issuance of summons has not caused any prejudice to the petitioner, as it is procedural in nature and falls within the statutory framework of the Act.



7.2. The learned ASG emphasized that Section 50 of the Act explicitly empowers the competent authority to summon any person, compel their attendance, and require the production of records or evidence during the course of an investigation. Therefore, the summons issued to the petitioner cannot be construed as arbitrary, illegal, or outside the scope of the powers vested in the respondent Agency.

7.3. The investigation initiated by the respondent Agency pertains to proceeds of crime derived or obtained in connection with a scheduled offence under the PMLA, 2002. He contended that the sites derived by the accused in the scheduled offence fall squarely within the ambit of “*proceeds of crime*” as defined under Section 2(1)(u) of the Act. The competent authority, having recorded its “*reason to believe*” in writing, has rightly concluded that the petitioner, as the former Commissioner of MUDA, assisted the accused in the illegal allotment of sites and may be in possession or control of records or properties relevant to the investigation.

7.4. Addressing the petitioner’s contention regarding the competence of the authorizing authority, the learned ASG submitted that the Joint Director is one of the authorities enumerated under Section 48 of the PMLA, 2002. He argued that Section 17 of the Act empowers the Joint Director, who is above the rank of Deputy Director, to authorize an Assistant



Director to conduct search and seizure. In the instant case, the Joint Director has validly authorized the Assistant Director to act under Section 17 of the Act, and the authorization is in accordance with the law.

7.5. In support of the above, he places a reliance on the circular dated 27.09.2011 issued by the Directorate of Enforcement, which authorizes Assistant Directors and Deputy Directors to conduct search and seizure operations under Section 17 of the Act, subject to the prior approval of the Joint Director. He emphasized that this circular reinforces the legality of the authorization granted in the present case and negates the petitioner's contention regarding procedural impropriety.

7.6. The learned ASG asserted that the Joint Director has duly recorded the "*reason to believe*" in writing as mandated under Section 17(1) of the PMLA, 2002. The recorded reasons clearly reveal the petitioner's role in the illegal allotment of sites during his tenure as the Commissioner of MUDA. He further contended that the sufficiency or adequacy of the "*reasons to believe*" cannot be examined in a writ petition, as it involves a subjective satisfaction of the competent authority.

7.7. The learned ASG argued that the recording of reasons under Section 17(1) of the PMLA, 2002, which



pertains to the power to conduct search and seizure, cannot be equated with the recording of reasons under Section 19 of the Act, which deals with the power to arrest a person guilty of an offence under the Act. While Section 17(1) of PMLA deals with the investigation process to summon records, Section 19 of the Act deals with punitive action against an accused person. Therefore, reasons recorded satisfies the requirements of section 17.

7.8. The petitioner has suppressed material facts from the Court. He contended that the petitioner failed to disclose his involvement as the former Commissioner of MUDA, during which he allegedly allotted fourteen sites that now constitute the proceeds of crime. This deliberate suppression of facts, he argued, disentitles the petitioner from any relief in equity or law.

7.9. In the light of the above submissions, he contended that the petitioner's challenge to the summons issued under Section 50 of the PMLA, 2002, and the search and seizure conducted under Section 17 of the Act, lacks merit. He submitted that the competent authority has acted in accordance with the provisions of the Act, and there is no procedural infirmity in the investigation. He, therefore, prayed for the dismissal of the writ petition with costs.



In support, reliance is placed on the following:

(Sufficiency of reasons to believe cannot be gone into)

i. DGIT v. Spacewood Furnishers (P) Ltd. (2015) 12 SCC 179 - Relevant Paras - 21-23

ii. CIT v. Rajesh Jhaveri, (2008) 14 SCC 2018 - Relevant Paras 19-20

(Money laundering is a standalone offence and once an ECIR is registered based on a scheduled offence, the umbilical chord between an FIR and an ECIR gets snapped)

iii. Vijay Madanlal Choudhary & Ors v. Union of India & Ors. (2022) SCC OnLine SC 929 - Relevant Paras - 269, 295

iv. Pavana Dibbur v, Enforcement Directorate, (2023) SCC OnLine SC 1586 - Relevant Paras - 15, 17

v. Directorate of Enforcement v. Aditya Tripathi, (2023) SCC OnLine SC 619 - Relevant Paras - 13, 16

vi. Dr. Manik Bhattacharya v. Ramesh Malik & Ors., SLP (C) - 16325/2022 - Relevant Para - 7

vii. Vijayraj Surana v. Enforcement Directorate, Relevant Para - 27

(ED need not wait filing of the chargesheet by the predicate agency event to exercise the power to arrest under section 19 PMLA)

viii. Vijay Madanlal Choudhary & Ors v. Union of India & Ors. (2022) SCC OnLine SC 929 - Relevant Para - 322

(Provisions regarding search and seizure under PMLA)

ix. Vijay Madanlal Choudhary & Ors v. Union of India & Ors. (2022) SCC OnLine SC 929 - Relevant Paras - 308-318

(Attachment/seizure under the PMLA is an emergency provision and can be resorted to even without the registration of the FIR)



x. Vijay Madanlal Choudhary & Ors v. Union of India & Ors. (2022) SCC OnLine SC 929 - Relevant Paras - 282, 290, 456, 457, 467 (xviii) (a)

(At the stage of summons, the person summoned is not even an aggrieved party and a person summoned is bound to appear)

xi. Kirit Shrimankar v. Union of India & Ors, in W.P. (Crl) No. 109/2013

xii. C.M. Raveendran v. Union of India, in 2020 SCC OnLine Ker 7555 - Relevant Paras - 6, 8

xiii. Union of India & Anr v. Kunisetty Satyanarayana, (2006) 12 SCC 28 - Relevant Paras - 13, 14

xiv. Commissioner of Customs, Calcutta & Ors. v. M/s/ MM Export and Anr, (2010) 15 SCC 647 - Relevant Paras - 1

xv. Virbhadra Singh v. Enforcement Directorate, 2017 SCC OnLine Del - Relevant Paras - 141, 143

xvi. Raghav Bahl v. Enforcement Directorate, High Court of Delhi, in W.P. (Crl) No. 2392/2021 : DD 23.01.2023 - Relevant Paras - 12-14

xvii. State of Gujarat v. Choodamani Parmeshwaran Iyer, in SLP (Crl) No. 4212/20219 - Relevant Paras - 11, 16

xviii. ED v. Tamil Nadu, Supreme Court of India, vide order dated 27.02.2024 - Relevant Para - 6

(All admissions are not confessions and in any case the same is a matter of trial)

xix. Pakala Narayana Swami v. King Emperor 1939 SCC OnLine PC 1 - Page 481

xx. CBI v. Shukla (1998) 3 SCC 410 - Relevant Para - 45

xxi. Faddi v. State of MP, 1964 SCC OnLine SC 123, Relevant Paras - 15

xxii. Kanda Padayachi v. State of T.N. (1971) 2 SCC 641 - Relevant Paras - 11, 13



(Crime investigation and detection us a reasonable restriction on right to privacy)

xxiii. KS Puttaswamy & Anr. v. Union of India, (2017) 10 SCC 1 - Relevant Paras - 200, 310 - 313, 328

xxiv. Vijay Madanlal Choudhary & Ors v. Union of India & Ors. (2022) SCC OnLine SC 929 - Relevant Paras - 263 - 284

xxv. Y Balaji v. Karthik Desari, (2023) SCC OnLine SC 645 - Relevant Paras - 96-100)

(Summons issued by ED cannot be quashed merely because the relevant documents required for the purpose of investigation or confrontation have not specified in the summons)

xxvi. Talib Hassan Darvesh v. Directorate of Enforcement (2024) SCC OnLine Del 1811, Relevant Para- 12

(There is no necessity to refer to the summoned person as a witness or accused while issuing summons under Section 50 of PMLA)

xxvii. Molay Ghatak v. Directorate of Enforcement, (2023) SCC OnLine Del 7443 - Relevant Paras - 26 -28

Issues

8. After considering the arguments of the learned counsel for the parties, the following issues emerge for consideration :

- i. Whether the authorisation issued to conduct the impugned search and seizure at the residence of the petitioner on 28.10.2024 and 29.10.2024, and the consequent statement recorded under Section 17 of PMLA, 2002 suffers from lack of jurisdiction?
- ii. Whether the said impugned search and seizure and the statement recorded, is bad in law for lack



of the requisite “*reason to believe*” under section 17(1) of PMLA, 2002, and is therefore, an abuse of process of law?

- iii. Whether the impugned summons/notices issued under Section 50 of PMLA, 2002 and the various statements recorded thereunder, be sustained under the law?
- iv. Whether, in the course of its administration and execution of the PMLA, 2002, the attachment of property under Section 5 of the Act must mandatorily precede the conduct of search and seizure under Section 17 of the said Act?

Discussion and Analysis

9. Before delving into the issues raised for consideration, it is necessary to advert to the relevant provisions of the Act.

9.1. **Section 2(1)(na)** of the PMLA, 2002, defines the term **investigation** as;

“including all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence”.



9.2. **Section 2(1)(u)** of the Act defines the term **proceeds of crime** as;

“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”.

9.3. **Section 3 of PMLA, 2002** defines the **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.”

10. A cumulative reading of Sections 2(1)(na), 2(1)(u), and 3 of the Prevention of Money Laundering Act, 2002 (PMLA) establishes the following essential elements required to attract an offence under Section 3 thereof:



- 1) The existence of proceeds of crime in relation to a criminal activity relating to any scheduled offence, specified in the schedule; and
- 2) Evidence of actual involvement or animus/intention on part of the accused in the scheduled offence(s), or any other person, subsequent to the accomplishment of the scheduled offence, to assist in any process or activity connected with the proceeds of crime including, its -
 - a) concealment, or
 - b) possession, or
 - c) acquisition, or
 - d) use, or
 - e) projecting or claiming the proceeds of the crime as untainted property.
- 3) Mere inadvertent possession or incidental handling of the property (*proceeds of crime*), without the requisite criminal intent, would not suffice to attract an offence under Section 3.
- 4) It is relevant to note that any process or activity connected with the proceeds of the crime comes to a close only upon cessation of illicit gains.
- 5) i) The scope of *concealment* includes removal, disposal or movement of the proceeds of crime in such a manner as to hide its illicit origins.
 - ii) The scope of *use, projection or claim* of proceeds of crime as untainted property includes all processes



committed to or activities undertaken to integrate illicit gains as legal. This typically involves layering of transactions to obscure the origin of the funds, and investing such proceeds in legitimate businesses or assets to make them appear lawful.

11. The aforementioned elements ensure that the scope of the investigation remains tied to the twin objectives of the PMLA:

- Combating money laundering as a standalone offence.
- Ensuring that the property associated with criminal activities is identified, confiscated, or attached to prevent misuse in the financial system.

ISSUE NO. 1

12. The factual matrix of the instant case at hand reveals that an FIR No. 11/2024 dated 27.09.2024 was registered by the Lokayukta Police Mysore, Police Station in relation to the predicate offences chargeable under Section 120-B and 420 of IPC, 1860 and Sections 9 and 13 of the Prevention of Corruption Act, 1988, against Shri Siddaramaiah, Smt Parvathi - wife of Shri Siddaramaiah, Shri Devaraju and Shri Mallikarjuna Swamy in relation to illegal de-notification and subsequent re-acquisition of a parcel of land measuring 3.16 acres located at Kesare Village from the



acquisition proceedings initiated by MUDA for the purpose of forming Devaneru Badavane Layout, and illegal allotment of 14 alternate sites in an affluent neighbourhood of Vijaynagara Layout amounting to INR 56 Crores only, in consideration for an illegal claim for compensation made by Smt Paravathi, against the acquisition of above lands.

13. Subsequently, the respondent-ED registers an ECIR/BGZO/25/2024 on 01.10.2024 on the grounds that 14 sites (plots), including commercial plots were allotted to Smt Parvathi in gross violation of the Karnataka Urban Development Authorities (Allotment of Sites in lieu of Compensation for the Land Acquired) Rules, 2009, during the tenure of the petitioner as the Commissioner of MUDA. It is alleged that the petitioner himself had selected the sites to be allotted and that the proposal for site allocation was not put up by the Site Allotment Section.

14. Therefore, the respondent-agency conducted the impugned search and seizure under Section 17 of the PMLA, 2002 at the residential premises of the petitioner, on 28.10.2024 and 29.10.2024, and the mobile phone belonging to the petitioner, along with one hard-disk in which the data extracted from the said mobile phone was transferred into and was seized. Subsequently, the respondent-agency has examined the petitioner on oath and has recorded the



statement of the petitioner under Section 17(1)(f) of the Act. The petitioner impugns the said search and seizure and the subsequent statement recorded, on the grounds that same are invalid and illegal for want of jurisdiction, and that there is no material evidence on record suggestive of the petitioner's involvement in any aspect related to the proceeds of crime.

15. Upon conclusion of the search and seizure operation, the petitioner was issued a summons under Section 50 of the said Act, 2002 at 4.30 PM on 29.10.2024 directing the petitioner to appear before the investigative authorities at 5.30 PM. Furthermore, it is the case of the petitioner that he was summoned yet again on 08.11.2024 and was interrogated by the respondent-agency from 11 AM to 7 PM. It is further the case of the petitioner that the respondent - Agency has telephonically summoned the petitioner to appear on 15.11.2024 and thereafter again on 25.11.2024, in complete contravention of the law, and is hence, illegal. It is undisputed that the petitioner has honoured the summons, including the telephonic summons, and has appeared repeatedly before the concerned authorities and has cooperated with the investigation.

16. The petitioner is aggrieved by the repeated issuance of summons under Section 50 of PMLA, 2002, and the further illegal telephonic summoning by the respondent -



agency, despite prior interrogations having not elicited anything incriminating for further investigation.

17. In the case at hand, the Joint Director of respondent-agency vide authorisation letter bearing No. 131/PMLA/2024, dated 27.10.2024 had authorised Assistant Director under Section 17(1) and (1-A) of the Act, to conduct the search of the petitioner's premises. The petitioner impugns the same on the grounds that the impugned authorisation letter issued to conduct the search and seizure was in contravention of the statutory provisions, and therefore, the impugned search and seizure was without jurisdiction.

18. A careful perusal of Section 17 of the Act, 2002, the relevant portion of which is extracted hereunder, reveals that the competent authority under the Act to authorize a search and seizure of any premises is the Director or any other officer authorized by the Director, for the purposes of Section 17, provided such officer is not below the rank of Deputy Director. Therefore, the statute clearly limits the vesting of authority to record reasons to believe on the basis of material in possession with highest responsible authority to prevent the misuse of such provisions. Furthermore, the words "*the Director*" in sub-section (1) of Section 17 were substituted for the words "*the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of*



this section” vide the Amendment Act 21 of 2009 (w.e.f. 1.06.2009).

“Section 17. Search and seizure.- (1) *Where [the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section.] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—*

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, or

(iv) is in possession of any property related to crime,

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;



(d) place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such records or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

...

*(2) **The authority, who has been authorised under sub-section (1)** shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with 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 reasons and material for such period, as may be prescribed.”*

(Emphasis supplied)

19. The learned ASG has further placed on record the Circular Order (Tech) No. 03/2011, dated 27.09.2011, issued by the Director of Enforcement in light of the re-designation of authorities vide Circular Order (Admn.) No. 54/2011, dated 26.09.2011. The said circular revises the statutory authorities for enforcing the provisions of the PMLA, and stipulates that search and seizure under Section 17 of the Act shall be subjected to the approval of the Joint Director, and the officer authorised shall be the Assistant/Deputy Director.



19.2. Accordingly, he argues that since Section 48 of the PMLA,2002 classifies the Joint Director as being above the Deputy Director in rank, a conjoint reading of the Circular dated 27.09.2011 and Section 48 of the Act justifies the authorization letter dated 27.10.2024 as being within the bounds of law.

20. A bare perusal of Section 48 of the Act, extracted hereunder, indicates that the Director is the foremost authority under the Act, and is placed in similarity with the rank of an Additional Director or Joint Director. The Deputy Director is immediately below the Director and the Joint Director, and further below down in the hierarchy is the Assistant Director.

“Section 48. Authorities under the Act - There shall be the following classes of authorities for the purposes of this Act, namely:—

- (a) Director or Additional Director or Joint Director,*
- (b) Deputy Director,*
- (c) Assistant Director, and*
- (d) such other class of officers as may be appointed for the purposes of this Act.”*

21. Thus, where the Director has clearly authorised the Joint Director (*an officer above the rank of Deputy Director*) for purposes of Section 17 of PMLA, 2002 vide Circular No. Circular Order (Tech) No. 03/2011, dated 27.09.2011, and;



- in pursuance thereof, the Joint Director had issued authorisation letter dated 27.10.2024 authorising the Assistant Director under sub-sections (1) and (1-A) thereof to conduct the search of the petitioner's premises, and;
- subsequently, when the Joint Director had forwarded, upon completion of the search and seizure, a copy of the reasons so recorded on the basis of the material in his possession to the Adjudicating Authority under sub-section (2) of PMLA vide letter dated 05.11.2024;

the conduct of impugned search and seizure under Section 17 of PMLA, 2002 cannot be faulted for lack of jurisdiction.

ISSUE NO. 2

22. The petitioner further challenges the formation of "*reason to believe*" that led to the search and seizure under Section 17 of the Act, and contends that such reasons are conspicuously absent. The petitioner argues that no material exists to indicate any involvement in the commission of an act constituting money laundering, possession of proceeds of crime related to money laundering, or possession of records or property connected to money laundering.

23. The learned Senior Counsel appearing for the petitioner further brought to the attention of this Court the



following decisions regarding the interpretation of “*reason to believe*” under Section 17 of the PMLA:

24.1. In **Vijay Madanlal Choudhary v. Union of India, (2022) SCC OnLine SC 929**, the Supreme Court addressed challenges to the constitutionality of certain provisions of the PMLA and the procedures followed by the Enforcement Directorate (ED) in investigating offences under the Act. The Court observed:

- i. The offence under Section 3 of the Act is contingent on the illegal gain of property arising from criminal activity related to a scheduled offence. In other words, an act would qualify as money laundering only if it generates proceeds of crime and involves tainted property.
- ii. The term “proceeds of crime” must be strictly construed. To qualify as proceeds of crime, the property must be derived or obtained, directly or indirectly, as a result of criminal activity related to a scheduled offence.
- iii. Projecting or claiming the property as untainted constitutes the offence of money laundering as an independent process or activity.
- iv. A person accused of involvement or activity related to the proceeds of crime derived from a predicate offence



may not necessarily be connected to the predicate offence itself.

V. The PMLA, 2002, is a self-contained legislation. Section 17 of the Act provides in-built safeguards, including the requirement that the exercise of power be undertaken by high-ranking officials, such as the Director or Deputy Director authorized by the Director. It also mandates the recording of reasons for the belief formed based on the information in the official's possession about the commission of any act of money laundering and conscious possession of proceeds of crime.

24.2. In **V. Senthil Balaji v. Deputy Director, Directorate of Enforcement, (2024) INSC 739**, the Supreme Court addressed an appeal concerning the dismissal of a bail application by a petitioner who had been incarcerated under the PMLA for over 14 months. The Court opined that the existence of proceeds of crime is a precondition for an offence under Section 3 of the Act.

24.3. In **Pankaj Bansal v. Union of India, (2023) INSC 866**, the Apex Court dealt with an appeal seeking to quash an arrest and included a plea to “read down” or “read into” the provisions of Section 19 of the Act. The Court held that the material in possession must be limited to legally admissible



and unimpeachable evidence, based on which “*reason to believe*” can be recorded in writing that the arrestee is guilty of an offence under Section 4 of PMLA. The Court further emphasized that the standard of guilt must meet a higher threshold than mere suspicion.

24.4. In **Opto-circuit India Pvt Ltd v. Axis Bank, (2021) 6 SCC 707**, the Supreme Court observed, while dealing with the freezing of property under Section 17 of the PMLA, that what is necessary under Section 17(1) is the recording of a belief regarding the commission of the act of money laundering. It also emphasized the need to seize any record or property found during the search and subsequently place it before the adjudicating authority.

24.5. In **Arvind Kejriwal v. Directorate of Enforcement, (2024) INSC 512**, the Supreme Court addressed an appeal challenging the validity of an arrest under Section 19 of the PMLA. While granting interim bail to the petitioner, who had been incarcerated for over 90 days, the Court employed the test of proportionality to evaluate the ‘necessity to arrest’. The Court referred to a larger Bench the question of whether the “need and necessity to arrest” pertains to satisfaction of formal parameters for arrest or involves personal grounds and reasons arising from the facts and circumstances of the case.



24.5.1. The Court in *Arvind Kejriwal* further referred to the Canadian decision in *Gifford v. Kelson*, (1943) 51 Man. R 120, where it was held that the requirement of ‘reasons to believe’ signifies a belief beyond mere speculation or doubt, derived from evidence regarding the existence of facts.

24.5.2. The Apex Court further relied on its Constitution Bench decision in *Barium Chemicals Ltd. and Anr. v. Company Law Board and Others*, AIR 1967 SC 295, where it was held that the expression ‘reason to believe’ is not a subjective process. The Court emphasized that such reasons are subject to judicial scrutiny, particularly to ascertain whether they are founded within relevant facts or fall outside permissible limits.

24.5.3. Reference was also made to **Jyoti Prasad v. State of Haryana, (1993) Supp (2) SCC 497**, wherein the Court interpreted Section 26 of the IPC, which defines “*reason to believe*” as sufficient cause to believe a thing. The Court opined that “*reason to believe*” exceeds mere suspicion or doubt and is distinct from ‘knowledge’, which occupies a higher evidentiary plane. It further held that the material relied upon to form such “*reason to believe*” must be adequate to make the conclusion probable.

24.5.4. The Court also referred to **A.S. Krishnan and Ors. v. State of Kerala, (2004) 11 SCC 576**, where it



endorsed the ratio in *Jyoti Prasad* and held that “*reason to believe*” are derived from a chain of probable reasoning based on the circumstances, leading to a conclusion or inference about the matter. The requirements of ‘knowledge’ and “*reason to believe*” must be deduced from the various facts and circumstances of each case.

24.5.5. Concluding its observations in *Arvind Kejriwal*, the Supreme Court held that “*reason to believe*” must be distinguished from ‘mere grave suspicion’. “*It refers to the reason for the formation of belief which must have rational connection with or an element bearing on formation of belief.*” The reason must not be extraneous to the provision’s purpose. The Court further held that “*reason to believe*” should be furnished to the arrestee at the time of arrest to enable them to challenge the arrest. It opined that any State action prejudicing personal liberty is subject to judicial review. The Court concluded that doubts arise only when the reasons recorded by the authority are unclear or ambiguous, thereby necessitating deeper scrutiny to determine the validity of the “*reason to believe.*”

24.6. In **Rashmi Metaliks Ltd. v. Enforcement Directorate & Ors.**, WPA No. 17454/2022 : D.D.10.08.2022, the High Court of Calcutta addressed the necessity of providing adequate reasons for freezing accounts under



Section 17(1-A) of the PMLA. It further observed that an order merely stating that the property was frozen for investigation purposes and that it was not practicable to seize the same was insufficient. The Court stayed the order and emphasized, *“search and seizure under Section 17(1) must satisfy the defining characteristics of money laundering, proceeds of crime, and their respective procedural requirements as stipulated under the PMLA. The power to enter and search any premises or to seize records or property must be predicated upon satisfaction of all requirements under Section 17(1), supported by a particularized statement in the written ‘reasons to believe’ by the authorized officer. Only upon fulfillment of these conditions, along with those in Sections 2(1)(u) and 3, can the power to search and seize be lawfully exercised”*.

24.6.1. The Court further held that the authorized officer must come to an informed conclusion that:

i.. The exact location of proceeds of crime or documents relating to money laundering cannot be ascertained, thereby, necessitating entry and search of premises based on a reasonable belief supported by material in possession; and

ii. There is apprehension of resistance from the person whose premises are to be entered and searched.



24.6.2. Additionally, the Court observed that *“a person reading the order must be able to discern the connecting link between the reasons provided and the action taken”*. The statutory requirements under Section 17(1), along with the definition of the offence of money laundering under Section 3, demand that *“properly graded reasons must be explicitly stated in the order to justify actions under Sections 17(1) and 17(1-A)”*.

24.7. In **M/s. Prakash Industries Ltd. v. Union of India, WP(C) 13361/2018 : DD 24.01.2023**, the High Court of Delhi examined the powers of the Enforcement Directorate (ED) to provisionally attach property under Section 5 of the PMLA, even in the absence of proceedings related to a predicate (scheduled) offence initiated by the competent agency. The Court also addressed whether such attachment could be based solely on the opinion that material gathered during an investigation evidences the commission of a predicate offence.

24.7.1 Relying on the ratio in *Vijay Madanlal*, the Court held that the authorities under the PMLA cannot initiate action against a person for money laundering based on mere assumptions regarding the commission of a scheduled offence. It concluded that any action under Section 5 of the PMLA must be premised on the competent authority having



“*reason to believe*” that a person possesses proceeds of crime. The Court further clarified that property cannot be recognized as proceeds of crime unless preceded by criminal activity related to a scheduled offence.

24.8. In **Pavana Dibbur v. Enforcement Directorate, (2023) 15 SCC 91**, the Supreme Court held that a plain reading of Section 3 of the PMLA establishes that an offence under Section 3 can only arise after the commission of a scheduled offence. A person unconnected with the scheduled offence may, however, be held liable under Section 3 if they assist the accused in concealing the proceeds of crime arising from the scheduled offence. Thus, it is not necessary for a person charged under Section 3 of the PMLA to also be named as an accused in the scheduled offence.

24.8.1. The Court further observed that, if the prosecution for the scheduled offence results in acquittal, discharge, or quashing against all accused, the scheduled offence ceases to exist, and all proceedings under the PMLA must also come to an end, as the foundation—proceeds of crime—would no longer exist. However, where a person unconnected with the scheduled offence provides assistance in concealing or utilizing the proceeds of crime after the completion of the scheduled offence, such a person can still be prosecuted under Section 3 of the PMLA, provided the



scheduled offence remains established. The Court concluded that it is not a legal requirement for a person accused under Section 3 of the PMLA to also be an accused in the scheduled offence.

24.9. In **Manish Sisodia v. CBI, 2023 SCC OnLine 1393**, the Supreme Court, while emphasizing the need for specificity in allegations against an accused in cases of money laundering, rejected the contention of the Directorate of Enforcement (DoE) that the generation of proceeds of crime alone constitutes possession or use of such proceeds. The Court held that possession of proceeds of crime is established only when the accused has dominion over such proceeds coupled with the intent (animus) to exercise control. The Court further observed that the accused's involvement may be direct or indirect in cases where charges relate to the use, concealment, or acquisition of proceeds of crime.

24.10. In **Parvez Ahmed v. Directorate of Enforcement, Bail Application No. 1859/2024 : D.D 04.12.2024 and connected matters**, the High Court of Delhi dealt with allegations that the petitioners had collected funds and deposited them into the account of a banned organization. The Court opined that the petitioners could not be attributed any role in the generation of the alleged proceeds of crime,



nor could they be shown to have “dominion or control” over such proceeds.

25. Similarly, in the present case, the alleged predicate offence pertains to the illegal allotment of sites during the petitioner’s tenure as the Commissioner of MUDA. However, there is no evidence to demonstrate that any consideration passed in relation to the conveyance or relinquishment of such sites was received by the petitioner. Consequently, the petitioner cannot be attributed any role in possessing, concealing, or using the proceeds of crime to constitute an offence under Section 3 of the PMLA, 2002.

26. Furthermore, mere possession of a site that was allegedly illegally allotted to an accused in connection with a scheduled offence does not, by itself, constitute an offence under the Prevention of Money Laundering Act, 2002 (PMLA), unless the essential ingredients of the offence as defined under Section 3 of the Act are satisfied.

27. In light of the above precedents, it can be concluded that the existence of “*reason to believe*,” as required under the Prevention of Money Laundering Act, 2002 (PMLA), mandates the presence of sufficient cause to indicate the commission of the offence of money laundering. Additionally, it necessitates a corresponding justification for the seizure of any records or proceeds of crime discovered



during the search. Such a requirement ensures that the said property is not dissipated, layered, or integrated in a manner that renders it seemingly legitimate.

28. To satisfy this threshold, the authorized officer must demonstrate that they arrived at an informed and objective conclusion, based on credible material in their possession, that the proceeds of crime or documents related to money laundering are likely to be located at the premises sought to be searched. This procedural safeguard upholds the principles of fairness and legality, ensuring that the exercise of power under Section 17 of the PMLA is neither arbitrary nor speculative.

29. A review of the recorded "*reason to believe*" must show that the material available with the Director is sufficient to support the conclusion reached. These conclusions must be based on reasonable evidence and logical reasoning, not merely on suspicion.

30. For possession of proceeds of crime, the "*reason to believe*" must specifically show that the person being searched had control over and intent to use or manage the proceeds of crime. Simply holding the proceeds by chance or accident does not mean the person was involved in generating or hiding them as part of money laundering. There must be clear evidence of control or intent over the property to meet



the requirements of the Prevention of Money Laundering Act, 2002. This ensures the law is applied fairly and prevents arbitrary actions.

31. The learned ASG contends that where the criminal activity in the predicate offence pertains to 'illegal allotment of 14 sites' by MUDA, during the tenure of the petitioner as its Commissioner, the said sites/properties, as such, satisfy the definition of proceeds of crime under Section 2(u) of PMLA, 2002. Therefore, where the allotted sites are the proceeds, the process of allotment, presided over by the Commissioner, constitutes 'assisting' a process or activity connected with the proceeds of crime, and hence, constitutes a reasonable cause for the purposes of conduct of search and seizure under Section 17 of the Act. The learned ASG clarifies that the petitioner, at this stage of investigation, is not an accused and that the impugned search was conducted on the basis of the reasonable belief that the petitioner, as the former Commissioner of MUDA, may be in possession of the proceeds of crime or any records related money laundering.

32. Section 17(1) of PMLA, 2002 mandates the formation of a reason to believe, on the basis of the information in possession of the Director, prior to the conduct of search and seizure. Sub-section (2) thereof prescribes that upon completion of search, a copy of reason(s) to believe, as



recorded in writing, is to be furnished along with the material in possession in a sealed envelope, so as to prevent any instance of tampering with the said reasons and to ensure the fairness of the procedure including accountability of the authority.

33. A perusal of the above furnished reasons adduced by the learned ASG in the sealed cover, indicates no specific allegation against the petitioner, except that of improper allotment of sites in favour of Smt B.M Parvathi, and that the petitioner is close to realtors. The reasons recorded do not in any manner, whatsoever, indicate the involvement of the petitioner in any act constituting money laundering or to be in possession of proceeds of crime involved in money-laundering, or to be in possession of any records or property related to money laundering or crime, respectively. The reasons do not contain any specific allegation/ remark against the petitioner having suspected to either received illegal gratification as against the allotment of sites, or having placed or layered any proceeds of crime, or having knowingly assisted in the same, much less any evidence to substantiate the suspicion.

34. It is now well settled that reason to believe must exist on the basis of evidence regarding the existence of certain facts. In the instant case, no such material as was in



possession at the time of search, has been furnished to this Court to probablize the purported involvement of the petitioner. In absence of the same, any conclusion arrived at necessitating the search does not satisfy the threshold of “*reason to believe*”, as envisaged under the PMLA, and is therefore, no more than a mere suspicion of involvement in the offence under the Act. Thus, this Court is of the opinion that the impugned search and seizure conducted at the residence of the petitioner was unwarranted and based on unfounded suspicion, and is therefore, an abuse of process of law.

ISSUE NO. 3

35. The petitioner herein further challenges the repeated issuance of summons under Section 50 of the PMLA, arguing that these summons are vague because they do not specify whether the petitioner is being treated as an accused or a witness. This, according to the petitioner, violates the constitutional protection against self-incrimination under Article 20(3) of the Constitution.

36. Section 50 of PMLA deals with *Powers of authorities regarding summons, production of documents and to give evidence, etc.* and the relevant portions thereof, reads thus –



“Section 50. - ...

*(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 (45 of 1860).”

(Emphasis supplied)

37. In the case of **Vijay Madanlal (supra)**, the Hon’ble Supreme Court clarified that the process under Section 50 of the PMLA, which involves summoning a person whose presence is needed for gathering evidence or records, is part of an inquiry into the proceeds of crime, and not an investigation for prosecution under the Act. There is no formal accusation brought against the summoned individual at this stage, to warrant invoking the constitutional guarantee under Article 20(3).



38. In the case of **Abhishek Banerjee v. Directorate of Enforcement (2024) INSC 668**, the Supreme Court dealt with a challenge to the issuance of summons and reaffirmed the ratio enunciated in the case of *Vijay Madanlal* and held that summons can be issued even to witnesses during the inquiry. It further stated that the procedure under the Act and its rules require the officer issuing the summons to follow Rule 11 of the PMLA Rules, 2005 which mandates the issuance of summons in Form V. The summons must include details such as the name, designation, and address of the summoning officer.

39. The Supreme Court in the case of **Mahabir Prasad Rungta v. Directorate of Enforcement, in SLP (Crl) No. 12353/2024**, also followed the *Vijay Madanlal* case and stated that money laundering charges under the PMLA cannot be concluded until the trial for the predicate offence is completed.

40. In **Sudarshan Ramesh v. Union of India (2023) SCC OnLine Kar 71**, a coordinate Bench of this Court dealt with a case, where the petitioner was repeatedly summoned in connection with an investigation involving his brother, who was implicated in a scheduled offence under the PMLA. The Court noted that despite the petitioner cooperating, nothing incriminating had been found, and he had been summoned



without any reasonable grounds other than his family connection. The Court held that the principle of probable cause or reasonable grounds is fundamental to the criminal justice system, and that a person cannot be repeatedly summoned without probable cause for convenience of the prosecution.

41. In response, the learned Additional Solicitor General of India, contended that Section 50 of the Act empowered the authorized officers to summon any person necessary to give necessary evidence or produce any record. In support of the same, the learned ASG drew the attention of the Court to various precedents, including the case of **Director General of Income Tax (Investigation) v. Spacewood Furnishers Pvt. Ltd. (2015) 12 SCC 179**, wherein the Hon'ble Supreme Court stated that while the reasons for search and seizure conducted under Income Tax Act, 1961 must be recorded, they do not need to be communicated to the person at that time. The Court also emphasized that judicial review cannot question the adequacy of the reasons for search, but only their relevance, and that any review of the sufficiency of the reasons or the authenticity of the information is not permissible. Therefore, the ASG argued that this Court cannot review the adequacy of the reasons for the search conducted under Section 17 and the issuance of summons under Section 50 of the PMLA.



42. In the case of **Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Broker Pvt. Ltd., (2008) 14 SCC 208**, the Hon'ble Apex Court opined that the phrase "*reason to believe*" in Section 147 of the Income Tax Act, 1961 means a cause or justification for the purpose of assessing or reassessing income chargeable to tax, if income for any assessment year had escaped assessment. The Court further held that this expression does not require the assessing officer to have finally ascertained the facts with legal evidence or conclusion. It was emphasized that the assessing officer must act fairly towards the taxpayer while administering the statute.

43. The learned ASG also referred to the case of **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. (2022) SCC OnLine SC 1929**, where the Supreme Court observed that the provisions of the PMLA, 2002 aim not only to investigate money laundering but also to prevent money laundering and confiscate any property related to money laundering. The Court noted that the trifold objectives of the Act make it distinct from the process of investigating a scheduled offence. The Court further held that the authority conducting the search under Section 17 of the Act must forward a copy of the recorded reasons and material in its possession to the adjudicating authority in a sealed envelope immediately after the search and seizure. This procedure



ensures that the contents are not tampered with, thereby guaranteeing procedural fairness and accountability. The Apex Court also noted that Section 62 of the Act provides punishment for officials conducting vexatious searches.

43.1. Relying on the above, in response to the allegation that the impugned search was arbitrary, the learned ASG argued that the PMLA has in-built safeguards against arbitrariness and misuse of power, and therefore, this Court should not be compelled to review the search and issuance of summons at this stage.

44. In the case of **Kirit Shrimankar v. Union of India & Ors., WP (Crl.) No. 109/2013, DD 20.11.2014, and connected matters**, the Hon'ble Supreme Court observed in a challenge to the issuance of summons under Section 108 of the Customs Act, 1962 or Section 14 of the Central Excise Act, that seeking extraordinary constitutional relief under Article 32 of the Constitution was premature, where the same was sought on the grounds that petitioner had alleged that officers conducting a search at the residence of his ex-wife had threatened arrest unless the petitioner complied with their demands. The Court held that the petitioner should have pursued the remedy under law only when any positive action was taken to his prejudice.



44.1. Therefore, the learned ASG, relying on the above, argued that the petitioner herein cannot seek a similar relief under Article 226 of the Constitution, as no action prejudicial to the petitioner has yet been taken. The summons issued under Section 50 of the PMLA were lawful and aimed at gathering evidence and records for the investigation under the Act. Therefore, the petition should be dismissed as premature.

45. The High Court of Kerala in **C M Raveendran v. Union of India (2020) SCC OnLine Ker 7335** reaffirmed the above ratio, stating that no cause of action arises merely because a person is called upon to state the truth or make a statement and produce documents. The Court further held that any apprehension of being coerced into giving a statement based on repeated issuance of summons is not a valid ground to seek constitutional relief under Article 226.

46. In the case of **Union of India & Anr. v. Kunisetty Satyanarayana (2006) 12 SCC 28**, the Hon'ble Supreme Court dismissed a challenge against the framing of charges in a disciplinary action initiated by the postal department against the petitioner, who was accused of submitting a forged 'scheduled tribe' caste certificate. The Court observed that a writ petition does not lie against a charge-sheet or show-cause notice, as it does not give rise to a cause of action. The Court



stated that a writ petition can only be filed when a final order, affecting the rights of the party, is passed.

47. In **Virbhadra Singh & Anr. v. Enforcement Directorate & Anr. (2017) SCC OnLine Del 8930**, where the summons issued under Section 50 of the PMLA were challenged, and one of the petitioners therein claimed to have been illegally detained and tortured into making false statements, the High Court of Delhi ruled that enforcement officers have the authority to summon and examine any person for investigative purposes. The Court stated that a person summoned under Section 50 is not necessarily an accused at that time; they may become an accused later if arrested or prosecuted. It further held that no one can avoid responding to a summons simply because of the apprehension that they might be prosecuted in the future.

48. In the case of **Raghav Bahl v. Enforcement Directorate (WP (Crl.) No.2392/2021)**, the Delhi High Court referred to the above case and also to case *Kirit Shrimankar (supra)*. It concluded that there was no violation of the petitioner's fundamental or legal rights that would warrant intervention by the writ court at the summons stage.

49. In the case of **State of Gujarat v. Choodamani Parmeshwaran Iyer, (2023) SCC OnLine SC 1043**, the Hon'ble Supreme Court dealt with a challenge to summons



under Section 145 of the Central Excise Act and Section 69 of the Goods and Services Tax Act. The petitioners argued that they were summoned due to suspected tax evasion and apprehended arrest. The Court held that those summoned must appear before the authorities for questioning and that the High Court's writ jurisdiction cannot be invoked at the summons stage to seek anticipatory bail.

50. In **Directorate of Enforcement v. State of Tamil Nadu (SLP (Cri.) No.1959-1963/2024)**, the Supreme Court clarified that under Section 50 of PMLA, authorized officers have the power to summon anyone whose attendance is necessary to give evidence or produce records for investigation. Those summoned are required to comply with the same.

51. In **Talib Hassan Darvesh v. Directorate of Enforcement, (2024) SCC OnLine Del 1811**, the Delhi High Court rejected a challenge to summons issued by the Enforcement Directorate (ED) on the grounds that the summons were vague. The petitioner had argued that the summons did not specify their status as a witness or suspect and did not mention the documents required. The Court held that the ED could issue summons without specifying the exact documents, as they are authorized to investigate and issue summons under PMLA. It further ruled that protection from



summons cannot be granted unless the petitioner is absolved in the predicate offence through discharge, acquittal, or quashing, in line with the statutory rigours of Section 45 of PMLA.

52. In **Moloy Ghatak v. Directorate of Enforcement (2023) SCC OnLine 7443**, the Delhi High Court addressed a challenge to repeated summons issued to a petitioner who was not yet an accused in the predicate offence. The Court found the petitioner's request to quash the Enforcement Case Information Report (ECIR) prematurely, because the ECIR was not provided for review, and the petitioner himself was uncertain about his status. The ED confirmed that the petitioner was not an accused at the time of the summons and had not been summoned for prosecution purposes.

53. In the present case, summons under Section 50 were issued following the 'illegal' search and seizure conducted under Section 17 of the PMLA. However, as established in the preceding paragraphs, the reasons recorded for the search do not satisfy the essential elements required to establish the commission of an offence under Section 3 of the PMLA. As a result, the search and seizure lacked proper authority for there being no proper reason to warrant such a search. The respondent-Agency can summon any person to record a statement or produce a document or



record only in cases where there is credible evidence that an offence under Section 3 of PMLA has been committed, and in such circumstances, the person who has been summoned cannot raise any grievance against the issuance of summons.

54. Thus, in light of the circumstances of this case, where no prima facie case has been established showing that an offence has been committed under the PMLA, and no incriminating material has been elicited at the time of search and seizure, the issuance of summons to the petitioner lacks legal authority. The petitioners cannot be compelled to appear and record their statements or produce documents, as such actions would unjustly infringe upon their personal right to liberty.

ISSUE NO. 4

55. The learned Senior Counsel appearing for the petitioner also contended that attachment of property under Section 5 of PMLA, which is intended to prevent the dissipation of the proceeds of the crime, must necessarily precede the conduct of search and seizure under Section 17 PMLA. The learned Senior Counsel contended that the same is forthcoming from the placement of the sections in the enactment. However, the same cannot be sustained as Section of the Act empowering the Director of the respondent-ED to conduct the search and seizure is merely an



investigative tool to gather evidence or seize the property itself.

56. Section 5 of the PMLA can precede Section 17, if the ED has in its possession sufficient information of the existence of proceeds of crime so as to provisionally attach such property before conducting a search. Furthermore, a perusal of the definition of property contained in Section 2(v) of PMLA indicates that a movable property, such as currency notes or any other property, etc, is subject to attachment under Section 5, provided the Director is satisfied that such property is likely to be concealed, dissipated, or dealt with in such manner so as to frustrate the proceedings of the Act. In all practicality, an attachment of such movable property therefore, cannot be conceived without an incidental search. As such, an attachment under Section 5 cannot be mandated to precede search and seizure under Section 17. Furthermore, it is appropriate that the exercise of investigative tools under the law is left to the prudent exercise of discretion of the investigative agency, to be decided in consideration of the facts and circumstances of each case. Therefore, the submission that attachment must mandatorily precede search cannot be countenanced.

57. Finally, as against the submission of the learned ASG that the instant petition suppresses material facts of the



petitioner and the scope of responsibilities incumbent upon him, in relation to holding of the office of Commissioner of MUDA in the past, it is to be observed that the petitioner is not an accused in the predicate offence and that unless the petitioner were to be informed that the investigation conducted is in relation to the particular predicate offence, and that the impugned search and seizure and the subsequent issuance of summons were in relation to purported role of the petitioner in the illegal allotment of 14 sites to an accused in the predicate offence, it cannot be expected of the petitioner to disclose past fact of having discharged any duties of such nature.

58. It is apposite at this stage to observe that the Enforcement Directorate is a premier investigative agency established for the purpose of preventing the serious offence of money laundering and confiscation of the proceeds of crime, and that it is expected to discharge its duties with fairness. The right to liberty and privacy under Article 21 of the Constitution vests a right against the conduct of arbitrary searches, and therefore, the search conducted on the premises of the petitioner under the garb of investigation, when there is no prima facie evidence to establish the offence under Section 3 is but an abuse of process of law. The Enforcement Directorate cannot give the elements of procedural fairness contained in the PMLA a go-by in the course of its administration. It is pertinent that the right to



liberty and privacy of individuals cannot be trampled upon and that any curtailment of civil liberties is subject to the due process of law.

Accordingly, I order the following:

ORDER

- i. The instant petition is ***allowed***.
- ii. The impugned search and seizure conducted at the residence of the petitioner on 28.10.2024 to 29.10.2024 and the subsequent statement recorded under Section 17(1)(f) of PMLA, 2002 is vitiated on the grounds of absence of '*reason to believe*', and is hereby declared invalid and illegal.
- iii. The statement recorded under Section 17(1)(f) of PMLA, 2002, is hereby ordered to be retracted.
- iv. The impugned summons issued under Section 50 of PMLA, 2002, dated 29.10.2024 and 06.11.2024 and the various statements recorded under Section 50 of the Act are hereby quashed.



- v. Liberty is reserved with the petitioner to initiate action under Section 62 of the PMLA, 2002 against the officer concerned before the appropriate forum, as whether the impugned search and seizure is vexatious or not is matter of trial.

**Sd/-
(HEMANT CHANDANGOUDAR)
JUDGE**

AC
List No.: 19 SI No.: 2