IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-17884-2025
Reserved on: 08.10.2025

Pronounced on: 31.10.2025

Sukhpal Singh Khaira ….Petitioner

Versus

Directorate of Enforcement, Government of India ….Respondent

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present: Mr. Vikram Chaudhri, Senior Advocate
(through video conferencing),
assisted by Ms. Hargun Sandhu, Advocate, for the petitioner.

Mr. Zoheb Hossain, Special Counsel
(through video conferencing),
assisted by Mr. Lokesh Narang, Senior Panel Counsel,
for the respondent.

TRIBHUVAN DAHIYA, J.

The petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, for setting aside the order dated 07.02.2025, Annexure P-19, passed by the trial Court, dismissing the petitioner's application to defer further proceedings of the case bearing CIS No.COMA-1-2022 arising out of ECIR/02/STF/2021, dated 21.01.2021. The deferment was sought on the ground that further proceedings in the scheduled/predicate offence, i.e., FIR No.35 dated 05.03.2015, registered under Sections 21, 24, 25, 27, 28, 29, 30, 61 of the NDPS Act, Sections

25/54 of the Arms Act, 1959, and Section 66 of the Information Technology Act, 2000, at Police Station Sadar Jalalabad, District Fazilka, remained stayed in terms of interim order, dated 10.04.2024, passed by the Supreme Court in Special Leave to Appeal (Crl.) No.2100 of 2024.

2. The petition has been filed on the following facts:

2.1. The petitioner was implicated and summoned as an additional accused in exercise of powers under Section 319 of the Code of Criminal Procedure (Cr.P.C.) after trial in case FIR No.35 dated 05.03.2015 had concluded, vide order dated 05.03.2021. The proceedings arraigning him as additional accused were challenged, and finally decided by the Supreme Court by answering a reference as to whether the power under Section 319 Cr.P.C. could be invoked after the trial was over. It has been held that once the trial Court pronounces the order of sentence it becomes *functus officio*, and has no jurisdiction to pass an order under Section 319 Cr.P.C. Accordingly, the order summoning the petitioner as additional accused was set aside vide order dated 09.02.2023.

2.2. In the meanwhile, searches were carried out by the respondent/Enforcement Directorate (ED), and on 21.01.2021, after a period of about six years from the date of registration of the aforementioned FIR under the NDPS Act, the ED registered ECIR/02/STF/2021 for carrying out investigation for commission of offences under Sections 3 and 4 of the Prevention of Money Laundering Act (PMLA), 2002, on the ground that the offences falling under Sections 21, 23, 27-A and 29 of the NDPS Act, 1985, and Section 25 of the Arms Act are scheduled offences under the PMLA. The petitioner was arrested on 11.11.2021; he was later granted regular bail by this Court vide order dated 27.01.2022. The complaint against him under the PMLA case was filed before the Special Court on 06.01.2022, whereupon cognizance was taken vide order dated 20.01.2022. The complaint *inter alia* alleges as under:

> 46. That as per the facts revealed during investigation under PMLA, 2002, Gurdev Singh has smuggled Heroin on several number of times and has received money from the recipients of Heroin in India and from Major Singh Bajwa through Western Union Money Transfer. He was also in close contact with Shri Sukhpal Singh Khaira as stated by both of them under their respective statements recorded under Section 50 of PMLA, 2002. Investigation also revealed that Shri Sukhpal Singh Khaira had provided protection to Shri Gurdev Singh for doing illegal dealing in Heroin trade. Shri Gurdev Singh in his statement under Section 50 of PMLA, 2002, stated that he had borne expenses on account of election campaign of Shri Sukhpal Singh Khaira. Further during the investigation under PMLA, 2002, huge unaccounted expenses and cash deposits by Shri Sukhpal Singh Khaira to the tune of Rs.3.84 Crores have been revealed which establishes that Gurdev Singh not only borne expenses on account of election campaign of Shri Sukhpal Singh Khaira, but he had also paid him in cash out of the proceeds of crime generated from smuggling of Heroin. Instead of repayment of defaulted loans (for which recovery suits were initiated by the banks), Shri Gurdev Singh was bearing Election Expenses of Shri Sukhpal Singh Khaira as well as paying him in cash. Therefore, Shri Gurdev Singh was knowingly a party and actually involved in process and activity connected with the proceeds of crime including its acquisition, use, possession, concealment and projecting as well as claiming the same as untainted property. As such, he has committed the

offence of money laundering as defined under the provisions of Section 3 punishable Section 4 of PMLA, 2002.

2.3. Subsequently, the petitioner filed an application before the Special Court, S.A.S. Nagar, Mohali, seeking discharge in ECIR/02/STF/2021 for offences under Sections 3 and 4 of the PMLA, which was dismissed vide order dated 20.09.2023, Annexure P-6. Thereafter, on the basis of further investigation he was arrested in the scheduled/predicate offence on 28.09.2023. In the interregnum, the State constituted Special Investigation Team (SIT) to investigate the role of petitioner and other suspects in smuggling of drugs, etc. After investigation, which led to collecting of fresh material, supplementary challan/chargesheet dated 20.01.2024, Annexure P-7, was filed against him in FIR No.35 dated 05.03.2015. It concluded that the petitioner had used his power and position to help co-accused Gurdev Singh in sale of drugs/contraband, and the money earned by the co-accused from drug smuggling was received by him.

2.4. The petitioner challenged revival of the proceedings against him in the scheduled offence, as also the consequential action of arrest before this Court by filing criminal writ petition, CRWP No.9859 of 2023, which was dismissed vide order dated 04.01.2024, Annexure P-9, by holding that after further investigation in the case, the petitioner’s arrest was neither illegal nor did it violate any order passed by the Supreme Court, as relied upon by the petitioner. The petitioner had also filed a petition seeking regular bail, CRM-M-52458-2023, which was allowed vide order dated 04.01.2024, Annexure P-8. Aggrieved by the order passed in CRWP No.9859 of 2023, the petitioner approached the Supreme Court by filing

Special Leave to Appeal (Crl.) No.2100 of 2024, wherein the following order dated 10.04.2024 was passed:

> 1. The learned senior counsel, Mr. Dave for the respondent No.1-State states on instructions that the respondent shall not proceed further with the proceedings before the Trial Court till the next date. He also seeks time to file counter affidavit.
> 2. Two weeks' time is granted to file the counter affidavit. Rejoinder, if any, be filed, within one week thereafter.
> 3. List on 07.05.2024.

The interim order remains in operation to date. On that basis, the petitioner filed an application before the Special Court for deferring further proceedings in the case, as the trial remained stayed in view of statement made on behalf of the State before the Supreme Court. The application was dismissed vide the impugned order, dated 07.02.2025, by recording as under:

> 9. The offence under the PMLA is a stand alone offence and the trial has to proceed after the framing of the charges. The trial Court in itself cannot defer or stay its own proceedings. The arguments of the learned counsel for the appellant have no substance and hence are rejected. The application is dismissed, being without merits. Papers be attached with the main case file.

2.5. Pursuant thereto, the trial has continued, and, as submitted by learned counsel for the ED, eight out of thirty-nine witnesses have been examined.

3. In this factual background, Mr. Chaudhri, learned senior counsel for the petitioner contended that despite answering of reference by the Supreme Court in the petitioner's favour and quashing of proceedings against him under Section 319 Cr.P.C., the State has illegally arrested him and also filed chargesheet against him under the scheduled offence. Both,

validity of the arrest and prosecution of the petitioner, are under challenge before the Supreme Court in Special Leave to Appeal (Crl.) No.2100 of 2024, wherein the prosecution itself has made a statement not to continue with further proceedings before the trial Court. Accordingly, there is no justification to continue the trial under the PMLA. The law in this regard has been settled by the Supreme Court in *Vijay Madanlal Choudhary and others* v. *Union of India and others*, (2023) 12 SCC 1. He also relied upon a judgment by the Telangana High Court in *M/s Bharti Cement Corporation Private Limited* v. *Directorate of Enforcement*, rendered in Criminal Revision Case No.87 of 2021, decided on 08.09.2022, holding that outcome of the trial for the scheduled offence would have a definite bearing on the outcome of the trial for the offence of money laundering. And it would be in the interest of justice if the Special Court trying the offence of money laundering while independently proceeding with the trial, may, however take a pause and await the ultimate pronouncement/decision of the Special Court trying the scheduled offence. He, accordingly, submits that the petitioner will be satisfied in case this Court grants stay on pronouncement of final judgment by the trial Court, though proceedings may continue.

4. *Per contra*, Mr. Hossain has contended that trial in the offence under Section 3 of the PMLA and the scheduled offence is different, as the two are separate offences under different statutes. It is not necessary that the person against whom offence under the PMLA is alleged, must be an accused in the scheduled offence also. In support of the contention, he relies upon Supreme Court judgment rendered in *Pavana Dibbur* v. *Directorate of Enforcement*, 2023 SCC Online SC 1586.

4.1. He further submits that in case arguments on behalf of the petitioner are accepted, it will defeat the object of PMLA as well as the international obligations under the Financial Action Task Force (FATF), which has observed that the offence of money laundering is independent and should not depend upon the trial of scheduled/predicate offence. In the instant case, the petitioner is accused of using the proceeds of crime given to him by co-accused, Gurdev Singh, who has already been convicted by the trial Court in case FIR No.35. This conclusively establishes that scheduled offence stands proved and the ECIR registered on that basis is legal and valid. Besides, further investigation has also revealed that the petitioner had an active role in using proceeds of the crime in collusion with the convicted co-accused leading to filing of the prosecution complaint against him under the PMLA, on which cognizance has also been taken and trial is already going on. Therefore, there is no basis to question the PMLA proceedings on the ground that scheduled offence is not made out.

4.2. Lastly, he contends that it is only when all the accused in a scheduled offence are discharged or acquitted, there cannot be any prosecution for the offence under Section 3 of the PMLA as there would be no proceeds of crime. However, the situation does not arise in the instant case as many of the accused already stand convicted by the trial Court, and there is no doubt that the petitioner is involved in the activity connected with the proceeds of crime.

5. Submissions made by learned counsel for the parties have been considered.

6. As per facts apparent on record, the ECIR in question for commission of offences under Sections 3 and 4 of the PMLA has been registered against the petitioner for the scheduled offence based on FIR No.35 dated 05.03.2015, lodged under Sections 21, 23, 27-A, 29 of the NDPS Act, and Section 25 of the Arms Act. The petitioner was initially not named as an accused for commission of the scheduled offences, regarding which the trial got concluded leading to conviction of the accused therein, including Gurdev Singh. Thereafter, the petitioner was summoned as an additional accused in the case under Section 319 Cr.P.C. by the trial Court, vide order dated 05.03.2021, for commission of the said scheduled offences. The order was set aside by the Supreme Court on 09.02.2023. Thereupon, based upon subsequent investigation carried out in the case, the petitioner has been nominated as an accused and supplementary chargesheet, dated 20.01.2024, has been filed against him on the ground that he has used his power and position to help co-accused Gurdev Singh in sale of drugs and received the money earned by the co-accused from drug smuggling. He has challenged the revival of proceedings against him pertaining to the scheduled offences, as also his consequential arrest in the case; the matter is pending before the Supreme Court in Special Leave to Appeal (Crl.) No.2100 of 2024. During pendency of the petition, proceedings before the trial Court remained stayed based upon a statement made by the prosecution. In the PMLA case, the petitioner is accused of using proceeds of the crime given to him by co-accused Gurdev Singh. Trial is going on. The petitioner sought stay on proceedings of the PMLA case on the ground that trial in the scheduled offences against him had been stayed. The application has been

dismissed by the Special Court on the ground that offence under the PMLA is a stand alone offence and the trial has to proceed after the framing of charges.

7. The issue that comes up for consideration before the Court is, *whether the trial for commission of offences under the PMLA before the Special Court is to proceed independent of trial for the scheduled offences*?

8. The Supreme Court in *Vijay Madanlal Choudhary* case (*supra*) delved into a related issue holding that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime. At the same time, it has also been held that such process or activity can only be indulged in after the property is derived or obtained as a result of criminal activity concerning the scheduled offence. The observations by the Court to that effect are as under:

> 269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.
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> 270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a

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

8.1. Subsequently, relying upon these observations the Supreme Court in *Pavana Dibbur* case (*supra*) held that for attracting the offence under Section 3 of the PMLA, there must be a scheduled offence as also the proceeds of crime in relation thereof, but the offence under Section 3 can be committed after commission of a scheduled offence. It is not necessary that the person against whom offence under Section 3 of the PMLA is alleged must be an accused of scheduled offence also. The following paragraphs of the judgment can be referred to in that regard:

> 17. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA.
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> 18. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of

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

8.2. The *ratio* of the judgments aforementioned is that the offence of money laundering is independent of the scheduled offence; nevertheless, it gets its substratum from the proceeds of crime obtained as a result of commission of a scheduled offence. Therefore, existence of scheduled offence is a *sine qua non* so far as commission of offence under the PMLA is concerned, though the accused under the PMLA need not necessarily be a person accused of committing the scheduled offence as he can still indulge in a process and activity connected with proceeds of the crime derived from commission of a scheduled offence.

9. The allegations against the petitioner, so far as commission of the scheduled offence is concerned, are that he had facilitated sale of drugs by co-accused Gurdev Singh and received the drug money from him. Under

Section 3 of the PMLA, he is accused of using proceeds of crime generated by commission of scheduled offence under the NDPS Act by co-accused Gurdev Singh, who already stands convicted for commission of the scheduled offences. In this background, argument by learned counsel for the ED has merit, that even if the petitioner is to be acquitted of charges pertaining to the scheduled offences, his prosecution under the PMLA will remain unaffected. It is because the conviction of Gurdev Singh and generation of drug money/proceeds of crime by commission of the scheduled offences by him is not an issue before the trial Court, where proceedings remain stayed. In this view of the matter, the outcome of trial before the Special Court in PMLA case cannot be said to be connected to trial of the scheduled offences, as the latter will have no bearing on the former. It is also a fact that complaint in the PMLA case was filed on 06.01.2022, whereupon cognizance was taken on 20.01.2022, prior to filing of chargesheet against the petitioner in the NDPS Act, dated 20.01.2024.

10. Reliance placed by learned senior counsel for the petitioner on *M/s Bharti Cement Corporation Private Limited* case (*supra*) is misplaced for the reason the petitioner therein was accused of commission of the scheduled offences under Sections 420 and 120-B IPC, regarding which chargesheet was filed by the CBI before the Principal Special Judge. In furtherance of the allegations, he was implicated in the consequential offence of money laundering regarding which complaint had been filed before the Special Court under the PMLA. Therefore, the petitioner therein was accused of committing the scheduled offence as well as the offence under the PMLA, and both the cases were pending trial. In these

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circumstances it was held that the Special Court would not be competent to pronounce on the quilt or otherwise of the person accused of money laundering till there was definite finding regarding commission of the scheduled offence(s) generating proceeds of crime. The situation in the instant case is different, as the petitioner is accused of using the proceeds of crime generated due to commission of scheduled offences by a person who already stands convicted, as discussed herein before.

11. In view of the discussion, this Court finds no merit in the petition, and it stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

31.10.2025
Maninder

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No