REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1878-1879 OF 2017
(Arising out of SLP (Crl.) No. 6896–6897 of 2017)

Rohit Tandon ...Appellant

:Versus:

The Enforcement Directorate ...Respondent

J U D G M E N T

A.M. Khanwilkar, J.

1. By these appeals the order of the High Court of Delhi at New Delhi dated 5th May, 2017, rejecting the Bail Application No.119 of 2017 and Criminal M.B. No.121 of 2017 has been assailed. The appellant was arrested on 28th December, 2016 in connection with ECIR/18/DZ-II/2016/AD(RV) registered under Sections 3 & 4 of the Prevention of Money-Laundering Act,

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Reason:

2002 (hereinafter referred to as "the Act of 2002"). The said ECIR was registered on 26th December, 2016 as a sequel to FIR No.205/2016 dated 25th December, 2016 in relation to the offences punishable under Sections 420, 406, 409, 468, 471, 188 and 120B of the Indian Penal Code, 1860 ("IPC" for short). The said FIR was registered by the Crime Branch of Delhi Police, New Delhi. The ECIR, however, has been registered at the instance of Assistant Director (PMLA), Directorate of Enforcement, empowered to investigate the offences punishable under the Act of 2002.

2. The appellant first approached the Additional Sessions Judge-02, South East Saket Court, New Delhi for releasing him on bail by way of an application under Section 439 of the Code of Criminal Procedure, 1973 read with Section 45 of the Act of 2002. The said bail application came to be rejected vide judgment dated 7th January, 2017 by the said Court. The appellant thereafter approached the High Court of Delhi at New Delhi by way of Bail Application No.119 of 2017 and an interlocutory application filed therein, being Criminal M.B. No.121 of 2017. The High Court independently considered the

merits of the arguments but eventually rejected the prayer for bail vide impugned judgment dated 5th May, 2017.

3. The ECIR has been registered against Ashish Kumar, Raj Kumar Goel and other unknown persons for offences punishable under Sections 3/4 of the Act of 2002 on the basis of information/material, as evident from the predicate offence registered by P.S. Crime Branch, Delhi against the named accused and unknown accused for offences punishable under Sections 420, 406, 409, 467, 468, 471, 188 and 120B of IPC, being FIR No.205/2016 dated 25th December, 2016. The relevant facts noted in the ECIR read thus:

> *"A. It is reported that during the course of investigation of Case FIR No.242/16 u/s 420, 467,468,471, 120-B IPC, PS C.R. Park, Delhi, it is revealed that Accused Raj Kumar Goel along with associates are engaged into earning profits by routing money into various accounts by using forged documents and thereby receiving commission from the prospective clients who either need money by cheque or in cash. In order to obtain large profits, accused Raj Kumar Goel and few of his associates have opened many Bank Accounts in Kotak Mahindra and ICICI Bank at Naya Bazar, Chandni Chowk, Delhi.*
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> *B. On 08.11.2016, the Government if India announced demonetization of one thousand- (1000) and five hundred (500) rupee notes. On this accused Raj Kumar Goel conspired with the bank manager of Kotak Mahindra Bank, Cannaught Place, namely Ashish Kumar r/o A-701, Bestech Park, Sector 61, Gurugram, Haryana and one Chartered Accountant, name unknown, having mobile number 9711329619 to earn huge profit by converting black money in the form of old currency*

notes into new currency notes. In this conspiracy, the said CA acted as a mediator and arranged prospective clients who intended to convert their black money into legitimate money. For the same, alleged CA offered 2% commission to the other accused persons on all such transactions.

C. The accused were having bank accounts in the Naya Bazar branch of Kotak Mahindra Bank but the CA and Bank Manager Ashish asked accused Raj Kumar to deposit old currency notes in Cannaught Place branch of Kotak Mahindra Bank. It is also revealed that the accused opened bank accounts in the name of Quality Trading Company, Swati Trading Company, Shree Ganesh Enterprises, R.K. International, Mahalxmi Industires, Virgo International and Sapna International on the basis of forged/false documents and deposited approx. Rs.25 Crore after the demonetization. As per the preliminary investigation of the said case it is transpired that accused Raj Kumar Goel, Bank Manager Ashish, CA along with their associates are involved in a deep roted conspiracy and were indulged in converting old currency which were entrusted to bank/Govt officials and were supposed to be delivered to general public/guidelines issued by the Reserve Bank of India/Ministry of Finance and hand thus cheated the public at large. The accused persons have also caused monetary loss to the Govt. of India and thereby Committed offences u/s 420, 406, 409, 467, 468, 471, 188, 120-B IPC."

It is then noted that the offences under Sections 420, 468, 471 and 120B of IPC are scheduled offences under the Act of 2002 and that from the available facts, a reasonable inference is drawn that the named accused and unknown accused have made illegal earnings arising out of the said criminal conspiracy which might have undergone the process of laundering and thereby an offence under Section 3 of the Act of 2002 was made out. It is noted that prima facie case for

commission of offence under Section 3 punishable under Section 4 of the Act of 2002 was made out and accordingly the case is being registered and taken up for investigation under the Act of 2002 and rules framed thereunder.

4. The learned Sessions Judge while considering the bail application adverted to the relevant materials including the CDR analysis of Mobile number of Ashish Kumar, Branch Manager, Kotak Mahindra Bank, K.G. Marg Branch, Kamal Jain, CA of Rohit Tandon (hereinafter referred to as "appellant"), Dinesh Bhola, Raj Kumar Goel; the statements of Kamal Jain, Dinesh Bhola and Ashish Kumar, recorded under Section 50 of the Act of 2002; and analysis of bank statements of stated companies. All these reveal that Ashish Kumar conspired with other persons to get deposited Rs.38.53 Crore in cash of demonetized currency into bank accounts of companies and got demand drafts issued in fictitious names with intention of getting them cancelled and thereby converting the demonetized currency into monetized currency on commission basis. Further, the investigation also revealed that the entire cash was collected on the instructions of the

appellant herein, by Ashish Kumar, Raj Kumar Goel and others through Dinesh Bhola, an employee of the appellant. According to the prosecution, all the associates of the appellant acted on instructions of the appellant for getting issued the demand drafts against cash deposit with the help of Ashish Kumar, Branch Manager of Kotak Mahindra Bank and others, to the tune of Rs.34.93 Crore from Kotak Mahindra Bank, K.G. Marg Branch. It was also noted that the demand drafts of Rs.3.60 Crore were issued in fictitious names on the instructions of Bank Manager Ashish Kumar in lieu of commission received by him in old cash currency. The demand drafts amounting to Rs.38 Crore were issued in favour of Dinesh Kumar and Sunil Kumar which were recovered from the custody of Kamal Jain who had kept the same on the instructions of the appellant. Out of the said amount, the demand drafts of other banks, apart from Kotak Mahindra Bank Limited, were also recovered. The prosecution suspected that there could be other dubious transactions made by the appellant in other banks and that Ashish Kumar, Bank Manager and others were acting on the instructions of the appellant for executing the crime.

5. The Sessions Court rejected the argument of the appellant that the investigation of the offence registered against the appellant and others under Section 3/4 of the Act of 2002 being a sequel to the FIR registered by the Crime Branch of Delhi Police, it cannot be investigated by the Enforcement Directorate. For, the Enforcement Directorate was not concerned with the outcome of the investigation of the predicate offence registered by the Delhi Police. It thus opined that the matter on hand must be examined only in reference to the registration of ECIR by the Enforcement Directorate. The fact that the investigation in FIR registered by the Crime Branch of Delhi Police, bearing FIR No.205/2016, had not commenced will also be of no avail to the appellant. The Sessions Court also found that as per Section 19 of the Act of 2002, the only condition to be satisfied for arrest of a person is the reasonable belief of the authority gathered on the basis of material in its possession. Further, in the present case, the accused was arrested by the competent authority on the basis of material in his possession giving rise to a reasonable belief about the complicity of the accused in the commission of

offence punishable under the Act of 2002. As such the arrest of the appellant under the Act of 2002 cannot be termed as illegal. After having dealt with those contentions, the Sessions Court took note of the material pressed into service by the prosecution and analysed the same in the following words:

> *"21. Pursuant to registration of FIR No.205/2016 under section 420, 406, 409, 468, 471, 188, 120-B IPC by Crime Branch, the matter was taken up by ED and ECIR No.18/16 was opened for investigation. Transaction statements of accounts in Kotak Mahindra Bank in FIR No.205/16 in respect of companies i.e. Delhi Training Company, Kwality Tading Company, Mahalaxmi Industries, R.K. International, Sapna Trading Company, Shree Ganesh Enterprises, Swastik Trading Company arid Virgo International were sought and scrutinized, Huge cash deposits in the said accounts were identified during November, 2016, post demonetization announcement it was found that demand drafts were issued in fictitious names like Dinesh Kumar, Sunil Kumar, Abhilasha Dubey, Madan Kumar, Madan Saini, Satya Narain Dagdi and Seema Bai.*
>
> *22.* ***Statement of Ashish Kumar, accused named in FIR No.205/16, Branch Manager, Kotak Mahindra Bank, K.G. Marg branch was recorded under section 50 of PMLA which revealed that Kamal Jain, CA of accused Rohit Tandon contacted him to get the demonetized currency on behalf of accused/applicant, converted into monetized currency on commission basis.*** *The commission of Ashish Kumar was decided @ 35%, who in turn contacted one Yogesh Mittal and Rajesh Kumar Goel, accused in FIR No.205/16 to carry out the criminal design of getting the demonetized cash converted into monetized 7 valuable form. Demonetized currency was deposited in different accounts of companies pertaining to Raj Kumar Goel besides others through Raj Kumar Goel with the help of Ashish Kumar in different bank accounts of Kotak Mahindra Bank and DDs were issued in fictitious names. The illegal conversion of demonetized currency, getting the same deposited and issuance of demand drafts is corroborated through CDR*

analysis of relevant persons for the relevant period. Dinesh Bhola and Kamal Jain, in their statements recorded under section 50 of PMLA have also confirmed and reiterated the facts as stated by Ashish Kumar, the Branch Manager. ***The statements of persons recorded under section 50 of PMLA, which has evidentiary value under section 50(4) of PMLA, have confirmed that the old demonetized currency pertains to accused Rohit Tandon and the conspiracy was executed on his instructions.***

23. Lastly, it was submitted by learned senior counsel for accused that accused fully cooperated with the investigating agency and there was no need to arrest him in this case. He further submitted that the actions of Accused persons as mentioned in the FIR attract implications and as such the correct authority to investigate into the same is the Income Tax Department and not the ED. Per contra, learned Special Prosecutor for ED submitted that accused only cooperated in the investigation in ECIR No.14/16 and not in ECIR No. 18/16. ***He further submitted that as sufficient material surfaced on record against the present accused and he did not cooperate in the investigation in the present case, therefore, accused Rohit Tandon was arrested in this case.*** *He submitted that he does not dispute the jurisdiction of Income Tax Department so far as other aspects of the matter are concerned.*

24. As per section 45 of PMLA, while considering grant of bail to accused, the court has to satisfy that:-

i. There are reasonable grounds for believing that accused is not guilty of such offence and that

ii. He is not likely to commit any offence, while on bail.

25. ***In the present case, accused has failed to satisfy this court that he is not guilty of alleged offence punishable under section 3 of PMLA. He has not been able to discharge the burden as contemplated under section 24 of the Act.***

26. Accused is alleged to have been found involved in a white collar crime. The alleged offence was committed by accused in conspiracy with other co-accused persons in a well planned and thoughtful manner. It has been observed in a catena of decisions by Hon'ble Superior Courts that economic

> *offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public, funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*
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> (emphasis supplied)

6. Having formed that opinion and noticing that the investigation was at the initial and crucial stage and that the source of funds of proceeds of crime was yet to be ascertained till then and that the recovery of balance proceeds of crime was in the process, the question of enlarging the appellant on bail does not arise, more so, when there was every possibility that he may tamper with the evidence and influence the material prosecution witnesses. Accordingly, the bail application was rejected by the Sessions Court vide judgment and order dated 7th January, 2017.

7. Aggrieved, the appellant approached the High Court of Delhi by way of bail application under Section 439 of the Cr.P.C. read with Section 45 of the Act of 2002. The High Court independently analysed all the contentions raised by the appellant and after adverting to the relevant materials, rejected

the application for grant of bail preferred by the appellant. The High Court found that the Act of 2002 does not prescribe that the Enforcement Directorate is debarred from conducting investigation in relation to the offences under Sections 3 & 4 of the Act of 2002 unless the Crime Branch concludes its investigation in relation to FIR No.205/2016 or was to file charge-sheet for commission of scheduled offence. Further, the proceedings under the Act of 2002 are distinct from the proceedings relating to scheduled offence and both the investigations can continue independently. The High Court then noted that Section 44 of the Act of 2002 is an enabling provision, to have a joint trial in such a situation to avoid conflicting and multiple opinions of the Courts. But proceeded to hold that the said possibility would arise only when the charge-sheet is filed after completion of investigation in relation to FIR No.205/2016 and the case is committed to the concerned Court. The High Court held that Section 44 of the Act of 2002 does not envisage a joint investigation but is a provision stipulating that the trial of offence under Section 3/4 of the Act of 2002 and any scheduled offence connected to the offence under that section may be tried only by the Special

Court constituted for the area in which the offence has been committed. While considering the merits of the allegations against the appellant, in particular, the materials on record, the High Court analysed the same in the following words:

> *"14. In FIR No.205/2016 allegations are that Raj Kumar Goel; Ashish Kumar, Bank Manager, Kotak Mahindra Bank, K.G.Marg Branch and others conspired for illegal conversion of demonetized currency notes into monetized currency by way of depositing cash in various accounts of the firms and subsequently getting Demand Drafts issued in fictitious names. It is further alleged in the said FIR that accused therein opened bank accounts in the name of 'Group of Companies' in Kotak Mahindra Bank. In ECIR No.18, transactions statements of accounts were collected pertaining to these 'Group of Companies' from Kotak Mahindra Bank and it emerged that from 15.11.2016 to 19.11.2016, there was huge cash deposit to the tune of `31.75 crores by Raj Kumar Goel and his associates. It was also found that the Demand Drafts amounting to `38 crores were issued in fictitious names during that period. It cannot be said at this stage that offences referred in FIR No.205/2016 and the ECIR No.18 have no nexus.*
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> *15. Prosecution under Section 45 of PMLA for commission of offence under Section 3 punishable under Section 4 of PMLA has already been initiated by ED in the Special Court. By an order dated 25.02.2017, learned Addl. Sessions Judge / Special Court (PMLA) has taken cognizance against Rohit Tandon (present petitioner), Ashish Kumar and Raj Kumar Goel. Dinesh Bhola and Kamal Jain have also been summoned to face trial under Section 4 of PMLA. Raj Kumar Goel and Ashish Kumar continue to be in custody in the said proceedings.*
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> *16. On perusal of the complaint lodged under Section 45 PMLA, it reveals that serious and grave allegations have been leveled against the petitioner and others. The allegations are categorical and specific; definite role has been assigned to each accused. It is alleged that during the period from 15.11.2016 to 19.11.2016, huge cash to the tune of `31.75 crores was deposited in eight bank accounts in Kotak*

Mahindra Bank in the accounts of the 'Group of Companies'. It gives details of Demand Drafts issued during 15.11.2016 to 19.11.2016 from eight bank accounts in the name of Sunil Kumar, Dinesh Kumar, Abhilasha Dubey, Madan Kumar, Madan Saini, Satya Narain Dagdi and Seema Bai on various dates. Most of the Demand Drafts issued have since been recovered. Its detail finds mention in Table No.2 given in the complaint.

17. During arguments, specific query was raised and the learned Senior Counsel for the petitioner was asked as to, to whom the money deposited in the various accounts belonged. ***Learned Senior Counsel for the petitioner was fair enough to admit that the whole money belonged to the petitioner. When enquired as to from which 'source', huge cash was procured, there was no clear response to it. Again, learned Senior Counsel for the petitioner was asked as to how the cash belonging to the petitioner happened to be deposited in various accounts of the 'Group of Companies' which were not owned by the petitioner and what was its purpose. It was further enquired as to why the Demand Drafts were got issued in the names of the persons referred above and what was its specific purpose. Learned Senior Counsel for the petitioner avoided to answer these queries stating that the defence of the petitioner could not be disclosed at this juncture to impact his case during trial. Apparently, no plausible explanation has been offered as to what forced the petitioner to deposit the old currency to the tune of `31.75 crores in eight accounts of the different 'Group of Companies' in Kotak Mahindra Bank during the short period from 15.11.2016 to 19.11.2016. There was no explanation as to why the Demand Drafts for the said amount were got issued in the name of sham people whose identity was not known.*** *The purpose of all this exercise seemingly was to deposit the cash (old currency) first, get the Demand Drafts issued in fictitious names and obtain monetized currency by cancelling them subsequently.* ***The petitioner also did not place on record any document whatsoever to show as to from which legal source, the cash was procured to deposit in the bank accounts of strangers. I find no substance in the petitioner's plea that petitioner's only liability was to pay income tax on the***

> ***unaccounted money / income.*** *In my considered view, mere payment of tax on the unaccounted money from any 'source' whatever would not convert it into 'legal' money. Needless to say, huge deposit was a sinister attempt / strategy by the petitioner and others to convert the 'old currency' into new one to frustrate the Demonetization Policy primarily meant to unearth black money.*
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> *18. Allegations against the petitioner are not without substance. The prosecution has recorded statements of the petitioner on various dates and that of Dinesh Bhola, Ashish Kumar (Branch Manager, Kotak Mahindra Bank), Raj Kumar Goel, Kamal Jain (petitioner's Chartered Accountant), Vimal Negi, Jivan Singh and Varun Tandon under Section 50 PMLA on various dates.* ***There statements have evidentiary value under Section 50 PMLA. Prima facie, the version given by them is in consonance with the prosecution case. The prosecution has further relied upon Call Data Records, CCTV footage, Account Trend Analysis.****"*
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> (emphasis supplied)

8. The High Court opined that keeping in mind the rigors of Section 45 of the Act of 2002 for the release of the accused charged under Part A of the Schedule, on bail, coupled with the antecedents of the appellant of being involved in other similar crime registered as FIR No.197/2016, for offence under Section 420, 409, 188, 120B of IPC dated 14th December, 2016 by Crime Branch and ECIR No.14/DZ/II/2016 registered on 16th December, 2016 by Enforcement Directorate for offences under Sections 3/4 of the Act of 2002. Further, during a raid conducted jointly by the Crime Branch and Income Tax

Department on 10th December, 2016 at around 10.00 P.M. at the office premises of the appellant, currency of Rs.13.62 Crore was recovered including new currency in the denomination of Rs.2000/- amounting to Rs.2.62 Crore. In addition, the appellant had surrendered Rs.128 Crore during the raid conducted by the Income Tax Department on 6/8 October, 2016 in his office and residential premises. No reliable and credible documents were forthcoming from the appellant about the source from where he had obtained such a huge quantity of cash. The possibility of the same being proceeds of crime cannot be ruled out. Hence, it noted that the question of granting bail did not arise, taking into consideration the serious allegations against the appellant and other facts including severity of the punishment prescribed by law. Accordingly, the bail application of the appellant came to be rejected. As a consequence, the pending application which was considered along with the bail application was also disposed of by the impugned judgment and order dated 5th May, 2017 passed by the High Court.

9. We have heard Mr. Mukul Rohatgi, learned senior counsel appearing for the appellant and Mr. Tushar Mehta, learned Additional Solicitor General for the Union of India. They have also filed written submissions.

10. Before we analyse the rival submissions, for the completion of record, we must mention that after the impugned judgment, the Crime Branch filed the charge-sheet before the appropriate Court in relation to FIR No.205/2016 on 24th June, 2017. Similarly, the Enforcement Directorate has filed supplementary complaint CC No.700/2017 in relation to ECIR 18/2016, which refers to further material gathered during the investigation, indicating the complicity of the concerned accused in the crime for offence punishable under Section 3 of the Act of 2002. A comprehensive supplementary complaint has been filed before the District and Sessions Judge, Saket, New Delhi (Designated Court under the Prevention of Money-Laundering Act, 2002) on 2nd August, 2017.

11. Before this supplementary complaint was filed, the appellant preferred second bail application in the present case

before the High Court of Delhi at New Delhi, being Bail Application No.1361/2017. This application was filed on 12th July, 2017. Along with the said bail application the appellant filed an application being Criminal M.A. No.1293 of 2017 for directing his interim release in connection with ECIR/DZ/II/2016 on the assertion that his mother was seriously ill and required immediate medical attention because of the injuries suffered by her on 20th June, 2017. The said interim release application was allowed on 10th August, 2017. Notably, the appellant was advised to withdraw the regular (second) Bail Application No.1361/2017. The learned Single Judge of the High Court by order dated 10th August, 2017 acceded to the prayer so made by the appellant. The order passed by the learned Single Judge of the High Court reads thus:

> ***"BAIL APPLN. 1361/2017***
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> *The petitioner has prayed for bail in connection with ECIR/18/DZII/2016/AD registered under Section 3 & 4 of Prevention of Money Laundering Act, 2002.*
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> *Simultaneously an application has been filed seeking interim bail on the ground of illness of the mother of the petitioner who has recently suffered a fracture in the neck.*
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> ***Mr. Mukul Rohatgi, learned Sr. Advocate seeks permission to withdraw the regular bail application on***

the observation of the bench that the earlier bail application was rejected only on 5th of May, 2017. However he presses the interim bail application.

Accordingly the regular bail application is dismissed as withdrawn.

Crl.M.A.No.1293/2017 (application for interim bail)

It has been submitted on behalf of the petitioner that he is the only son of his mother who has suffered a fall and has got a fracture in her neck. The sister of the petitioner is stationed abroad. The petitioner has a son who is of young age. The petitioner has also drawn the attention of this Court to the medical report which indicates that a plaster has been put on the fracture but she has been suffering from acute pain.

It has been further submitted that the charge sheet in the main case has been submitted and that the petitioner has remained in jail for more than seven months by now.

Opposing the aforesaid prayer for grant of interim bail, Mr. Mahajan, learned Sr. Standing Counsel submits that this is a case of serious fiscal impropriety of great magnitude and there is a possibility of the petitioner tampering with evidence if he comes out from the jail even for a short period. No definite reasons, however, have been assigned by Mr.Mahajan, for such a presumption that the petitioner would tamper with the evidence specially when charge sheet in the main case has already been submitted.

Mr.Rohtagi, learned senior counsel has drawn the attention of this Court to the fact that whenever the petitioner was summoned to answer to the Queries, he had visited the office of the ED and in the past, had never tried to evade the process of investigation.

Taking into account the aforesaid facts, specially the period of incarceration of the petitioner, submission of the charge sheet in the main case and the illness of the mother of the petitioner, this Court is inclined to grant interim bail to the petitioner for a period of 3 weeks.

Let the petitioner be released on interim bail for the period of 3 weeks, to be counted from the date of his release,

on his furnishing a bond in the sum of Rs. 25,000/- with two sureties of the like amount to the satisfaction of special court.

However it is made clear that the petitioner shall not tamper with the evidence or commit any act which would be prejudicial to the prosecution side. Should anything of that kind be reported, this Court would consider the desirability of withdrawing/cancelling the interim bail.

The petitioner shall not, unnecessary, seek extension of the interim bail granted to him. It is also specified that the petitioner shall not leave the country under any circumstances whatsoever. Should the petitioner intend to go out of the territorial confines of NCR of Delhi, permission would be required to be taken from the Special Court. The petitioner shall also deposit his passport before the Special court while furnishing his bonds.

Application is disposed of accordingly.

Dasti."

(emphasis supplied)

12. It is relevant to note that the aforementioned order for interim release of the appellant was confirmed by this Court on 12th August, 2017.

13. The appellant was thereafter advised to file the present appeals to assail the judgment and order dated 5th May, 2017 passed by the High Court of Delhi at New Delhi in Bail Application No.119 of 2017 and Criminal M.B. No.121 of 2017. The special leave petitions were filed on 18th August, 2017. During the pendency of these special leave petitions, the

appellant was advised to also file a writ petition under Article 32 of the Constitution of India to challenge the validity of the provisions of the Act of 2002. The same was filed on 23rd August, 2017, being Writ Petition (Civil) No.121 of 2017. The reliefs claimed in the said writ petition read thus:

"**PRAER**

(i) *Issue a writ of mandamus or any other appropriate writ, order or direction declaring that the conditions/limitations contained in Section 45(1) of Prevention of Money Laundering Act, 2002 (Act 15 of 2003) to the extent that it imposes rigors/restrictions in the grant of bail in any offence punishable upto 7 years under the provisions of Prevention of Money Laundering Act, 2002 (Act 15 of 2003) as unreasonable, arbitrary and unconstitutional being violative of the fundamental rights of the Petitioner guaranteed and protected under Articles 14 and 21 of the Constitution of India;*

(ii) *In the alternative to prayer (i) above, issue a writ of mandamus or any other appropriate writ, order or direction reading down the scope and ambit of Section 45(1) of the Prevention of Money Laundering Act, 2002 (Act 15 of 2003), so that the rigors in grant of bail are not applicable in the case of the Petitioner, where the alleged scheduled offences in CC No. 41 of 2017 arising out of charge-sheet No. 1 dated 24.06.2017 filed by the Crime Branch, New Delhi alleging commission of offences under Sections 420/188/109/120B/34 IPC and Section 12 of the Prevention of Corruption Act, 1988 (none of which were under Part A of the Schedule prior to the Prevention of Money Laundering (Amendment) Act, 2012 (Act 2 of 2013) and formed part of Part B of the Schedule;*

(iii) *Issue a writ of mandamus or any other appropriate writ, order or direction declaring the continued incarceration of the Petitioner since 28.12.2016 in*

ECIR/18/DZ-II/2016/AD dated 26.12.2016 under Section 3/4 of the Prevention of Money Laundering Act, 2002 is illegal, unconstitutional and in violation of the fundamental right of the Petitioner guaranteed and protected under Article 21 of the Constitution of India;

(iv) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus declaring that the offences under the Prevention of Money Laundering Act, 2002 (Act 15 of 2003) pursuant to the Prevention of Money Laundering (Amendment) Act, 2005 (Act 20 of 2005) which came into force w.e.f. 01.07.2005 are non-cognizable offences and therefore, it is mandatory to comply with the provisions of Sections 155, 177(1) and 172 of the Code of Criminal Procedure, 1973 and declare that the law laid down by the Division Bench of the Hon'ble Delhi High Court in its judgment dated 27.4.2016 (reported in 2016 SCC Online Delhi 2493) and by the Hon'ble Gujarat High Court in Rakesh Manekchand Kothari vs. Union of India [Special Criminal Application (Habeas Corpus) No. 4247/2015] decided on 03.08.2015 holding that the offences under Section 3 of the Prevention of Money Laudnering Act, 2002 punishable under Section 4 thereof is a non-cognizable offence is good law and the contrary view taken by the Hon'ble Bombay High Court in its judgment dated 14.12.2016 in Chhagan Chandrakant Bhujbal vs. Union of India & Ors. is bad in law;

(v) lay down guidelines for compliance by all Courts for grant of bail in proceedings arising out of and concerning the Prevention of Money Laundering Act, 2002 by expounding the scope of Section 439 of the Code of Criminal Procedure, 1973;

(vi) Issue rule nisi in terms of Prayers (i) to (v) above; and

(vii) And/or pass any other or further orders which Your Lordships may deem fit and proper in the interest of justice.

14. The aforementioned writ petition was listed together with the appeals on 30th October, 2017. During oral arguments,

however, the counsel appearing for the appellant, in all fairness, stated that the grounds urged in the said writ petition need not be considered at this stage and that the appeals preferred against the impugned judgment and order dated 5th May, 2017 be examined on the basis of the prevailing statutory provisions, including the rigors of Section 45 of the Act of 2002. In other words, the challenge to the impugned judgment will have to be considered as per the prevailing provisions and not with reference to the challenge regarding the validity thereof.

15. Reverting to the first contention of the appellant, that the reasons which weighed with the learned Single Judge of the High Court while directing interim release of the appellant, would apply *proprio vigore* for considering the regular bail. In that, the learned Single Judge vide order dated 10th August, 2017 noted the following circumstances:

i) Petitioner never tried to evade the investigation;
ii) The period of incarceration (7 ½ months);
iii) Submission of charge-sheet in the main case on 24/6/17;
iv) Illness of the mother of the Petitioner;

v) No definite reasons assigned by the Counsel for the Respondent to substantiate allegation that Petitioner would tamper with evidence especially when charge-sheet in the main case has been submitted.

16. The argument though attractive at the first blush deserves to be rejected. In our opinion, the order dated 10th August, 2017 passed by the High Court directing interim release of the appellant was primarily on account of the illness of his mother. No more and no less. The other observations in the said order will have no bearing on the merits of the controversy and required to be reckoned whilst considering the prayer for grant of regular bail. For that, the appellant must succeed in overcoming the threshold of the rigors of Section 45 of the Act of 2002. Indubitably, the appellant having withdrawn the regular (second) bail application, the consideration of prayer for grant of interim release could not have been taken forward. Besides, in the backdrop of the opinion recorded by the Co-ordinate Bench of the High Court (in its decision dated 5th May, 2017) whilst considering the application for grant of regular bail, which was after filing of the initial complaint CC

No.700/2017 (on 23rd February, 2017), was binding until reversed or a different view could be taken because of changed circumstances. Suffice it to observe that indulgence shown to the appellant in terms of order dated 10th August, 2017 will be of no avail. In that, the facts such as the appellant never tried to evade the investigation or that he has suffered incarceration for over 7½ months or that the charge-sheet has been filed in the predicate offence registered under FIR No.205/2016 or the factum of illness of the mother of the appellant or the observation that no definite reason has been assigned by the respondents for substantiating the allegation that the appellant would tamper with the evidence, may become relevant only if the threshold stipulation envisaged under Section 45 of the Act of 2002 was to be fulfilled. The said provision reads thus:

> *"45.* ***Offences to be cognizable and non-bailable.****—(1)* ***Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-***
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and*

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

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

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

(i) the Director; or

(ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

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

(2) ***The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.****"*

(emphasis supplied)

The sweep of Section 45 of the Act of 2002 is no more *res intergra*. In a recent decision of this Court in the case of ***Gautam Kundu Vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of***

India,[1] this Court has had an occasion to examine it in paragraphs 28-30. It will be useful to advert to paragraphs 28 to 30 of this decision which read thus:

> *"28. Before dealing with the application for bail on merit, it is to be considered whether the provisions of Section 45 of the PMLA are binding on the High Court while considering the application for bail under Section 439 of the Code of Criminal Procedure. There is no doubt that PMLA deals with the offence of money laundering and the Parliament has enacted this law as per commitment of the country to the United Nations General Assembly. PMLA is a special statute enacted by the Parliament for dealing with money-laundering. Section 5 of the Code of Criminal Procedure, 1973 clearly lays down that the provisions of the Code of Criminal Procedure will not affect any special statute or any local law. In other words, the provisions of any special statute will prevail over the general provisions of the Code of Criminal Procedure in case of any conflict.*
>
> *29 . Section 45 of the PMLA starts with a non obstante clause which indicates that the provisions laid down in Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them.* ***Section 45 of the PMLA imposes following two conditions for grant of bail to any person accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule of the PMLA:***
>
> ***(i) That the prosecutor must be given an opportunity to oppose the application for bail; and***
>
> ***(ii) That the Court must be satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on bail.***
>
> *30 . The conditions specified under Section 45 of the PMLA are mandatory and needs to be complied with which is further strengthened by the provisions of Section 65 and also*

1 (2015) 16 SCC 1

Section 71 of the PMLA. Section 65 requires that the provisions of Cr.P.C. shall apply in sofaras they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of the PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of Cr.P.C. would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 of Cr.P.C. ***That coupled with the provisions of Section 24 provides that unless the contrary is proved, the Authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant.****"*

(emphasis supplied)

17. In paragraph 34, this Court reiterated as follows:

34. "xxx xxx xxx We have noted that Section 45 of the PMLA will have overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. As mentioned earlier, Section 45 of the PMLA imposes two conditions for grant of bail, specified under the said Act. We have not missed the proviso to Section 45 of the said Act which indicates that the legislature has carved out an exception for grant of bail by a Special Court when any person is under the age of 16 years or is a woman or is a sick or infirm. Therefore, there is no doubt that the conditions laid down under Section 45-A of the PMLA, would bind the High Court as the provisions of special law having overriding effect on the provisions of Section 439 of the Code of Criminal Procedure for grant of bail to any person accused of committing offence punishable under Section 4 of the PMLA, even when the application for bail is considered under Section 439 of the Code of Criminal Procedure."

The decisions of this Court in the case of ***Subrata Chattoraj Vs. Union of India***,[2] ***Y.S. Jagan Mohan Reddy Vs. CBI*** [3], and ***Union of India Vs. Hassan Ali Khan*** [4] have been noticed in the aforesaid decision.

18. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the Act of 2002.

19. It is not necessary to multiply the authorities on the sweep of Section 45 of the Act of 2002 which, as aforementioned, is no more *res integra*. The decision in the

2 (2014) 8 SCC 768
3 (2013) 7 SCC 439
4 (2011) 10 SCC 235

case of ***Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Anr.***,[5] and ***State of Maharashtra Vs. Vishwanath Maranna Shetty***,[6] dealt with an analogous provision in the Maharashtra Control of Organised Crime Act, 1999. It has been expounded that the Court at the stage of considering the application for grant of bail, shall consider the question from the angle as to whether the accused was possessed of the requisite mens rea. The Court is not required to record a positive finding that the accused had not committed an offence under the Act. The Court ought to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. The duty of the Court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. Further, the Court is required to record a finding as to the possibility of the accused committing a crime which is an offence under the Act after grant of bail. In ***Ranjitsing Brahmajeetsing Sharma***

5 (2005) 5 SCC 294
6 (2012) 10 SCC 561

(supra), in paragraphs 44 to 46 of the said decision, this Court observed thus:

> *"44. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*
>
> *45. It is, furthermore, trite that for the purpose of considering an application for grant of bail, although detailed reasons are not necessary to be assigned, the order granting bail must demonstrate application of mind at least in serious cases as to why the applicant has been granted or denied the privilege of bail.*
>
> *46. The duty of the court at this stage is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. However, while dealing with a special statute like MCOCA having regard to the provisions contained in Sub-section (4) of Section 21 of the Act, the Court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting*

> *or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby."*

20. Reverting to the decision in the case of ***Manoranjana Sinh Vs. Central Bureau of Investigation***,[7] we hold that the same is on the facts of that case. Even in the said decision, the Court has noted that the grant or denial of bail is regulated to a large extent by the facts and circumstances of each case. In the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***,[8] the Court was not called upon to consider the efficacy of Section 45 of the Act of 2002 which is a special enactment.

21. Keeping in mind the dictum in the aforesaid decisions, we find no difficulty in upholding the opinion recorded by the Sessions Court as well as the High Court in this regard. In our opinion, both the Courts have carefully analysed the allegations and the materials on record indicating the complicity of the appellant in the commission of crime punishable under Section 3/4 of the Act of 2002. The Courts

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7 (2017) 5 SCC 218
8 (2012) 1 SCC 40

have maintained the delicate balance between the judgment of acquittal and conviction and order granting bail before commencement of trial. The material on record does not commend us to take a contrary view.

22. Realizing this position, the learned counsel appearing for the appellant would contend that even if the allegations against the appellant are taken at its face value, the incriminating material recovered from the appellant or referred to in the complaint, by no stretch of imagination, would take the colour of proceeds of crime. In fact, there is no allegation in the charge-sheet filed in the scheduled offence case or in the prosecution complaint that the unaccounted cash deposited by the appellant is as a result of criminal activity. Absent this basic ingredient, the property derived or obtained by the appellant would not become proceeds of crime. To examine this contention, it would be useful to advert to Sections 3 and 4 of the Act of 2002. The same read thus:

> *"**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 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.

4. Punishment for money-laundering.*- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

23. As the fulcrum of Section 3 quoted above, is expression 'proceeds of crime', the dictionary clause in the form of Section 2(1)(u) is of some relevance. The same reads thus:

"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 or where such property is taken or held outside the country, then the property equivalent in value held within the country;"*

It will be useful to advert to the meaning of expression "property" as predicated in Section 2(1)(v). The same reads thus:

*"*2(1)(v) *"property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and*

instruments evidencing title to, or interest in, such property or assets, wherever located;

The expression 'scheduled offence' has been defined in Section 2(1)(y) of the Act of 2002. The same reads thus:

"2(1)(y) *'scheduled offence' means-*

(i) the offences specified under Part A of the Schedule; or
(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
(iii) the offences specified under Part C of the Schedule;"

Indisputably, the predicate offence is included in Part A in paragraph 1 of the Schedule in the Act of 2002, in particular Sections 420, 467, 471 and 120B of IPC. Indeed, the expression "criminal activity" has not been defined. By its very nature the alleged activities of the accused referred to in the predicate offence are criminal activities. The possession of demonetized currency in one sense, ostensibly, may appear to be only a facet of unaccounted money in reference to the provisions of the Income Tax Act or other taxation laws. However, the stated activity allegedly indulged into by the accused named in the commission of predicate offence is replete with mens rea. In that, the concealment, possession,

acquisition or use of the property by projecting or claiming it as untainted property and converting the same by bank drafts, would certainly come within the sweep of criminal activity relating to a scheduled offence. That would come within the meaning of Section 3 and punishable under Section 4 of the Act, being a case of money-laundering. The expression 'money-laundering' is defined thus:

> *"*2(1)(p) *"money-laundering" has the meaning assigned to it in section 3;*

24. The appellant then relies upon the decision in the case of ***Gorav Kathuria Vs. Union of India***,[9] of the Punjab and Haryana High Court which has taken the view that Section 45(1) of the Act of 2002 requires to be read down to apply only to those scheduled offences which were included prior to the amendment in 2013 in the Schedule. It is contended that the offence, in particular, under Sections 420, 467 and 471 of IPC, may not be treated as having been included in the scheduled offences for the purpose of the Act of 2002. Further, if any other view was to be taken, the provision would be rendered *ultra vires*. We are in agreement with the stand taken by the

9 (2016 SCC Online P & H 3428

respondents that the appellant cannot be permitted to raise the grounds urged in the writ petition, hearing whereof has been deferred on the request of the appellant. In other words, the appellant should be in a position to persuade the Court that the allegations in the complaint and the materials on record taken at its face value do not constitute the offence under Section 3 read with the schedule of the Act of 2002 as in force.

25. It has been brought to our notice that the decision in ***Gorav Kathuria*** (supra) was challenged before this Court by way of Criminal Appeal No.737 of 2016, which has already been dismissed on 12th August, 2016. The order originally passed on the said criminal appeal reads thus:

> *"Though the High Court has granted certificate to appeal, after arguing the matter for some time, learned counsel for the petitioner concedes that the impugned judgment of the High Court is correct.*
>
> *This appeal is, accordingly, dismissed."*

However, that order has been subsequently revised which reads thus:

> *"Though the High Court has granted certificate to appeal, we have heard the learned counsel for some time and are of the opinion that the impugned judgment of the High Court is correct.*

This appeal is, accordingly, dismissed."

At the same time the respondents have drawn our attention to a chart contained in their written submissions pointing out that other High Courts have disagreed with the principle expounded in ***Gorav Kathuria's*** case. The said chart reads thus:

(i)	*Crl. Misc. Application (for Regular Bail) No.7970/17* *Jignesh Kishorebhai Bajiawala vs. State of Gujarat & Ors.* ***Manu/GJ/1035/2017***	*High Court of Gujarat*
(ii)	*Crl. Petition No.366/2017* *SC Jayachandra vs Enforcement Directorate, Bangalore* ***2017 (349) ELT 392 KAR***	*High Court of Karnataka at Bengaluru*
(iii)	*WP[Crl.] No.333 of 2015* *Kishin S. Loungani vs. UOI & ors.* ***(2017) 1 KHC 355***	*High Court of Kerala at Ernakulam*
(iv)	*Crl. Mic. Application (for Regular Bail) No.30674/16* *Pradeep Nirankarnath Sharma vs Directorate of Enforcement* ***2017 (350) ELT 449 (GUJ)***	*High Court Gujarat at Ahmedabad*
(v)	*Crl. Writ Petition No.3931/2016* *Chhagan Chandrakant Bhujbal vs Union of India & Ors.* ***2016 SCC Online Bom 9983***	*High Court of Bombay*

26. For the time being, it is not necessary for us to examine the issues arising from the decision of the Punjab and Haryana High Court or the rejection of criminal appeal by this Court against that decision. The constitutional validity of Section 45 of the Act of 2002 will have to be examined by this Court in the writ petition on its own merits. The summary dismissal of criminal appeal will not come in the way of considering the correctness of the decision of the Punjab and Haryana High Court in view of the conflict of opinion with the other High Courts.

27. Suffice it to observe that the appellant has not succeeded in persuading us about the inapplicability of the threshold stipulation under Section 45 of the Act. In the facts of the present case, we are in agreement with the view taken by the Sessions Court and by the High Court. We have independently examined the materials relied upon by the prosecution and also noted the inexplicable silence or reluctance of the appellant in disclosing the source from where such huge value of demonetized currency and also new currency has been acquired by him. The prosecution is relying on statements of

26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. These statements are admissible in evidence, in view of Section 50 of the Act of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money-laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence. Further, the Courts below have justly adverted to the antecedents of the appellant for considering the prayer for bail and concluded that it is not possible to hold that the appellant is not likely to commit any offence ascribable to the Act of 2002 while on bail. Since the threshold stipulation predicated in Section 45 has not been overcome, the question of considering the efficacy of other points urged by the appellant to persuade the Court to favour the appellant with the relief of regular bail will be of no avail. In other words, the fact that the investigation in the predicate offence instituted in terms of FIR No.205/2016 or that the investigation qua the appellant in the complaint CC No.700/2017 is completed; and that the proceeds of crime is already in possession of the investigating agency and

provisional attachment order in relation thereto passed on 13th February, 2017 has been confirmed; or that charge-sheet has been filed in FIR No.205/2016 against the appellant without his arrest; that the appellant has been lodged in judicial custody since 2nd January, 2017 and has not been interrogated or examined by the Enforcement Directorate thereafter; all these will be of no consequence.

28. It was urged on behalf of the appellant that Demonetization Notification dated 8th November, 2016 imposes no limit in KYC compliant accounts on the quantum of deposit and no restrictions on non-cash transactions. The relevant portion of the said notification reads thus:

> *"(iii) there shall not be any limit on the quantity or value of specified bank notes to be credited to the account maintained with the bank by a person, where the specified bank notes are tendered; however, where compliance with extant Know Your Customer (KYC) norms is not complete in an account, the maximum value of specified bank notes as may be deposited shall be Rs. 50,000/-;*
>
> *(vii) there shall be no restriction on the use of any non-cash method of operating the account of a person including cheques, demand drafts, credit or debit cards, mobile wallets and electronic fund transfer mechanisms or the like;"*

We fail to understand as to how this argument can be countenanced. The fact that no limit for deposit was specified, would not extricate the appellant from explaining the source from where such huge amount has been acquired, possessed or used by him. The volume of demonetized currency recovered from the office and residential premises of the appellant, including the bank drafts in favour of fictitious persons and also the new currency notes for huge amount, leave no manner of doubt that it was the outcome of some process or activity connected with the proceeds of crime projecting the property as untainted property. No explanation has been offered by the appellant to dispel the legal presumption of the property being proceeds of crime. Similarly, the fact that the appellant has made declaration in the Income Tax Returns and paid tax as per law does not extricate the appellant from disclosing the source of its receipt. No provision in the taxation laws has been brought to our notice which grants immunity to the appellant from prosecution for an offence of money-laundering. In other words, the property derived or obtained by the appellant was the result of criminal activity relating to a scheduled offence. The argument of the appellant that there is

no allegation in the charge-sheet filed in the scheduled offence case or in the prosecution complaint that the unaccounted cash deposited by the appellant is the result of criminal activity, will not come to the aid of the appellant. That will have to be negatived in light of the materials already on record. The possession of such huge quantum of demonetized currency and new currency in the form of Rs.2000/- notes, without disclosing the source from where it is received and the purpose for which it is received, the appellant has failed to dispel the legal presumption that he was involved in money-laundering and the property was proceeds of crime.

29. Taking overall view of the matter, therefore, we are not inclined to interfere with the well considered opinion of the Sessions Court and the High Court rejecting the prayer for grant of regular bail to the appellant. However, considering the fact that the appellant is in custody since 28th December, 2016 and the offence is punishable with imprisonment for a term extending to seven years only, but not less than three years, the Trial Court will be well advised to proceed with the trial on day-to-day basis expeditiously. We clarify that the Trial Court

must examine the evidence/material brought on record during the trial on its own merit and not be influenced by the observations in this decision which are limited for considering the prayer for grant of regular bail.

30. Accordingly, the appeals are dismissed in the above terms.

.....CJI.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(D.Y. Chandrachud)

New Delhi,
Dated: 10th November, 2017.