GAHC010092512026

2026:GAU-AS:9425

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Writ Petition (C) No. 2531/2026

Mrig Mrinal Dhawan, S/o Vijay Kumar Dhawan, R/o House no. 38, Kundil Nagar, P.S.- Basistha, Guwahati – 781029 and proprietor of M/s Fama Marketing having its place of business at House no. 57(A), Kundli Nagar, Bye Lane-1, near Basistha Post Office, Guwahati – 781029

……Petitioner

-**Versus**-

1. The Union of India, through its Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi.

2. The Directorate of Enforcement, through its Deputy Director, Itanagar, Sub-Zonal Office, Guwahati Zonal Office-II 5th Floor, Mainaak Tower, Shree Nagar, Christian Basti, Guwahati, Kamrup(M), Assam – 781005.

……Respondents

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Petitioner	:	Dr. A. Saraf, Senior Advocate, Mr. S.P. Sarma, Advocate.
Respondent no. 1	:	Mr. R.K. Deb Choudhury, Senior Counsel & Deputy Solicitor General of India.
Respondent no. 2	:	Mr. R. Dhar, Retainer Counsel, Enforcement Directorate.

Date on which judgment is reserved	:	19.05.2026
Date of pronouncement of judgment	:	26.06.2026
Whether the pronouncement is of the Operative part of the judgment?	:	No
Whether the full judgment has been Pronounced ?	:	Yes

JUDGMENT & ORDER

A. The Challenge :-

1. In this writ petition instituted under Article 226 of the Constitution of India, assail is made to a Provisional Attachment Order [PAO] No. 03/2026 dated 30.03.2026 passed by the Deputy Director, Directorate of Enforcement, Itanagar Sub-Zonal

Office, Guwahati Zonal Office – II, Guwahati in exercise of the powers conferred under sub-section [1] of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'the PMLA', for short], read with Rule 3 of the Prevention of Money Laundering [Issuance of Provisional Attachment Order] Rules, 2013 ['the PMLA Rules, 2013', for short]. By the PAO, the Deputy Director as 'the Authorized Officer' has provisionally attached inter alia three plots of land belonging to the petitioner [hereinafter collectively referred to as 'the Attached Property', for ease of reference], holding that the PAO shall remain in force for a period of One Hundred and Eighty days from the date of the PAO. The PAO is stated to have been made under the Second Proviso to sub-section [1] of Section 5 of the PMLA and shall cease to have effect after the expiry of the said period, or on the date of an Order passed by the Adjudicating Authority [PMLA], New Delhi, under Section 8[3] of the PMLA, whichever is earlier.

2. The petitioner has also sought for a direction to restrain the respondents from taking any coercive steps against the petitioner pursuant to or in furtherance of the PAO dated 30.03.2026 and consequential proceeding thereafter, apart from an interim order of stay of the operation and effect of a Summons dated 27.04.2026 issued by the Special Judge, Papum Pare District, Yupia, Arunachal Pradesh ['the Special Court'] in PMLA Case no. 02/2026 to the petitioner to answer a charge under Section 44[1][b] r/w Section 45[1], PMLA Act.

B. <u>The Petitioner</u> :-

3. The petitioner has stated that he is the sole proprietor of M/s Fama Marketing, which is primarily engaged in the business of supply and trading of industrial and construction-related materials, medical equipments and allied goods, etc. It is stated that the petitioner under the aegis of M/s Fama Marketing operates from Imphal, Manipur and Guwahati, Assam. He is also associated as a partner in M/s

Fama Marketing, Arunachal Pradesh and has been carrying on commercial activities through the said entities in the ordinary course of business.

4. I have heard Dr. A. Saraf, learned Senior Counsel assisted by Mr. S.P. Sarma, learned counsel for the petitioner; Mr. R.K. Deb Choudhury, learned Senior Counsel & Deputy Solicitor General of India for the respondent no. 1, Union of India; and Mr. R. Dhar, learned Retainer Counsel, Enforcement Directorate for the respondent no. 2.

C. <u>Submissions on behalf of the Petitioner</u> :-

5. Dr. Saraf, learned Senior Counsel appearing for the petitioner has advanced submissions on four aspects. He has submitted, firstly, that 'reason to believe' is to be formed and recorded prior to initiation of the proceeding under Section 5[1] of the PMLA; and the reason to believe, which is to be recorded in writing, shall not be a part of the PAO, as it is confidential; secondly, there must be 'Proceeds of Crime' [PoC] and if the PoC are not traceable, then simply on the basis of 'value of any property', attachment cannot be made; thirdly, a property purchased prior to alleged commission of the crime cannot be attached provisionally exercising power under Section 5[1] of the PMLA; and fourthly, before taking the drastic action of provisional attachment of any property, the Authorized Officer must have to arrive at a satisfaction on the basis of the materials available with him as regards urgency of the matter on the apprehension of alienation of the property by way of sale, etc. As the above elements are lacking in the case in hand leading to the PAO, the Authorized Officer has committed jurisdictional error. As a consequence, the PAO is not sustainable in law and cannot be acted upon.

5.1. Expanding upon the first ground of challenge, Dr. Saraf has submitted that in the impugned PAO, the Authorized Officer has recorded his 'reason to believe' in the

Order itself. It is his submission that 'reason to believe' is to be recorded in a separate file and such 'reason to believe' is to be recorded prior to initiation of the proceeding under Section 5[1] of the PMLA. It is contended that the Legislature has intended that before initiation of any proceeding leading to issuance of a PAO, the reason to believe is to be recorded at first in the file. Reliance is placed in a decision of the Delhi High Court in **Aprajita Kumari vs. Joint Director, Enforcement Directorate, [2018] SCC OnLine DEL 13479**, wherein it is held that the reason to believe at every stage must be noted down by the Authorized Officer in the file. In the impugned PAO, the Authorized Officer has recorded his reason to believe in the Order itself and not in a separate file at any prior point of time and the same invalidates the PAO. Till the Authorized Officer forms an opinion on the basis of the material on record, about the fulfillment of the two conditions, which has to be recorded in writing, the pre-conditions for passing of the order of provisional attachment cannot be said to be in existence. In the case of the petitioner, no satisfaction has been recorded in respect of the Attached Property being PoC or not. The reason to believe recorded by the Authorized Officer in a proceeding under sub-section [1] of Section 5 of the PMLA is not to be supplied to the person concerned and is to be kept confidential. In support of the above ground, reliance has been placed in the decisions in **Vijay Madanlal Choudhary vs. Union of India, [2023] 12 SCC 1**, Para 157; **P. Chidambaram vs. Directorate of Enforcement, [2019] 9 SCC 24**, Para 28; **Aftabuddin Ahmed and another vs. Enforcement Directorate and others, [2024] 4 GLR 566**, Paras 35 & 38; and **Seema Garg vs. Deputy Director, Directorate of Enforcement, 2020 SCC OnLine P&H 738**, Para 45.

5.2. Dr. Saraf has contended that to be PoC, the pre-condition is that the property must be derived or obtained, directly or indirectly, as a result of criminal activity relating to a Scheduled Offence. Referring to **Vijay Madanlal Choudhary** [supra], it is contended that for being regarded as PoC, the property associated with the Scheduled Offence must have been derived or obtained by person as a

result of criminal activity relating to the Scheduled Offence concerned and this distinction is significant for reckoning any property referred to in the Scheduled Offence as PoC. The expression 'derived or obtained' is only relatable to the criminal activity of a Scheduled Offence already accomplished. Relying upon a decision of the High Court of Patna in **HDFC Bank Limited vs. Government of India, Ministry of Finance, [2021] Cri LJ 3969**, Para 37, it is contended that what can be provisionally attached under Section 5[1] of the PMLA is only the PoC and to establish that the property attached is PoC or part of PoC, there must be material in possession of the authority to connect the property with the PoC. In the present case, the Attached Property is not part of the PoC, as evident from the impugned PAO itself. He has pointed out that the Authorized Officer has himself recorded that the Attached Property are not directly traceable to the PoC. Therefore, there is no connect between the PoC and the Attached Property and merely on the basis of value of the Attached Property, with no connection with the PoC, the Authorized Officer has clearly committed a jurisdictional error in respect of the Attached Property.

5.3. On the third point, the learned Senior Counsel by referring to the registered Sale Deeds, annexed as Annexure-9 to the writ petition, he has contended that the Attached Property, which are three plots of land, were purchased in the year 2022 after obtaining No Objection Certificate from the Competent Authority with regard to their transfer by way of sale on 10.12.2021 on the basis of applications submitted on 26.11.2022. As the FIR no. 182/2024 was registered on 03.10.2024 and the connected ECIR was registered on 28.03.2025, the Attached Property were evidently acquired at an earlier point of time. As they were purchased anterior to registration of FIR no. 182/2024, the same cannot be attached under Section 5[1] of the PMLA. He has further contended that the petitioner purchased three plots of land from a person, who was not connected either with the investigation of FIR no. 182/2024 or with the investigation of ECIR dated 28.03.2025. Therefore, the said three plots of land could not have been brought

under the purview of the impugned PAO by exercise of the powers under Section 5[1] of the PMLA. As the Authorized Officer does not have any authority and jurisdiction to attach any property obtained prior to generation of the PoC, the impugned PAO is illegal due to arbitrary exercise of power. To buttress, reliance has been placed in the decision in **Seema Garg** [supra] wherein it is held that property acquired prior to commission of Scheduled Offence i.e. criminal activity cannot be attached unless property obtained or acquired from Scheduled Offence is held or taken outside the country.

5.4. It is further submitted that even if it is accepted, for the sake of argument, that the reason to believe can be recorded in the Order itself, then also it does not appear from the impugned PAO that there has been satisfaction for formation of the requisite belief. He has contended, by taking support from the observations made in Para 157 of **Vijay Madanlal Choudhary** [supra], that it is only upon recording satisfaction regarding the twin requirements referred to in sub-section [1], the Authorized Officer can proceed to issue a PAO. Before issuing a formal PAO, he has to form his opinion and delineate the reasons for such belief to be recorded in writing about meeting the two requirements, which shall not be on the basis of assumption, but on the basis of material in his possession. The PAO has to be only an outcome of such satisfaction reached. By referring to the impugned PAO, it is contended that the fulfillment of the twin requirements and satisfaction reached on the basis of materials are missing.

D. <u>Submissions on behalf of the Enforcement Directorate</u> :-

6. Mr. Dhar, learned Retainer Counsel for the respondent Enforcement Directorate has submitted that the Authorized Officer had first reached the satisfaction on the basis of the material in his possession, which led him to believe that there is generation of PoC and a number of persons including the petitioner, are in possession of the PoC and he had reason to believe that such PoC are likely to

be concealed, transferred or dealt with in such a manner which will result in frustration of any proceeding relating to confiscation of such PoC. The reasons for such belief were recorded by the Authorized Officer on 29.03.2026. The learned Retainer Counsel has placed the reason to believe, which were recorded in writing by the Authorized Officer on 29.03.2026. Therefore, there is no infirmity in the impugned PAO issued on 30.03.2026. There is also no bar for disclosure of the reason to believe in the PAO and the submission advanced on behalf of the petitioner on the said aspect is misconceived.

6.1. The learned Retainer Counsel has pointed out that the Enforcement Directorate has already filed the Prosecution Complaint [Offence Report] on 30.03.2026 in reference to ECIR no. ECIR/ITSZO/02/2025 dated 28.03.2025 before the Court of learned District & Sessions Judge, Yupia, Arunachal Pradesh and in view of submission of the Offence Report, the processes were already issued. He has further submitted that there has already been compliance of the provision of sub-section [2] of Section 5. The matter will henceforth be dealt by the Adjudicating Authority under Section 8 of the PMLA and the petitioner, after being served with the notice, can place the evidence and other relevant information and particulars before the Adjudicating Authority to claim that the Attached Property should not be declared to be property involved in money-laundering and confiscated by the State.

6.2. It is also the contention of Mr. Dhar that without availing such statutory remedy, the petitioner has straightway approached this Court assailing the PAO in a writ petition. The writ petition is, therefore, not maintainable and the petitioner should be directed to participate in the proceeding before the Adjudicating Authority. In support of the said submission, Mr. Dhar has referred to a decision of this Court in **W.P.[C] no. 7331/2017 [Kujendra Doley vs. Union of India and others**, decided on 30.01.2025, and a decision of the Hon'b'le Supreme Court in **Raj Kumar Shivhare vs. Assistant Director, Directorate of**

Enforcement and another, [2010] 4 SCC 772, apart from the decision in **Vijay Madanlal Choudhary**, to support his contention that a writ petition on the given facts of the present case is not maintainable and statutory remedy is not to be by-passed.

6.3. By referring extensively to Para 174 to Para 174.18 of **Vijay Madanlal Choudhary** [supra], Mr. Dhar has submitted that the PAO has been passed observing all the procedural safeguards. It is neither prescribed in Section 5 nor laid down in **Vijay Madanlal Choudhary** [supra] that the reason to believe, which is to be recorded in writing, cannot be a part of the PAO issued under Section 5[1] read with Second Proviso of the PMLA and Rule 3 of the PMLA Rules, 2013 and such reason to believe is to be kept confidential. The reason to believe as part of a PAO goes in conformity with the principles of natural justice and fair play. In any view of the matter, the reason to believe, which is to be recorded in writing, is to be provided to the affected person if he asks for it and the reason to believe must have to be placed before the High Court, when any question is raised on its legality and validity. The High Court has ample power to examine whether the procedural safeguards are duly followed or not, and if it is found to have suffered from any jurisdictional error, the High Court has power to pass appropriate order. If the submission of the petitioner regarding confidentiality of the reason to believe is to be accepted, the same would be antethesis of the principles of natural justice and fair play and can be treated as a denial of an effective opportunity being heard to the affected person.

E. **Background Facts** :-

I. **FIR No. 182/2024 and Investigation** :-

7. A complaint was lodged at Itanagar Police Station, Arunachal Pradesh on 03.10.2024 by an Inspector [Anti-Evasion], CGST & Central Excise, Itanagar

Commissionerate ['the Complainant']. The complaint was registered as FIR no. 182/2024 on 03.10.2024 for the offences under Sections 120B, 420, 467, 468, 471, 473 & 474 of the Indian Penal Code [IPC] against two persons specifically, Sri Rakesh Sharma and Sri Ashutosh Kumar Jha, along with other unidentified individuals, for their alleged involvement in a criminal conspiracy involving cheating and forgery of documents. It was alleged that one M/s Siddhi Vinayak Trade Merchants ['M/s Siddhi Vinayak', for short], registered under the Central Goods and Services Tax [CGST] Act, 2017 in the State of Arunachal Pradesh, showing its Principal Place of Business [PPoB] at Likabali, Arunachal Pradesh, registered as Trader-Retailer/Wholesaler Business under HSN 7204, 7214, 2713, 2715, 7604 & 8482, was found to be engaged in fraudulent practices of passing on GST Input Tax Credit [ITC] through issuance of GST Invoices without concomitant supply of goods. M/s Siddhi Vinayak had issued Invoices totaling 15,258 Invoices amounting to Rs. 658,55,35,521/- from October to March of the Financial Year [FY] : 2023-2024 to fifty-eight entities across eleven different States. All the entities to which GST Invoices were issued are registered in eleven States and ITC amounting to Rs. 99,31,36,975/- was passed to those entities.

8. On 23.05.2024, the PPoB of M/s Siddhi Vinayak was searched pursuant to a Search Authorization under Section 67[2] of the CGST Act and it was found to be non-existent/fake and the address shown as the PPoB was found to be fictitious with no existence of road. M/s Siddhi Vinayak was prima facie found involved in issuance of Invoices without actual supply of goods, thereby, facilitating fraudulent availment and wrongful passing on of ITC in contravention of Section 16 r/w Section 132 of the CGST Act. It is mentioned that investigation disclosed that M/s Siddhi Vinayak fraudulently availed ITC amounting to Rs. 99,31,36,975/- for the purpose of setting off its tax liability, which arose on account of issuing Invoices to fifty-eight registered entities, involving a total taxable value of Rs. 658,55,35,521/-. The entities systematically transmitted such ineligible ITC to

several other registered entities across India, thereby widening the chain of fraudulent transactions. In the Complaint, it was mentioned that M/s Siddhi Vinayak obtained GST Registration through submission of forged and fabricated documents, with fraudulent intent to cause wrongful loss to the Government Exchequer and undue enrichment to itself and others. Such conduct appeared to constitute offences under the CGST Act, besides attracting the penal provisions of the IPC for forgery, cheating, and criminal conspiracy.

II. <u>Enforcement Case Information Report [ECIR]</u> :-

9. When upon examination of the afore-mentioned information and available supporting documents, it was disclosed prima facie of commission of an offence of money-laundering, as defined under Section 3 of the PMLA, with registration of FIR no. 182/2024 for Scheduled Offences under the PMLA, investigation under PMLA was initiated by the Itanagar Sub-Zonal Office of the Directorate of Enforcement [ED] by recording brief facts of the case in an Enforcement Case Information Report [ECIR] on 28.03.2025 against Sri Rakesh Sarma, Sri Ashutosh Kumar Jha and others.

10. During the course of investigation, after the ECIR, documentary evidence was collected from the complainant in FIR no. 182/2024 with recording of his statement under Section 50 of the PMLA on 25.07.2025, pertaining to fraudulent availment of ITC by M/s Siddhi Vinayak. In the course of investigation, summons under Section 50[2] r/w Section 50[3] were issued to a number of individuals and entities connected with the case, for their attendance and production of documents relevant to the enquiry.

11. In the Statement, the Complainant stated that M/s Siddhi Vinayak, was a non-existent shell entity created solely for the purpose of issuing fake GST Invoices to pass on ITC fraudulently without actual supply of goods. Field verification

revealed that its PPoB declared in the GST Registration was fictitious. The electricity bill for obtaining the GST Registration was found to be forged. It was established that M/s Siddhi Vinayak existed only on paper and had no physical PPoB. GST Returns revealed that M/s Siddhi Vinayak issued 15,258 bogus Invoices within a span of six months from October, 2023 to March, 2024 having a total Invoice value of Rs. 658,55,35,521/- enabling fifty-eight firms located across eleven States to fraudulently avail ITC amounting to Rs. 99,31,36,975/-. The Invoices were found to have been issued without any corresponding movement of goods. Verification in the E-Way Portal revealed that no E-Way bills were generated against the GSTIN of M/s Siddhi Vinayak, which confirmed the transactions was merely paper transactions, created to facilitate fraudulent availment and passing of ITC. M/s Siddhi Vinayak had no bank account. Scrutiny of GST Returns revealed that M/s Siddhi Vinayak utilized ITC to discharge its tax liability in GSTR-3B despite absence of any corresponding ITC reflected in GSTR-2A/2B, indicating utilization of fake and ineligible ITC.

12. The investigation established involvement of Sri Ashutosh Kumar Jha, who had operated and managed GST compliances of the shell entity, M/s Siddhi Vinayak. Late fees for delay in GST Return filings of M/s Siddhi Vinayak were paid through a bank account of Sri Ashutosh Kumar Jha. A search operation conducted on 25.08.2024 resulted in recovery of several incriminating documents and electronic devises indicating that the GST Returns of M/s Siddhi Vinayak were filed through those seized devices. GSTR-1 and GSTR-3B Returns of M/s Siddhi Vinayak for the period from October, 2023 to March, 2024 revealed mis-match between GSTR-2A/2B and GSTR-3B. Though for the period from October, 2023 to March, 2024, no data was available in GSTR-2A/2B, ITC was utilized in GSTR-3B, clearly indicating availment and utilization of fake and ineligible ITC.

III. <u>The role attributed to M/s Fama Marketing & the petitioner</u> :-

13. In the statement recorded under Section 50, PMLA, the petitioner had admitted that he as the sole proprietor of various concerns was operating under the name of M/s Fama Marketing in Assam, Manipur, Haryana and Chennai and was also associated as a partner in M/s Fama Marketing, Arunachal Pradesh and M/s Zeno, Manipur. He stated that he was engaged in the business of supplying medical equipments and technical infrastructure in the North-East Region and his annual income was Rs. 4-5 Crores [approx.]. He denied about having knowledge of M/s Siddhi Vinayak and he also initially denied about having any direct business or financial dealings with M/s Siddhi Vinayak and the persons associated with the said entity. When the petitioner was shown the list of fifty-eight direct beneficiary entities of M/s Siddhi Vinayak, he admitted to the extent that *M/s Fama Marketing had business dealings with two such entities, namely, M/s Krishti Enterprise and M/s L.S. & Company*.

14. The PAO has recorded that the petitioner stated that *during F.Y. : 2023-2024, M/s Fama Marketing purchased TMT from M/s L.S. & Company amounting to about Rs. 1.97 Crore and from M/s Krishti Enterprise amounting about Rs. 1.47 Crore*, and those payments were made through Indian Bank and Axis Bank accounts. He stated that he submitted bank details, ledgers, invoices and E-Way bills in support of such transactions. *M/s Fama Marketing received ITC in relation to these transactions and the total ITC received from both entities was Rs. 52.66 lakh*. Despite his assurance, he did not submit any GSTR-2A/2B and GSTR-3B returns for FY : 2023-2024. Ledger entries showed that an amount of Rs. 1,02,82,140/- remained outstanding and payable to M/s L.S. & Company for more than two years vis-a-vis the Balance Sheets of FY : 2022 – 2023, FY : 2023 -2024 & FY : 2024-2025.

15. A search was sought to be conducted on 20.01.2026 at the business premises of M/s Fama Marketing, Imphal. But no office was found functioning at the declared PPoB. When the petitioner was asked about the same, the petitioner stated that

the said location was a virtual branch office maintained in compliance with GST norms, and though he undertook to provide documentary evidence later on, by he did not. The petitioner stated that goods such as TMT Bars reflected in Invoices were usually unloaded at various project locations in Imphal city, but he did not furnish any weighing slips or goods entry register.

F. <u>Other events leading to the PAO</u> :-

16. Apart from the statements of the above two persons, statements were recorded of a number of persons connected with entities, M/s Anjani Impex, M/s Ganesh International, M/s Riya Richita Enterprise, M/s Phoenix Hydraulics and the summary of statements of those persons were in the PAO. The contents of those summary statements are not discussed herein for brevity.

17. In connection with investigation of ECIR dated 28.05.2025, search operations were conducted under authority of Section 17[1] of the PMLA at ten nos. of residential and business premises associated with the entities and individuals supposedly involved in the generation, layering, and projection of PoC. During search operations, incriminating documents, records, and data relevant to the investigation were seized under Section 17[1A] of the PMLA. The seized materials primarily comprised of purchase and sale Invoice records, GST Invoices, Invoice books, transport bills and allied documents of the entities, spanning the period from FY : 2022-2023 to FY : 2023-2024. In compliance with Section 17[4] of the PMLA, an Original Complaint dated 17.02.2026 was filed before the Adjudicating Authority seeking confirmation of the freezing orders issued under Section 17[1A] and retention of seized documents. The Adjudicating Authority had thereafter, issued notice under Section 8[1] of the PMLA to the concerned persons for appearance and submission of reply. The PAO has recorded the findings of investigation.

18. In Table-A of the PAO, a list of fifty-eight non-existent or fictitious entities/individuals to whom M/s Siddhi Vinayak passed on ineligible or bogus ITCs amounting to Rs. 99,31,36,975/-, has been provided. *In the said list of fifty-eight shell entities in Table-A of the PAO, the names of M/s Krishti Enterprise and M/s L.S. & Company* are included. From the GST portal, upon a verification of the GSTINs of those fifty-eight entities, it has been found that the entities listed in Table-A had passed on fake ITC to various other downstream entities without any actual movement of goods. *The initial beneficiaries of M/s Siddhi Vinayak are also shell entities,* which existed merely on paper and function as conduit entities for issuing fake Invoices and facilitating the circulation of illegitimate ITC, ultimately causing wrongful loss to Government Exchequer through evasion of indirect tax [GST]. The transactions constitute 'Proceeds of Crime' within the meaning of Section 2[1][u] of the PMLA, being derived or obtained, directly or indirectly, from criminal activity relating to the Schedule Offences punishable under Sections 120B, 420, 467, 468, 471, 473 & 471, IPC.

G. <u>The prevention of Money-Laundering Act [PMLA] Act, 2002</u> :-

19. The Prevention of Money-Laundering Act, 2002 [PMLA] has been enacted with the prime objective to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. The PMLA is designed for confiscation of the PoC so that such illicit funds do not undermine financial system. The offence of money-laundering has propensity to create far-reaching consequences. The laundering of PoC causes significant loss to the State Exchequer. The illegal diversion and layering of funds having cascading effect, leads to revenue losses and creates a dent in availability of legitimate financial resources to the formal economy.

20. Considering the grounds urged in this writ petition, the provisions of Section 2[1][u], Section 2[1][v], Section 3, Section 5 and Section 8 of the PMLA are of relevance.

H. Discussion, Analysis and Reasons for Decision :-

I. Whether in the given facts and circumstances of the case, the writ petition under Article 226 is to be entertained :-

21. It has been contended on behalf of the respondents that the Court in its power of judicial review available under Article 226 of the Constitution has to be slow and circumspect in entertaining a writ petition assailing a PAO, that is, at the stage of Section 5 [1] of the PMLA. One of the grounds canvassed is that a PAO has a currency of One Hundred and Eighty days only and by the very provision, it is provisional in nature. A person whose property is attached by a PAO, will have an opportunity to represent before the Adjudicating Authority to explain as to why the PAO should not have been issued in respect of the property for non-fulfillment of the conditions precedent for its issuance.

22. Therefore, a brief analysis of the provisions in the statute relating to remedy before the Adjudicating Authority is called for. As per Section 5 [2] of the PMLA, the Authorized Officer immediately after attachment under Section 5 [1], is required to forward a copy of the PAO, along with the material in his possession, to the Adjudicating Authority in a sealed envelope. As per Section 5 [3], every PAO made under Section 5 [1] shall cease to have effect after the expiry of the period of One Hundred and Eighty days or on the date of an Order made under Section 8 [3], whichever is earlier. Section 5 [5] requires the Authorized Officer passing a PAO to file a complaint stating the facts of such attachment before the Adjudicating Authority.

22.1. As per Section 8 [1], once a complaint under Section 5 [5] is filed, if the Adjudicating Authority has reason to believe that any person has committed an offence under Section 3 or is in possession of POC, he may serve a Notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under Section 5 [1], and to show cause why all or any such properties should not be declared to be the properties involved in money-laundering, and confiscated by the Central Government. The Notice would require the noticee to produce evidence on which he relies upon and also other relevant information and particulars to show cause as to why all or any of the properties should not be declared to be the properties involved in money-laundering and confiscated. Section 8 [2] requires the Adjudicating Authority to consider the Reply to the Notice; to hear the aggrieved person as well as the Authorized Officer; and take into account 'all relevant materials placed on record' before him. After following the above procedure, the Adjudicating Authority has to record his finding whether all or any of the properties referred to in the Notice are involved in money laundering.

22.2. If the Adjudicating Authority is satisfied that any such property is involved in money-laundering, he will confirm the attachment of such property, by recording a finding to that effect in writing, whereupon the attachment of such property will continue during the pendency of the criminal proceedings. It becomes final after an Order of confiscation is passed either under Section 8[5] or under Section 8 [7] and other provisions of the PMLA. Under Section 8[4], upon confirmation of the PAO, the Director or other Authorized Officer is authorized to take possession of the property attached forthwith. Where on conclusion of a trial, the Special Court finds that the offence of money-laundering or the property is not involved in money laundering, it shall release such property to the person entitled to receive it. An order of the Adjudicating Authority is subject to appeal before the Appellate Tribunal under Section 26, which means that the

Adjudicating Authority is not the final authority under the PMLA as far as the attachment of PoC is concerned. There is a further provision for appeal before the High Court on any question of law or fact under Section 42.

22.3. From the afore-mentioned provisions, it is evidently clear that there is a remedy available to a person whose property has been attached provisionally in exercise of powers under Section 5[1]. The decisions in **Rajkumar Shivhare** [supra] and **Kujendra Doley** [supra] are on this point.

23. The power of judicial review under Article 226 of the Constitution is not be ordinarily exercised if an alternative remedy is available. It is also settled by a long line of decisions that the existence of alternative remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. Where [i] the writ petition has been filed for the enforcement of a fundamental right protected by Part-III of the Constitution; [ii] there has been a violation of the principles of natural justice; [iii] the order or proceedings are without jurisdiction; or [iv] the vires of a legislation, is challenged; then a writ petition can be entertained, depending on the fact situation obtaining in the case. Otherwise, there shall be restraint to entertain a writ petition, when a remedy is provided in the statute. It is a settled proposition that where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of procedure, a writ petition can be entertained even when a statutory forum is created by law for redressal of grievances is available. A writ petition can also be entertained when on the undisputed facts the statutory authority is shown to have assumed jurisdiction which it does not possess. But ordinarily, the High Court should not entertain writ petitions unless the action impugned goes to the root of the jurisdiction of the authority revealing a case of palpable injustice.

24. The same issue came up for consideration before a three-Judge Bench in **Southern Electricity Supply Co. of Orissa Ltd. vs. Shri Sitaram Rice Mill, [2012] 2 SCC 108**. A Show Cause Notice / PAO was issued to the assessee on the ground of unauthorized use of electricity meter under Section 126[1] of the Electricity Act, 2003 and a demand for payment of electricity charges was raised. The contention of the assessee was that Section 126 would not be applicable to it and challenged the jurisdiction of the authority who issued such Show Cause Notice / PAO before the High Court in its writ jurisdiction. The High Court entertained the writ petition and the judgment was challenged before the Hon'ble Supreme Court in appeal. The Hon'ble Supreme Court while observing that the High Court did not commit any error in exercising its jurisdiction in respect of the challenge raised on jurisdiction, has inter-alia proceeded to observe that depending upon the facts of a given case, writ petitions can be heard only where they involve primary questions of jurisdiction or the matters which go to the very root of jurisdiction and where the authorities have acted beyond the provisions of the Act. The High Court should not decline to exercise its jurisdiction merely for the reason that there is a statutory alternative remedy available even when the exercise of jurisdiction by the authority appears to be an exercise of jurisdiction in futility. Then, it will be permissible for the High Court to interfere in exercise of its jurisdiction under Article 226 of the Constitution.

25. In **State of Himachal Pradesh vs. Gujrat Ambuja Cement Limited, [2005] 6 SCC 499**, it was observed to the effect that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable to dismiss the same on the ground of non-exhaustion of statutory remedy; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition.

26. 'Attachment', as per Section 2[d] of the PMLA, means prohibition of transfer, conversion, disposition or movement of property by an order issued under

Chapter III of the PMLA. The object behind Section 5 is, in essence, a preventive not a punitive measure. By attaching the tainted property, the State seeks to preserve the status quo, so that the asset remains available for eventual confiscation if the guilt of the accused is established. Provisional attachment does not transfer the title of the property to the State. It, however, prohibits its transfer or conversion or alienation. The statutory intervention is for the purpose to protect the financial eco-system from the infiltration of PoC. Attachment, thus, touches upon one's constitutional right to property under Article 300A of the Constitution wherein it is laid down that no person shall be deprived of his property save by authority of law.

27. This preventive power, however, impairs a person's right to hold property to an extent that during the currency of the PAO, the person is prevented from selling or transferring or alienating the attached property in any manner. If the PAO is challenged on the ground that while passing the PAO, the Authorized Officer has committed a jurisdictional error then if such challenge turns out to be correct, then by such commission of jurisdictional error, the property would remain attached, even if provisionally for the period indicated in the PAO, without authority of law. As it then goes to the root of the matter, the remedy available under the writ jurisdiction is not to be declined without examining the given facts and circumstances of the case. It is on such supposition, the court proceeds further to examine the points raised on behalf of the petitioner on the premise that the points raised go to the root of the matter and would establish that the Authorized Officer has committed a jurisdictional error in the process.

II. Whether on the basis of material in his possession, the Authorized Officer could have reason to believe that any person is in possession of the PoC or a part of the PAO; and such PoC are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such PoC for issuing a PAO? Whether in the

given facts and circumstances of the case, the power under the Second Proviso is exercisable?

28. Section 5 of the PMLA has provided for attachment of property involving money-laundering. On a reading of sub-section [1] of Section 5, it emerges that where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of the Section, has 'reason to believe' [the reason for such belief is to be recorded in writing], on the basis of material in his possession, that [a] any person is in possession of any PoC; and [b] such PoC are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such PoC under Chapter III of the PMLA, he may, by order in writing, provisionally attach such property for a period not exceeding One Hundred and Eighty days from the date of the order, in such manner as may be prescribed.

29. From the main part of sub-section [1] of Section 5, it can be noticed that [a] the Director can pass a PAO. If it is not the Director, an officer not below the rank of the Deputy Director can also pass a PAO, provided he is authorized by the Director for the said purpose; [b] possession of material is a prerequisite of passing a PAO and it is on the basis of material in his possession only, the PAO has to be passed; [c] the Authorized officer must have *reason to believe* and the reason for such believe is to be recorded in writing; [d] the Authorized Officer is to have reason to believe on two aspects, firstly, the person is in possession of any PoC; and secondly, such PoC are likely to be concealed, transferred, or dealt with, in any manner which may result in frustrating any proceedings relating to confiscation of such PoC under Chapter III; [e] only after having arrived at a satisfaction to form reason to believe on the above two aspects, the Authorized Officer can, by Order in writing, provisionally attach such property; [f] if a PAO is passed, then it will have a currency of One Hundred and Eighty days from the date of the PAO; and [g] the PAO is to be passed in the manner prescribed. The

Second Proviso to sub-section [1] of Section 5, which is with a non-obstante clause in reference to anything contained in the first proviso thereof, has provided that any property of any person may be attached under Section 5, if the Authorized Officer for achieving the twin purposes has reason to believe [the reasons for such belief is to be recorded in writing] on the basis of material in his possession, that if such property involving money-laundering is not attached immediately under the Chapter, then non-attachment of the property is likely to frustrate any proceeding under the PMLA.

30. It has been settled by **Vijay Madanlal Choudhary** [supra] that it is only upon recording satisfaction regarding the twin requirements referred to in sub-section [1] of Section 5, the Authorized Officer can proceed to issue a PAO of PoC. Before issuing a formal order, the Authorized Officer has to form his opinion and delineate the reasons for such belief, to be recorded in writing, which indeed is not on the basis of assumption, but on the basis of material in his possession. The PAO is, thus, the outcome of such satisfaction already recorded by the Authorized Officer. It is, therefore, necessary to look, at first, what were the material in possession of the Authorized Officer on the basis of which he appeared to have reached the satisfaction and had reasons to believe, which were recorded in writing, that there was existence of PoC.

31. From the impugned PAO itself, it is evident that the Authorized Officer had in his possession the complaint of FIR no. 182/2024, registered on 03.10.2024, for the offences mentioned hereinabove; the ECIR no. ECIR/ITS20/02/2025 registered on 28.03.2025; documents/data seized during the search proceedings under Section 17 of the PMLA; the statement of the complainant in FIR no. 182/2024, recorded under Section 50[2] & [3] of the PMLA, along with the documents/evidence received from him; and the statements of the proprietor/partner/director of four entities, recorded under Section 50[2] & [3] of PMLA, associated with a number of entities under scrutiny, along with documents

received from them. In addition, the Authorized Officer had, in his possession, the statement of the petitioner as the proprietor of M/s Fama Marketing, recorded under Section 50[2] & [3] of the PMLA, and the documents received from him. The Authorized Officer had also in his possession Bank Account statements of a number of entities.

32. The Authorized Officer had been provided with the materials, collected by the complainant in FIR no. 182/2024. The materials included the details of 15,258 Invoices issued within a span of six months [October, 2023 to March, 2024] by M/s Siddhi Vinayak, which were found out to be bogus, having total Invoice value of Rs. 658,55,35,521/-, which enabled 58 firms located across eleven States to avail ITC amounting to Rs. 99,31,36,975/-. The Invoices, after verification, were found to be issued without any corresponding movement of goods as on verification of the e-way bill portal, no e-way bills were found generated against the GSTIN. The records of GSTR-1 month-wise, GSTN wise and GSTR-TB pertaining to M/s Siddhi Vinayak were available with the Authorized Officer. The information regarding GSTR-2A and GSTR-2B of M/s Siddhi Vinayak for the period under reference were examined and on examination, no data was found available in GSTR-2A and GSTR-2B of M/s Siddhi Vinayak whereas by GSTR-TB, ITC were utilized by M/s Siddhi Vinayak indicating clearly availment and utilization of fake and ineligible ITC. The statement of Sri Ashotosh Kumar Jha was available wherein it was revealed that some of the entities which had received Invoices from M/s Siddhi Vinayak were shell entities existing only on paper. The statements of the proprietor/partner/director of the four entities had clarified that they had availed ITC without verifying as regards filing of GST Returns [GSTR-TB] by their supplier firms prior to availing the ITC. The Authorized Officer had materials collected and information gathered from the search proceeding that M/s Siddhi Vinayak had office only on paper and it did not even have a Bank Account in its name. The Authorized Officer had the GST Returns filed by M/s Siddhi Vinayak wherefrom it was evident to him that an

amount of Rs. 99,31,36,975/- were passed as ineligible or bogus ITC to 58 non-existent or fictitious entities/individuals, mentioned in Table-A in the PAO. The Authorized Officer had the GST Returns upon whose analysis along with the corroborative materials in the form of statements and documents seized during the search operation, he had drawn the satisfaction that out of the total amount of Rs. 99,31,36,975/- crores of fraudulently generated ITC by M/s Siddhi Vinayak, an amount of approximately Rs. 76.89 crores was illegally transmitted as ineligible and bogus ITC to various downstream entities. He had materials in possession in the form of GST Returns which revealed that M/s Prince Enterprise received Rs. 8,30,00,134,82/-, M/s A.C. Enterprises received Rs. 6,35,78,196/-, M/s Rangoli Enterprise received Rs. 5,03,33,200/-, M/s Pawan Enterprise received Rs. 2,97,39,584/-, M/s Sardar Enterprise received Rs. 5,58,15,349/-, Ms. P. Enterprise received Rs. 5,90,70,320/-, M/s Jaiswal Traders received Rs. 4,85,49,759/-, M/s Nandi Enterprise received Rs. 5,43,68,328/-, Ms. Sanjay Traders received Rs. 2,84,53,750/-, M/s Rohit Enterprise received Rs. 3,60,87,822/-, M/s Dwarkesh Traders received Rs. 2,79,99,849/-, **M/s Krishti Enterprise received Rs. 3,84,21,019/-**, M/s SRG Traders received Rs. 2,92,53,764/-, M/s Riya Rishita Enterprise received Rs. 2,66,46,302/-, M/s Jai Enterprise received Rs. 4,29,91,931/-, and **M/s L.S. & Company received Rs. 4,39,15,230/-**.

33. 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 PoC in relation to the Scheduled Offence as defined in clause [u] of sub-section [1] of Section 2 of the PMLA. From the definition of the offence of money-laundering, as given in Section 3 of the PMLA, it is evident that it can be committed simultaneously with or after a Scheduled Offence is committed. The FIR no. 182/2024 was registered on 03.10.2024 for offences under Sections 120B, 420, 467, 468, 471, 473 & 474, IPC. 'Scheduled Offence', as per Section 2[1][y], inter-alia means the offences specified in Part-A of the Schedule. In Part-A of the

Schedule, the offences under Sections 120B, 420, 471 & 472, IPC are included. It was based on FIR no. 182/2024 the ECIR was registered on 28.03.2025 as regards the criminal activities relating to the Schedule Offences. In the present case, the Scheduled Offences were found to have committed during the period from October, 2023 to March, 2024.

34. The term, 'Proceeds of Crime [PoC]' is the most vital aspect in the PMLA as it determines whether an offence falls within the scope and ambit of money-laundering. Section 2[1][u] of the PMLA, which defines PoC, lays the foundation for attachment and confiscation of property acquired through illegal means. 'Proceeds of Crime' under Section 2[1][u] of the PMLA has been defined to mean :-

[a] any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled Offence; or

[b] the value of any such property; or

[c] where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

35. The pre-condition for being PoC is that property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled Offence. The sweep of Section 5[1] is not limited to the accused named in the criminal activity relating to a Scheduled Offence. It would apply to any person [not necessarily being accused in the Scheduled Offence], if he is involved in any process or activity connected with the PoC. Such a person besides facing the consequence of PAO, may end up in being named as accused in the complaint to be filed by the Authorized Officer concerning offence under Section 3 of the PMLA.

36. From the definition of 'property', it emerges that property means any property or assets of every description, whether corporeal or incorporeal, movable or

immovable, tangible or intangible or includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located. The Explanation has clarified that the term 'property' includes property of any kind of used in the commission of an offence under the PMLA or any of the Scheduled Offences.

37. It has been settled by **Vijay Madanlal Choudhary** [supra] that the offence of money-laundering is an independent offence regarding the process or activity connected with the PoC which have 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 PoC 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 PoC would constitute offence of money-laundering. The offence of money-laundering otherwise has nothing to do with the criminal activity relating to a Scheduled Offence – except the PoC derived or obtained as a result of the crime.

38. 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 PoC; 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. If a person has indulged in or continues to indulge directly or indirectly in dealing with PoC, derived or obtained from such criminal activity, he may be liable to be prosecuted for the offence of money-laundering under the PMLA for continuing to possess or conceal the PoC [fully or in part] or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent or linked to the date on which the Scheduled Offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such PoC. It is mentioned that there are three generally accepted stages to

money-laundering, [a] Placement : which is to move the funds from direct association of the crime; [b] Layering : which is disguising the trail to foil pursuit; and [c] Integration : which is making the money available to the criminal from what seem to be legitimate sources.

39. In the case of **Pavana Dibbur vs. the Directorate of Enforcement, 2023 INSC 1029**, the Hon'ble Supreme Court has provided an illustration in the following manner :-

> 15. [.....] 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. [.....]

40. The key elements of PoC are that the property must originate from criminal activity linked to a Scheduled Offence [offences listed in the Schedule] and

criminal activity could include corporate crime, tax evasion, corruption, fraud, trafficking in contraband, smuggling, etc. The property can be acquired directly from illegal activities. Property also includes those which are indirectly acquired, for example, re-investment of money generated through illicit activities into real estate, stock market, etc. The term 'property' under the PMLA includes movable and immovable assets like cash, real estate, vehicle, gold, share, debenture, etc. tangible and intangible properties including crypto currencies and virtual digital assets. PoC also includes property situated outside India if it is derived from criminal activities within India.

41. Reverting back to the PAO assailed herein, the Authorized Officer is found to have drawn his conclusions on the basis of the material in his possession. In the PAO, the Authorized Officer has found that M/s Fama Marketing had availed and utilized ITC amounting to Rs. 52.66 lakh on the basis of transactions with M/s Krishti Enterprise and M/s L.S. & Company, which are identified as shell entities linked to the fake ITC network of M/s Siddhi Vinayak. The transactions were conducted through unknown intermediaries, indicating non-genuine dealings. Existence of substantial unpaid trade payable exceeding Rs. 1 Crore [Rs. 1,02,82,140/-], absence of supporting documents such as transport and goods receipt records, and contradictory nature of supplier activities have collectively established that no actual movement of goods took place and the transactions were merely accommodation entries to avail fraudulent ITC, thereby, constituting PoC under Section 2[1][u] of the PMLA.

42. Analysis of GST Returns, coupled with the statements recorded and documents seized have established that out of the total Rs. 99,31,36,975/- fraudulently generated ITC by M/s Siddhi Vinayak, an amount of Rs. 76.89 Crore [approximately] was illicitly transmitted as ineligible or bogus ITC to fifteen downstream entities mentioned therein. M/s Krishti Enterprise and M/s L.S. & Company were among such fifteen entities, who received Rs. 3,84,21,019/- and

Rs. 4,39,15,230/- respectively, which transactions were circulated and without any underlying supply of goods or services. The transactions were designed solely to facilitate the layering, integration, and projection of the PoC within the formal financial system, thereby disguising the illicit funds as legitimate business income. Summons issued under Section 50, PMLA to the said fifteen entities at their GST-registered addresses were returned undelivered with postal endorsement 'no such address exist / insufficient address', except in the case of one entity, which indicated that the entities were not operating from their declared PoBs. Physical verification conducted at the declared addresses revealed that the locations did not correspond to any identifiable commercial establishment and local enquiries confirmed that no such firms had ever operated from the said premises. Such facts have established that the entities are fictitious / paper entities created solely for the purpose of issuing bogus Invoices and facilitating the receipt and circulation of Proceeds of Crime in the form of fraudulent ITC.

43. Some of the conclusions drawn from the facts by the Authorized Officer are as under :-

> **4.10** Upon thorough scrutiny of the said documents and material evidence, the following facts have prima facie emerged :
>
> * * * * *
>
> **4.10.3 Fraudulent Availment, Utilisation, and Passing on of Ineligible Input Tax Credit** : It has been revealed that M/s Siddhi Vinayak Trade Merchants fraudulently availed Input Tax Credit [ITC] amounting to approximately **Rs. 99.31 crore** during the Financial Year : 2023-24 to set off its tax liability of **Rs. 99.31 crore** and ultimately causing wrongful loss to the Government exchequer through evasion

of indirect tax i.e. GST. The said ITC was claimed on the basis of fictitious invoices issued without any actual supply or movement of goods or services, and in the complete absence of genuine business activities. Further, it has been found that the said entity wrongfully passed on **Rs. 99.31 crore** of fake and ineligible ITC to 58 entities registered in different States of India. Further, there was no bank account of the said entity and GST returns of this entity was filed by Shri Ashutosh Kumar Jha who himself admitted that the said entity merely existed on paper only.

* * * * *

4.10.5 The fraudulently availed and passed on ITC constitutes **Proceeds of Crime** within the meaning of Section 2[1][u] of the PMLA, 2002, being derived from the commission of Scheduled Offences punishable under Sections 120B read with Sections 419, 420 and 471 of the Indian Penal Code, 1860.

4.10.6 Further Layering and Circulation of Proceeds of Crime / Fake ITC : Examination of the GST returns filed by M/S Siddhi Vinayak Trade Merchants indicates that out of the **total proceeds of crime amounting to Rs. 99.31 crore passed on as ineligible or bogus ITC to non-existent or fictitious entities/individuals**.

Further details are mentioned in a Table in the PAO, which are not reproduced here.

44. The PAO has listed names of twenty individuals / entities whose statements were recorded during the period from 25.07.2025 to 19.03.2026. The petitioner was one of the persons whose statement was recorded on 19.03.2026 pursuant to

summons dated 25.02.2026. The PAO has recorded summary of the statements of those individuals/entities.

45. In the PAO, the details of ITC received by M/s Fama Marketing, represented by the petitioner, are mentioned as under :-

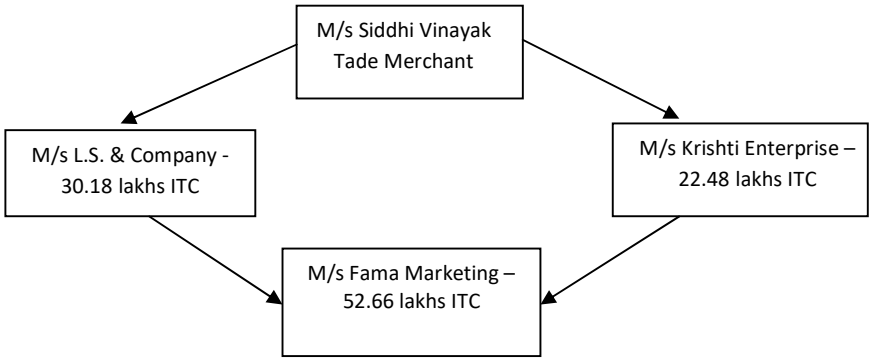
> **5.8.6** The details of ITC received by M/s Fama Marketing [14AXFPD2304J1Z1] represented by Shri Mrig Mrinal Dhawan :
>
> **5.8.6.1** During the course of investigation, it has been revealed that the said entity had availed and utilized fraudulent Input Tax Credit [ITC] on the strength of Invoices issued by M/s Krishti Enterprise and M/s L.S. & Company, which have been identified as suspicious entities. It was further revealed that M/s Fama Marketing purportedly purchased TMT bars from M/s Krishti Enterprise. However, upon detailed examination of the tax invoices and the corresponding e-way bills produced by the said entity, several material discrepancies and deficiencies were noticed which indicate that the invoices and e-way bills are self-fabricated and do not represent genuine commercial transactions.
>
> 5.8.6.2 It is also observed from the GSTR-3B returns of M/s Fama Marketing, submitted by Shri Mrig Mrinal Dhawan, that during F.Y. 2023-24 the entity completely relied on Input Tax Credit [ITC] to discharge its GST liability, with no tax paid in cash.
>
> **5.8.6.3** Investigation has further revealed that the second-layer entities, which are the direct beneficiaries of M/s Siddhi Vinayak Trade Merchant, including M/s Krishti Enterprise and other related entities,

have shown supplies not only 'TMT bars' to M/s Fama Marketing, but have also shown [.....]. It is pertinent to mention that during field verification and further investigation it has been found that M/s Krishti Enterprise is not operating from its declared principal place of business and its GST registration is presently inactive, thereby strongly indicating that the said entity is a non-existent or shell entity created solely for the purpose of issuing bogus invoices and facilitating fraudulent availment and circulation of Input Tax Credit.

5.8.6.4 By utilising the fraudulently availed Input Tax Credit [ITC] to discharge its statutory GST liabilities, M/s Fama Marketing actively acquired, possessed, used and projected the proceeds of crime as legitimate tax credit, **thereby integrating illicit gains into the formal financial system. The fraudulent ITC amounting to Rs. 0.5266 crore, which was availed on the strength of invoices issued by suspected shell entities and subsequently utilised to set off the GST liability, constitutes Proceeds of Crime generated through the predicate offence.**

5.8.6.5 Accordingly, the conduct of M/s Fama Marketing and its proprietor Mrig Mrinal Dhawan demonstrates knowing involvement and active participation in processes connected with the Proceeds of Crime, including their acquisition, possession, use and projection as untainted property, thereby squarely attracting the ingredients of the offence of money-laundering under Section 3 r/w Section 70 of the Prevention of Money Laundering Act, 2002. **The fraudulent ITC of Rs. 0.5266 crore utilised by M/s Fama Marketing therefore represents Proceeds of Crime within the meaning of Section**

2[1][u] of the said Act, rendering the said entity and its responsible persons liable under the provisions of the Act.



46. Based on the investigation, the Authorized Officer in the PAO has observed that the PoC, mentioned therein, or **the value thereof**, as defined under Section 2[1][u] of the PMLA have been identified, traced, and are found to be held in the names of a number of individuals and their family members including the petitioner herein, in the form of various movable and immovable properties, which are also detailed in the PAO. The Authorized Officer has identified in case of the petitioner, the Attached Property for its value for attachment.

47. The Authorized Officer has thereafter, proceeded to record his reasons to believe for attachment under the Second Proviso to sub-section [1] of Section 5 of the PMLA in the PAO. The Authorized Officer has stated to have considered the materials available on record, as mentioned above, to record that M/s Siddhi Vinayak is a non-existent shell entity, created solely for the purpose of issuing fake invoices without any actual supply of goods and fraudulently passing on ITC amounting to approximately Rs. 99.31 Crore to multiple beneficiary shell entities across India. The said ITC was subsequently availed, utilized, layered, and integrated through various entities including M/s Fama Marketing, thereby generating PoC. On the basis of evidence gathered, including statements of key-persons recorded under Section 50 of the PMLA of fictitious non-existent

downstream entities, and absence of any evidence of movement of goods such as E-Way bills, transport documents, or genuine commercial records, the Authorized Officer in the PAO has gone on to observe that such facts have conclusively established that [i] no actual supply or movement of goods took place; [ii] the transactions were devoid of any genuine commercial substance; and [iii] the entire arrangement was structured for the purpose of generation, layering, circulation, and projection of PoC as legitimate business transactions. Routing fake ITC through a network of shell and conduit entities to conceal and project the PoC as untainted property is held to constitute a prima facie offence of money-laundering as defined under Section 3 r/w Section 70 of the PMLA.

Reason to believe in the PAO :-

48. Thereafter, Authorized Officer has recorded in the PAO as to why he has reason to believe that the conditions stipulated under Section 5[1] of the PMLA have been satisfied in the following manner :-

> **7.1.1 Condition under Section 5[1][a]** : I have reason to believe that [*]*****,[*]*****, Shri Mrig Mrinal Dhawan and [*]*****, through their respective entities namely [*]*****,[*]*****, M/s Fama Marketing and [*]***** [formerly ****], have knowingly acquired, possessed, used and projected as untainted property the proceeds of crime generated from fraudulent availment and utilisation of Input Tax Credit amounting to approximately Rs. 14.85 crore, arising out of criminal activity relating to the scheduled offence, as detailed in Paras 2 to 5 above.
>
> The said amount represents 'proceeds of crime' within the meaning of Section 2[1][u] of the PMLA and is liable for attachment under Section 5 of the Act.

7.1.2 Condition under Section 5[1][b] : I further have reason to believe that the properties proposed for attachment, being held in the names of the aforesaid persons and their family members/entities are liable to be concealed, transferred, or otherwise dealt with in a manner which may result in frustrating the confiscation proceedings under the PMLA. The investigation has revealed that the properties are held in a layered manner, including in the names of family members, thereby facilitating ease of alienation, transfer, or creation of third-party interests. Any delay in attachment would provide an opportunity to dissipate the proceeds of crime and defeat the object of the Act.

Accordingly, the conditions stipulated under Section 5[1][a] and Section 5[1][b] of the PMLA stand fulfilled.

7.2 Recording of Reasons to Believe for Invocation of the Second Proviso to Section 5[1] of the PMLA

7.2.1 I further record separate and independent reasons to believe, on the basis of material in possession, that if the properties involved in money-laundering are not attached immediately, the non-attachment is likely to frustrate proceedings under the Act, for the following reasons :

[i] The investigation has revealed systematic layering and routing of proceeds of crime through fictitious and controlled entities.

[ii] The properties proposed for attachment are held in the name of [*]***** his wife, Shri Mrig Mrinal Dhawan, [*]***** [W/o ****] & [*]***** [S/o *****] and [*]*****, indicating ease of alienation, transfer, or encumbrance.

[iii] Any delay in attachment would provide an opportunity to dissipate or create third-party interests, thereby frustrating confiscation under Section 8 of the PMLA.

> In view of the above, I am satisfied that the conditions laid down under Section 5[1][a] and 5[1][b] of the PMLA are fully satisfied, and this is a fit case for invoking the provisions of Section 5[1] of the PMLA for provisional attachment of the properties involved in money laundering or the value thereof.

49. The expression 'reason to believe' is a part of a number of statutes. The Income Tax Act, 1961 or its predecessor statute, the Income Tax Act, 1922, the Essential Commodities Act, 1955, the Foreign Exchange Regulation Act, 1973, the Narcotic Drugs and Psychotropic Substances [NDPS] Act, 1985, the Central Goods and Services Tax Act, 2017 or various State Goods and Services Tax Act and the previous statutes on Value Added Tax are a few to name, apart from the PMLA.

50. In **P. Chidambaram** [supra], the Hon'ble Supreme Court finding that the expression 'reason to believe' has not been defined in the PMLA, has referred to Section 26, IPC where the expression 'reason to believe' was defined. After repeal of the IPC, the expression 'reason to believe' has found place in Section 2[29] of the Bharatiya Nyaya Sanhita, 2023 [BNS]. The expression 'reason to believe' is similarly worded both in the IPC and in the BNS.

51. In **Joti Parshad vs. State of Haryana, 1993 Supp[2] SCC 497**, the Hon'ble Supreme Court has observed that 'knowledge' is an awareness on the part of the person concerned indicating his state of mind. 'Reason to believe' is another facet of the state of mind. The Hon'ble Court has explained 'reason to believe' in the following manner :-

> 5. [.....] 'Reason to believe' is not the same thing as 'suspicion' or 'doubt' and mere seeing also cannot be equated to believing. 'Reason to believe' is a higher level of state of mind. Likewise 'knowledge' will

be slightly on a higher plane than 'reason to believe'. A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words 'reason to believe' thus:

> 26. '*Reason to believe*'.— A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise.

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. 'knowledge' and 'reason to believe' have to be deduced from various circumstances in the case. [.....]

52. The standard of reason to believe for the Authorized Officer is that of a prudent person who acts on reasonable grounds and comes to a cogent conclusion. There has to be a conscious application of mind to the relevant facts and material available and existing at the relevant point of time while making the assessment. The reason to believe is not to be the subjective satisfaction of the Authorized Officer but it has to be an objective view on the material in possession in connection with the concerned case and must be based on them. 'Reason to believe' means a belief which a reasonable person entertains on facts before him.

53. It is only on the basis of specific, reliable and relevant information in his possession and the belief is to be that of the Authorized Officer. Since the belief is to be that of the Authorized Officer, which is to be based on the material in his possession, there must be a rational connection and link between the material in the possession of the Authorized Officer and the formation of belief of the Authorized Officer that the two pre-conditions adumbrated in Section 5 [1] are present for him to proceed further for attachment of the property in question provisionally. When the Authorized Officer entertains a requisite belief and for that belief, reasons are recorded in writing by him, no one, not even a constitutional court, can ask the Authorized Officer to substitute his own opinion whether the Authorized Officer on the basis of the material should have passed the Order. The Court, to a limited extent, can look into the reason to believe recorded by the Authorized Officer and examine whether on the basis of the material available in possession, it was possible for the Authorized Officer to form the requisite belief and also, whether the material have any rational connection or a live-link for the formation of the requisite belief. In other words, the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Authorized Officer on the point as to whether such an action should be taken or not.

54. A POA is to be passed by the Authorized Officer when he is of the opinion that for the ultimate object of confiscation of PoC, it is necessary to pass the PAO for attachment of properties of the person who is in possession of whole or any part of the PoC. Therefore, before passing the PAO, there must be an opinion formed by the Authorized Officer that for the purpose of confiscation of PoC, it is necessary to attach provisionally any property of any person who is in possession of any part or whole of PoC.

55. From the material in his possession which are described above, a substantial part of which are found verifiable from records, the Authorized Officer has come to a conclusion the by way of fraudulent availment, utilization, and passing on of ineligible ITC, M/s Sidhi Vinayak Trader availed ITC amounting to Rs. 99,31,36,975/- which is the PoC, during the Financial Year [FY] : 2023-2024 to set-off its tax liability and the same had ultimately caused wrongful loss to the State exchequer through evasion of indirect tax [GST]. The ITC is found to be claimed on the basis of fictitious Invoices issued without any actual supply or movement of goods or services, and in absence of genuine business activities. Based on the material in his possession, M/s Sidhi Vinayak Trader is found to have wrongfully passed on the PoC of Rs. 99,31,36,975/- through fake and ineligible ITC to fifty-eight entities registered in different States of India. The Authorized Officer has reached a conclusion that further layering and circulation of PoC through fake ITC took place and the PoC of Rs. 99,31,36,975/- was passed on to non-existence or fictitious entities/individuals, the details of which were in Table-A of PAO. The Authorized Officer has found, on the basis of materials in his possession, two of the entities, M/s Krishti Enterprise and M/s L.S. & Company received Rs. 3,84,21,019/- and Rs. 4,39,15,230/- respectively through fraudulently generated ITC by M/s Sidhi Vinayak Trader. On the basis of materials in his possession, the Authorized Officer has drawn a conclusion that M/s Fama Marketing had availed and utilized fraudulent ITC of Rs. 52.66 lakhs on the strength of Invoices issued by M/s Krishti Enterprise for Rs. 22.48 lakh and M/s L.S. & Company for 30.18 lakh, which he has found to be a part of the PoC of Rs. 99,31,36,975/-.

56. In the considered view of this Court, having regard to the materials in his possession, as reflected in the impugned PAO, and the discussion made therein, the Authorized Officer had adequate, acceptable, reliable and verifiable material, which were verified, to form the above belief that Rs. 99,31,36,975/- was PoC and the same were put into the formal financial system by fraudulent means. A

part of the PAO of Rs. 99,31,36,975/- amounting to Rs. 52.66 lakhs has also been percolated down to M/s Fama Marketing through to Shell entities, M/s Krishti Enterprise and M/s L.S. & Company, who received a share each from the pies of the PoC to the extent of Rs. 3,84,21,019/- and Rs. 4,39,15,230/- respectively. Thus, the aspect that the petitioner is in possession of a part of the PoC is seen to be satisfied. As the said share of the PoC stood already dissipated into the formal financial system, the other aspect that such PoC is likely to be concealed, transferred or dealt with in any manner resulting in frustration of the proceeding relating to confiscation is also found to have been fulfilled. Having regard to the reason to believe, recorded in writing, this Court is not in a position to disagree that conditions precedent for passing an order under Section 5[1] read with the Second Proviso were absent before the Authorized Officer to pass the impugned PAO. The Authorized Officer had reason to believe that the properties in issue were involved in money-laundering and if they were not attached immediately, it had the propensity to frustrate the proceedings under the PMLA initiated for their confiscation. The Authorized Officer is also found to have reached the satisfaction on the condition set forth in the Second Proviso.

III. Whether properties purchased prior to the PAO can be attached by the Authorized Officer under Section 5[1] of the PMLA.

57. By the PAO, the Authorized Officer has provisionally attached two plots of land measuring 3 Kathas [8.03 Ares], covered by Dag no. 647 of K.P. Patta no. 190, and another plot of land, measuring 2 Kathas [5.35 Ares], covered by Dag no. 648 of K.P. Patta no. 600, classified as Second Basti land, situate at Revenue Village – Sarusajai, Mouza – Beltola, Dispur Revenue Circle, Guwahati, Kamrup Metropolitan District, Assam [‘the Attached Property’]. From the registered Sale Deeds annexed as Annexure-9 to the writ petition, it is evident that the said plots of land were purchased by the petitioner by way of a Sale Deed, registered on 11.02.2022 and the sale consideration paid was Rs. 60,00,000/-. The transfer of

the Attached Property by way of sale was pursuant to No Objection Certificates granted by the office of the Deputy Commissioner, Kamrup Metropolitan District, Guwahati on 10.12.2021 on the basis of three applications submitted by the petitioner before the said authorities on 26.11.2021 and 14.12.2021 respectively.

58. The contention raised by the petitioner is that as the Attached Property were purchased on 19.01.2022 and the Scheduled Offences were allegedly committed during the period from October, 2023 to March, 2024, the Attached Property were demonstrably purchased prior to commission of the alleged Scheduled Offences in respect of which FIR no. 182/2024 was registered on 03.10.2024. It is the contention that as the Attached Property were purchased evidently prior to the commission of the Scheduled Offences and registration of the ECIR on 28.03.2025 the Attached Property could not have been provisionally attached by the Authorized Officer in exercise of the powers under Section 5 [1] of the PMLA.

59. The contentions raised are in relation to the definitions of 'Proceeds of Crime' and 'Property' as defined in Section 2 [1][u] and Section 2 [1][v] respectively in the PMLA. Noticeably, in the definition provided in Section 2 [1][u], all three parts in PoC are separated by disjunctive 'or'. The word 'or' appears between the expression 'the value of any such property' in [b] above and the expression in [c] where such property is taken or held outside the country. The words 'such property' appearing in [b] is more closely connected and relatable to the first part in [a], that is, property derived or obtained, directly or indirectly, by 'any person' as a result of criminal activity relating to a Scheduled Offence. By Explanation to Section 2[1][u], it has been clarified that PoC 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.

60. The definition of 'Proceeds of Crime' [PoC] is, therefore, intricately connected with and therefore, is to be read with Section 2[1][v] which defines 'property'. 'Property' means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes title deeds and instruments evidencing title to, or interest in, such property or assets, wherever located. The Explanation to Section 2[1][v] has clarified that the term 'property' includes property of any kind used in the commission of an offence under the PMLA or any of the Scheduled Offence.

61. Therefore, the expression 'value of any such property' appearing as a distinct part of the definition of 'Proceeds of Crime' would be a value equivalent to the value of a property derived or obtained directly or directly by any person as a result of criminal activity. The property itself may no longer be available but the equivalent value of such property, whether held in cash, in the form of land or building, apartment, flat, etc. would be available for attachment.

62. Referring to the definition of 'Proceeds of Crime', it was urged in **Vijay Madanlal Choudhary** that the Attachment of Property must be equivalent in value of the PoC only if the PoC are situated outside India. Repelling such contention, the Hon'ble Court has held in the following terms :-

> 172. [.....] This argument, in our opinion, is tenuous. For, the definition of 'proceeds of crime' is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, **but also of the value of any such property**. If the property is taken or held outside the country, **even in such a case**, the property equivalent in value held within the country or abroad can be proceeded with. The definition of 'property' as in Section 2[1][v] is equally wide enough to encompass the value of the property of

> proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money laundering.

63. Following **Vijay Madanlal Choudhary**, the Hon'ble Supreme Court in **M/s. Nav Nirman Builders & Developers Pvt. Ltd. vs. the Union of India, 2026 INSC 130**, has held that the definition of 'Proceeds of Crime' under Section 2 [1][u] of the PMLA is wide enough to include a property which is equivalent in value to the property that is directly or indirectly obtained from a criminal activity relating to the scheduled offence. Thus, such a property can also be attached if the PoC, as such, are not otherwise available. Section 2 [1][u] of the PMLA, despite being a definition clause, indicates the very objective of the enactment to secure PoC in any form.

64. Thus, if the actual asset is no longer available, its equivalent value can be considered as PoC and can be attached or confiscated. The term 'PoC' encompasses property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. Even if PoC is transferred multiple times wholly or partly to one or many to other entities in different modes, the original tag attached to it as tainted money does not go away and it remains, and as a result, the last of the person in possession of the PoC or a part of the PoC comes under the purview of the attachment and confiscation proceeding. Attachment and confiscation apply not only to money but to any assets purchased using illicit funds of PoC or ***value thereof***.

65. The PMLA has been enacted for the purpose of preventing money laundering and confiscating the proceeds of crime in order to ensure that any illicit funds generated through the process of money laundering does not make a dent to the economy of the Nation. Money laundering has deeply ingrained effect of causing significant loss to the State Exchequer. The PoC generated through money-

laundering not only cause significant loss to the State Exchequer, but also disturbs financial transactions transacted legally. It creates an adverse impact on the formal financial system as illicit financial transactions of the nature as shown to have been committed in the present case, which affects the State of legitimate revenue and brings adverse consequences towards maintenance of economic stability. The illegal diversion or layering of funds leads to losses through to the State Exchequer. The offences under the PMLA are of continuing in nature and the act of money-laundering might not be stopped by a single act but it extends so long as the PoC are concealed or used. The financial trail, as demonstrated prima facie from the material, stated to be in possession of the Authorised Officer, out of the total PoC of Rs. 99,31,36,975/- infused into the financial economy through fraudulent availment and utilisation of ITC during the reference period, Rs. 3,84,21,019/- and Rs. 4,39,15,230/- were transmitted to the two entities, M/s Krishti Enterprise and L.S. & Company respectively through fraudulently generated ITC by M/s Siddhi Vinayak through further layering amounts of Rs. 22.48 lakhs and Rs. 30.18 lakhs from the said two entities, that is, total Rs. 52.66 lakhs were availed and utilised ITC fraudulently on the strength of Invoices issued by the said two entities. As the said amount of Rs. 52.66 lakhs availed and utilised by the petitioner is a part of the total proceeds of crime of Rs. 99,31,36,975/-, the same is found liable for attachment provisionally. The respondents have demonstrated prima facie that the said part PoC of Rs. 52.66 lakhs is liable to be attached provisionally. As the said amount of Rs. 52.66 lakhs a part of the total PoC, stood infused into the formal financial economy and is not available for attachment, the Attached Property having value at par is permissible to be attached under the provisions of Section 5 [1], notwithstanding the fact that the Attached Property were purchased at a period prior to the commission of the Scheduled Offences whereby the proceeds of crime of Rs. 99,31,36,975/- had been found generated.

66. In **Seema Garg** [supra], it was held that property acquired prior to commission of Scheduled Offence i.e. criminal activity or introduction of PMLA cannot be attached unless property obtained or acquired from Scheduled Offence is held or taken outside the country. The finding so recorded in **Seema Garg** is found not in alignment in the decisions of the Supreme Court in **Vijay Madanlal Choudhary** [supra]; **Nirman Builders** [supra]; and **Pavana Dibbur** [supra].

67. In view of the above discourse, the contention of the petitioner that the Attached Property cannot be brought under the scope and ambit of Section 5 [1] of the PMLA is found unsustainable for the reasons discussed above.

IV. Whether the impugned PAO is bad in law for the reason that the Authorized Officer has recorded his 'reason to believe' in the order itself.

68. It is now to turn to the cardinal point of assail, recorded in Paragraph 5.1 above. The prime ground on which the PAO is assailed by the petitioner, which is the sheet anchor, is that the reason to believe [the reason for such believe to be recorded in writing] to be reached by the Authorized Officer for issuing a PAO, as per Section 5 [1] of the PMLA, is of ***confidential*** nature and the same are to be recorded in a separate file and such reason to believe are not to be a part of the PAO. In support of such submission, reliance has been placed, as mentioned above, in the decisions in **P. Chidambaram** [supra], Paragraph 28; and **Aftabuddin Ahmed** [supra], Paragraphs 35 & 38.

69. This line of reasoning is prima facie does not align with the other three contentions advanced on behalf of the petitioner. If such contention is accepted, a PAO order passed under Section 5[1] of the PMLA would be a barren order listing only the property or properties which are thereby attached and an affected person like the petitioner could not be in a position to know the reasons

on which the Authorized Officer had proceeded to attach the affected person's property or properties.

70. In Paragraph 45 of **Seema Garg** [supra], a Division Bench of the High Court of Punjab and Haryana has recorded its view in the following words :-

> 45. [.....] an authority required to record reasons prior to initiating any action is duty bound to record reasons in writing which cannot be mere formality but should be germane and relevant to the subjective opinion formed by authority. Reasons recorded are subject to judicial review and court may look into material which made basis of reasons recorded.

71. Paragraph 28 of **P. Chidambaram** [supra] reads as under :-

> 28. Section 5 of PMLA which provides for attachment of property involved in money-laundering, states that where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this Section, has 'reason to believe' [the reason for such belief to be recorded in writing], on the basis of material in his possession, that [a] any person is in possession of any proceeds of crime; and [b] such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under Chapter III, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and fifty days from the date of the order, in such manner as may be prescribed. Section 5 provides that no such order of attachment shall be made

> unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 [2 of 1974], or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be.

72. On going through the above observations made in **Seema Garg** [supra] and **P. Chidambaram** [supra], this Court is not persuaded to reach a view that the same have dealt on the point that the reasons to believe are to be kept confidential and not to be disclosed to the affected person. **Seema Garg** has specifically referred to 'material' and not to 'reason to believe'. The Court can look into which made the basis of reason to believe whenever found necessary. This Court is also not persuaded to agree totally with the observation made in **Aprajita Kumari** [supra], wherein it is observed that the Authorized Officer is required to record reasons for initiation of any action for provisional attachment of any property in the concerned file at first.

73. In **Aftabuddin Ahmed** [supra], a contention that the reason to believe, which had been recorded by the Authorized Officer to attach property provisionally, was to be mentioned in the PAO or for that matter, the reason was to be furnished to the petitioner has been negated. While negating such contention, it has been opined that Section 5 of the PMLA has not, in any manner, stipulated that the reason to believe which is required to be recorded in writing, is to be furnished to the person whose property has been provisionally attached or the reason so recorded is to be part of the PAO. To reach such a view, the Hon'ble Court has taken note of a decision of the Hon'ble Supreme Court in **S. Narayanappa vs. Commissioner of Income Tax, [1967] 63 ITR 219** [inadvertently referred to as (1967) 63 ITR 2019], more particularly, paragraph 4 thereof.

74. In paragraph 4 of **S. Narayanappa** [supra], the Hon'ble Supreme Court observed as under :-

> 4. It was also contended for the appellant that the Income Tax Officer should have communicated to him the reasons which led him to initiate the proceedings under Section 34 of the Act. It was stated that a request to this effect was made by the appellant to the Income Tax Officer, but the Income Tax Officer declined to disclose the reasons. In our opinion, the argument of the appellant on this point is misconceived. The proceedings for assessment or re-assessment under Section 34[1][a] of the Income Tax Act start with the issue of a notice and it is only after the service of the notice that the assessee, whose income in sought to be assessed or re-assessed, becomes a party to those proceedings. The earlier stage of the proceeding for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial. The scheme of Section 34 of the Act is that, if the conditions of the main section are satisfied a notice has to be issued to the assessee containing all or any of the requirements which may be included in a notice under sub-section [2] of Section 22. But before issuing the notice, the proviso requires that the officer should record his reasons for initiating action under Section 34 and obtain the sanction of the Commissioner who must be satisfied that the action under Section 34 was justified. There is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must

> also be communicated to the assessee. In *Presidency Talkies Ltd.* vs. *First Additional Income Tax Officer, City Circle II, Madras* [25 ITR 447] the Madras High Court has expressed a similar view and we consider that that view is correct. We accordingly reject the argument of the appellant on this aspect of the case.

75. The Court in **Aftabuddin Ahmed** [supra] has also referred to the Prevention of Money-Laundering [the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its Period of Retention] Rules, 2005 [‘the PMLA Rules, 2005’], more particularly, Rule 3 and 4 thereof, to negate such contention. As in Rule 3 of the PMLA Rules, 2005, it is laid down that the PAO is to be sent by the Authorized Officer along with the material to the Adjudicating Authority in a sealed envelope, the Hon’ble Court has recorded the view that a reading of Rule 3 and Rule 4 clearly shows that the reason to believe has to be kept ***confidential*** and therefore, a question does not arise for providing the reasons so recorded in writing to the person whose property is attached, more so, when the PMLA is completely silent on the said aspect.

76. On the above basis, the contention advanced is that since the reason to believe, which are peremptorily required to be recorded in writing by the Authorized Officer and to be kept confidential, has been made part of the PAO, a jurisdictional error has been committed. It is also the contention that both ‘the reason to believe’ and ‘the material’ on the basis of which such reason to believe was arrived at are to be kept out of the bounds of the affected person as per the PMLA Rules, 2005.

77. The predecessor to the Income Tax Act, 1961 was the Income Tax Act, 1922, which was repealed by the Income Tax Act, 1961 [Act 43 of 1961] w.e.f. 01.04.1962. The decision in **S. Narayanappa** [supra] was rendered in respect of provisions of the Income Tax Act, 1922, more particularly, in reference to Section 22 and Section 34 [1] of the Income Tax Act, 1922 ['I.T. Act, 1922', for short]. Section 34[1][a] prescribed that if an Income Tax Officer [ITO] had reason to believe that an assessment was omitted, under-assessed, or given excessive relief due to the taxpayer's failure to file a return or disclose fully and truly all primary material facts, a notice could be issued. Section 34[1][a] allowed the ITO, based on definite information, to re-assess income that escaped taxation, was under-assessed, or received excessive relief, etc. Section 34[1][a] was primarily used to deal comprehensively with income escaping assessment. To prevent arbitrary use of such re-assessment powers, the ITO was not supposed to issue a notice under Section 34[1][a] out of mere suspicion. He was legally required to record his reasons in writing and to secure prior approval or sanction from the Commissioner before re-opening any assessment process. The Hon'ble Supreme Court interpreted the statutory provision of Section 34[1][a] wherein the dispute involved around the re-assessment of the appellant taxpayer's income for the Assessment Year: 1951-1952. It was observed in the context of Section 34[1][a] of the I.T. Act, 1922 that the statutory provision did not require the ITO to communicate the recorded reasons to the assessee before or at the time of issuing the notice. He was only required to satisfy the Commissioner, and not to the taxpayer, that the re-opening was justified.

78. The Income Tax Act, 1922 was subsequently repealed by the Income Tax Act, 1961 [Act 43 of 1961]. In the Income Tax Act, 1961, the authority and jurisdiction were vested in Section 147 [Income escaping Assessment] and Section 148 [Issue of Notice wherein Income has escaped Assessment] to the ITO to re-open and re-assess previous tax filings. The primary purpose of Section 147 and Section 148 was to prevent tax evasion and ensure that no

taxable income should escape assessment. Together, these provisions allowed the Income Tax Department authorities to re-open past returns and re-assess a taxpayer's income if credible new information had suggested that some income was under reported or omitted. Section 147 allowed the Department to tax the escaped income and Section 148 outlined the procedure which required issuance of a notice to initiate the process.

79. The Hon'ble Supreme Court in **GKN Driveshafts [India] Ltd. vs. ITO, [2003] 1 SCC 72**, while considering Section 148 of the Income Tax Act, 1961 has observed in the following manner :-

> 5. [.....] we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, **to seek reasons for issuing notices**. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years.

80. Following **GKN Driveshafts [India] Ltd.** [supra], the Hon'ble Supreme Court in **Nusli N. Wadia vs. Assistant Commissioner of Income Tax and another, [2023] 16 SCC 677**, has agreed that when a notice under Section 148 is issued, proper course of action for the noticee is to file return and if he so desires to seek reason for issuing the notice, the Assessing Officer is bound to furnish the reasons within a reasonable time and on receipt of the reasons, the noticee is

entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.

81. The Parliament introduced reformative changes to Section 147 to Section 151 of the Income Tax Act, 1961 governing re-assessment proceedings by way of the Finance Act, 1921. Amendments inter alia were brought in Section 147 [Income escaping Assessment], Section 148 [Issue of Notice where Income has escaped Assessment] and Section 148A [Conducting Inquiry, providing Opportunity before Issue of Notice under Section 148]. As per Section 148A, the Assessment Officer before issuing any notice under Section 148, is required to provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause as to why a notice under Section 148 should not be issued on the basis of information which suggest that income chargeable tax has escaped assessment for the relevant assessment year and results of enquiry conducted, if any. In the case of **Union of India vs. Asish Agarwal, [2023] 1 SCC 617**, it has been observed that the Assessing Officer is required to provide to the respective assessee information and material relied upon by the revenue so that the assessee can reply to the show cause notice within two weeks and time periods have been stipulated for the same.

82. The expression, 'reason to believe' has been serving as the jurisdictional bedrock for reopening tax assessment in all the statutes pertaining to income tax. Between the decisions in **S. Narayanappa** [supra] in 1966 and **GKN Driveshafts** [supra] in 2002, the judicial interpretation has undergone a sea-change fundamentally. The interpretation transformed from a revenue-centric highly confidential administrative process into a taxpayer-centric procedurally transparent mechanism rooted in the principle of natural justice and fair play. During the time in **S. Narayanappa** [supra], the principle established was limited taxpayer oversight at the initial stage. The court viewed 'reason to believe' primarily as an internal administrative checkpoint. The statutory requirement was

said to be satisfied the moment the officer recorded reasons and obtained approval from the Commissioner. The court ruled that the revenue was not under a legal obligation to communicate the recorded reasons at the stage of issuing the notice and the reason recorded was treated as confidential administrative document. The taxpayer was left completely in the dark and he was compelled to respond to a reopening notice without knowing whether it was based on concrete material or a subjective fishing expedition.

83. Between 1966 and 2002, the Income Tax Act, 1961 took full effect. There was a realization that lack of transparency has the propensity of systemic abuse and noticing drawal of frequent re-assessment proceedings by the ITOs to simply re-examine old files because of changes in their mind, the expression 'reason to believe' was interpreted to keep 'change of opinion' would be out of it. Subsequently, there has been a paradigm shift in **GKN Driveshafts** [supra] towards transparency and procedural fairness. The mandate was towards a binding and multi-step procedural checks and balances. The 'reason to believe' no longer remains a hidden administrative secret. Once a taxpayer filed a return in response to a notice, the Assessing Officer was obligated to furnish the recorded reasons upon request. The taxpayer was granted right to file written objection against those reasons. The Assessing Officer was barred from proceeding with the assessment until he passed a speaking order disposing of the taxpayer's objection.

84. The reasons behind changes in the interpretative process can be attributed to a number of reasons, firstly, one cannot defend himself against a charge if the basis of the charge is hidden from him, and if reasons are allowed to be kept secret, the same would not be in alignment with the constitutional principles of natural justice and fair-play; secondly, if the procedure ensures that the reason to believe is to be communicated and it must be backed by actual and tangible material before the notice was issued, the same would lessen the number of

fishing expeditions; thirdly, if a change is made for reason to believe from hidden administrative secret to a situation of communication, it would filter out invalid reopenings. The journey from **S. Narayanappa** [supra] to **GKN Driveshafts** [supra] represents the shift of reason to believe from a subjective tool at the hand of the revenue into an objective and transparent standard. The Finance Act, 2021 had finally fortified the process into law under Section 148A requiring a mandatory show cause enquiry before any reopening notice can be issued.

85. From an analysis of the provisions of the Income Tax Act in its different avatars, relating to re-assessment of income for escaping assessment and the decisions from **S. Narayanappa** [supra] to **GKN Driveshafts [India] Ltd.** [supra], it is easily discernible that the observation in **S. Narayanappa** [supra] on the procedural aspect that revenue is not required to communicate its recorded reasons to a taxpayer before re-opening has been changed significantly. While **S. Narayanappa** [supra] considered the situation at the initial stage of issuing the notice whereas **GKN Driveshafts** [India] Ltd. [supra] is on the subsequent stage of assessment. **S. Narayanappa** [supra] held that non-communication of reasons at the exact moment of issuing notice is not a fatal procedural defect whereas **GKN Driveshafts [India] Ltd.** [supra] and the subsequent decisions have held that there shall not be failure on the part of the authority to provide the reason to believe. The legal landscape changed even further with the new provisions substituted by the Finance Act thereby, amending Section 147 to Section 151. The law has been codified for a pre-reopening enquiry under Section 148A and an Assessing Officer can no longer rely on purely internal administrative mechanism. He is legally bound to conduct a preliminary enquiry, provide the taxpayer with an opportunity to show cause, and consider the reply before issuance of a re-opening notice.

86. While the law at the time of **S. Narayanappa** [supra] was that the reasons must exist in the file of the Assessing Officer before the notice was sent, the law has

changed to a position that the reasons existing in that file of the Assessing Officer must be shared with the taxpayer, as adumbrated in **GKN Driveshafts [India] Ltd.** [supra] and the subsequent decisions.

87. The case in **Aslam Mohammad Merchant vs. Competent Authority and others, [2008] 14 SCC 186**, pertained to a proceeding under Chapter V-A of the NDPS Act leading to forfeiture of property. A three-Judge decision in **State of Uttar Pradesh and others vs. Aryaverth Chawal Udyog and others, [2015] 17 SCC 324** pertained to re-assessment proceeding under the U.P. Trade Tax Axt, 1948. In these statutes, the pre-condition for the concerned proceeding was a mandatory requirement to record the reason to believe in writing to the affected person / noticee. In the said decisions, the Hon'ble Supreme Court has expressed specifically to the following effect :-

> 'It is now trite law that whenever a statute provides for 'reason to believe', either the reasons should appear on the face of the notice or it must be available on the materials which have been placed before him'.

88. Section 19 of the PMLA has vested the power to arrest any person on the authorities, mentioned therein. Such authority can arrest a person if he has on the basis of material in his possession reason to believe [the reason for such believe to be recorded in writing] that any person has been guilty of an offence punishable under the Act. Examining the provision of Section 19[1], which is directly concerned with the fundamental right to life and personal liberty, the Hon'ble Supreme Court in **Arvind Kejriwal vs. Directorate of Enforcement, [2025] 2 SCC 248**, has observed in the following manner :-

32. [……] Existence and validity of the 'reasons to believe' goes to the root of the power to arrest. The subjective opinion of the arresting officer must be founded and based upon fair and objective consideration of the material, as available with them on the date of arrest. On the reading of the 'reasons to believe" the court must form the 'secondary opinion' on the validity of the exercise undertaken for compliance of Section 19[1] of the PML Act when the arrest was made. The reasons to believe' that the person is guilty of an offence under the PML Act should be founded on the material in the form of documents and oral statements.

41. Once we hold that the accused is entitled to challenge his arrest under Section 19[1] of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the 'reasons to believe', based upon the material available with the authorised officer. It is difficult to accept that the 'reasons to believe', as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19[1] are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. **Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the 'reasons to believe'**. In reality, this would effectively prevent the accused from challenging their arrest, questioning the 'reasons to believe'. We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the

> 'reasons to believe' should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest.

89. It is not in doubt that the right to life and personal liberty, a fundamental right, is albeit at a higher pedestal than the right to property. Yet, the right to property is a constitutional right and no person is to be deprived of his property save by authority of law. **Aslam Mohammad Merchant** [supra] has held that the right to hold property is not only a constitutional right but also a human right. In the context of the Himachal Pradesh Goods and Services Tax Act, 2017 wherein a power has been vested on the Commissioner to order provisional attachment of the property of an assessee, the Hon'ble Supreme Court in **M/s Radha Krishan Industries vs. State of Himachal Pradesh, [2021] 6 SCC 771**, has held that the power to levy a provisional attachment is draconian in nature. By the exercise of power, a property belonging to a taxable person may be attached.

90. Section 6[1] of the Smugglers and Foreign Exchange Manipulators [Forfeiture of Property] Act, 1976 has inter alia provided that before serving a notice upon an affected person to show cause as to why a property should not be declared to be illegally acquired property and forfeited to the Central Government, the competent authority should have reason to believe [the reasons for such believe to be recorded in writing] that the property is an illegally acquired property.

90.1. In the context of said Section 6[1], the Hon'ble Supreme Court in **P.P. Abdulla and another vs. Competent Authority and others, [2007] 2 SCC 510**, has observed as under :-

> 7. [.....] Whenever the statute requires reasons to be recorded in writing, then in our opinion it is incumbent on the respondents to produce the said reasons before the court so that the same can be

> scrutinised in order to verify whether they are relevant and germane or not. This can be done either by annexing the copy of the reasons along with the counter-affidavit or by quoting the reasons somewhere in the counter-affidavit. Alternatively, if the notice itself contains the reason of belief, that notice can be annexed to the counter-affidavit or quoted in it. [.....]

91. In **Kaushalya Infrastructure Development Corporation Limited vs. Union of India and others, [2023] 18 SCC 526**, the petitioner succeeded before the High Court on the ground that the PAO does not record proper satisfaction as required under Section 5[1] of the PMLA as the order has only reproduced the provisions of the PMLA. The Hon'ble Supreme Court dismissed the Special Leave Petition [SLP] preferred by the petitioner against the PAO whereby the High Court directed the authority concerned to pass a fresh order recording reasons. While dismissing, the Hon'ble Supreme Court observed that the dismissal would not come in the way of the petitioner in pursuing other appropriate remedy including the two questions the validity of fresh order of attachment, if passed by the appropriate authority.

92. In the present case, the reason to believe for issuance of the PAO dated 30.03.2026 was recorded by the Authorized Officer in the concerned file on 29.03.2026. It is those reasons to believe, which were already recorded in writing in the concerned file at an anterior point of time, were also made part of the PAO dated 30.03.2026 issued in exercise of the powers conferred by Section 5 [1] of the PMLA.

93. As per Section 2 [t] of the PMLA, 'prescribed' means prescribed by rules made under the Act. Section 73 of the PMLA has provided for the powers to the Central

Government to make rules wherein by sub-section [1], power has been provided generally to make rules for carrying out the purposes of the Act.

94. There is a set of rules called 'the Prevention of Money-Laundering [the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property along with the Material, and Copy of the Reasons along with the Material in respect of Survey, to the Adjudicating Authority and its Period of Retention] Rules, 2005' ['the PMLA Rules, 2005', for short]. The PMLA Rules, 2005 are made under Section 73[1][b] and Section 73[2][l] of the PMLA Act. Clause [b] of Section 73[1] pertains to the manner in which the order and the material referred to in Section 5[2] are to be maintained; and Section 73[2][l] pertains to the manner in which the reasons and the material referred to in sub-section [2] of Section 16 are to be maintained. In Rule 3 of the PMLA Rules, 2005, the manner of forwarding a copy of the PAO along with the material under Section 5[2] of the PMLA Act to the Adjudicating Authority has been outlined. In Rule 4 of the PMLA Rules, 2005, the manner of forwarding a copy of the reasons along with the material in respect of survey under Section 16[2] of the PMLA, to the Adjudicating Authority has been delineated, which is not relevant for the power of the case in hand. By Section 5[2] of the PMLA Act, the Authorized Officer has been ordained, immediately after attachment under sub-section [1], to forwarded a copy of the order, along with the material in his possession, referred to in sub-section [1], to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed. After going through the provisions of the PMLA RULES, 2005 including Rule 3, it is noticed that nothing has been prescribed therein as regards the manner in which an order of provisional attachment of property is to be passed and the manner of release. No amendment had been made in the PMLA Rules, 2005 after insertion of Clause [aa] in sub-section [2] of Section 73 of the PMLA by Act 2 of 2013 w.e.f. 15.02.2013.

95. Clause [aa] in sub-section [2] of Section 73 has been incorporated in the PMLA Act by Act 2 of 2013. By sub-clause [aa], the Central Government has been empowered to make rules providing for the manner of provisional attachment of property under sub-section [1] of Section 5.

96. After insertion of Clause [aa] in sub-section [2] of Section 73 by Act 2 of 2013, the Central Government has notified a set of rules, 'the Prevention of Money-Laundering [Issuance of Provisional Attachment Order] Rules, 2013 ['the PMLA Rules, 2013, for short] in exercise of the powers conferred by sub-section [1] read with Clause [aa] of sub-section [2] of Section 73 of the PMLA. Rule 3 of the PMLA Rules, 2013, has laid down the manner of issuance of PAO. Rule 3 has provided as under :-

> **3. Manner of issuance of provisional attachment order**. —
>
> [1] Where the Director or any officer authorised in this behalf has reason to believe on the basis of material in his possession that the proceeds of crime or the property involved in money-laundering has to be provisionally attached, the said officer shall make a provisional attachment order.
>
> [2] The Authorized Officer shall endorse a copy of the provisional attachment order **to all concerned** including the persons in possession of the properties and the Adjudicating Authority.

97. On analysis of the PMLA Rules, 2013, this Court finds that there is no statutory prescription as regards the manner in which an order of PAO is to be passed and there is also no specific restriction as regards the contents of an order of PAO. A Constitution Bench in **Union of India vs. V. Sriharan, [2016] 7 SCC 1**, has

observed that what is not prescribed in the statute cannot be imagined or inferred. Section 5 [1] of the PMLA has not laid down any restriction to the effect that the reason to believe, which was recorded by the Authorized Officer in writing, cannot be a part of the PAO. There is also no such restriction placed in the PMLA Rules, 2013. The PMLA Rules, 2005 are for the manner of forwarding a copy of the order of PAO along with the material to the Adjudicating Authority in a sealed envelope. It has been prescribed therein that a copy of the PAO, after preparing an index of a copy of the order, and the material and signed each page of such index, order and the material. With regard to the PMLA Rules, 2005, the evidence and the material submitted to the Adjudicating Authority in the sealed envelope in the manner as prescribed is for the purpose of ensuring the confidentiality and sanctity of the material. This Court is therefore of the clear view that it is for the purpose of precluding manipulation of, and preservation of, the evidence and the material, on the basis of which the Authorized Officer recorded his reason of believe, intact till the time the same are examined by the Adjudicating Authority to test the legality and validity of the PAO. As per the contention of the petitioner, the reason to believe, recorded by the Authorized Officer, is not to be part of the PAO. Then the PAO will be without the reason to believe. As per the PMLA Rules, 2005, the Authorized Officer would be required to send a copy of the PAO and the material to the Adjudicating Authority in a sealed envelope. Then, the PAO sans the reason to believe recorded by the Authorized Officer would be made available to the Adjudicating Authority along with the material. Meaning thereby, the reason to believe would not be made available to the Adjudicating Authority at any time. It is not the mandate of the PMLA Rules, 2005 to send the concerned file where the Authorized Officer had recorded the reason to believe at an anterior point of time. The PMLA Rules, 2013 require the Authorized Officer to endorse a copy of the PAO to all concerned including the persons in possession of the properties and the Adjudicating Authority.

98. The Court cannot read into a restriction which the legislature itself has not incorporated. From the above analysis, this Court does not reach a conclusion that if the reason to believe, which if recorded by the Authorized Officer to exercise the power under Section 5 [1] of the PMLA in a file at a prior point of time, is made part of the PAO, the PAO would suffer from any kind of illegality. Rather, this Court is of the view that such reason to believe is required to be furnished to the affected person, sooner or later, if a request is made to that effect by the affected person. If the reason to believe is made part of the PAO, the same would be in alignment with the constitutional principles of natural justice and fair play; and the same would lessen the possibility of subjective fishing expeditions. The Court has, thus, negates the contention advanced on behalf of the petitioner that as reason to believe is made part of the impugned PAO, the impugned PAO has suffered from any defect from the point of jurisdiction.

99. Having considered all the contentions urged on behalf of the petitioner, this Court does not find any merit therein in view of the discussion and observations made; and the reasons assigned hereinabove.

I. <u>Reference</u> :-

100. This Court has reached a view above that if the reason to believe, which is to be recorded by the Authorized Officer in writing as per the mandate of Section 5[1] of the PMLA for issuing a Provisional Order of Attachment [PAO], is made part of the PAO or simultaneously, then the same will not suffer from any jurisdictional error as such reason to believe is not of confidential manner. This Court is of the view that a Coordinate Bench of this Court in **Aftabuddin Ahmed** [supra] has expressed a contra view to the effect that the reason to believe being confidential in character is not to be furnished to the petitioner, meaning thereby, the reason to believe is not to be part of the PAO. This Court is,

therefore, also of the considered view that from the standpoint of judicial consistency, the issue requires to be referred to a larger bench for a resolution.

101. From the perspective of this Court, the points of reference are : [i] whether the reason to believe, which is to be recorded in writing by the Authorized Officer on the basis of material in his possession to pass a Provisional Attachment Order [PAO] under Section 5[1] of the PMLA, is confidential in character or not, and/or is to be furnished to the affected person or not? and [ii] if such reason to believe is made part of the PAO, whether the PAO suffers from any jurisdictional error or not?

102. The matter is to be placed before the Hon'ble Chief Justice on the administrative side for constitution of a larger bench for the reference.

103. The Registry is requested accordingly.

JUDGE

Comparing Assistant