



2026:DHC:2955



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 21st August, 2025
Pronounced on: 9th April, 2026*

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CRL.A. 1071/2025 & CRL.M.A. 22223/2025 (stay)

SANJAY BHANDARI

S/o Late Shri Rajinder Kumar Bhandari,
B-217, Greater Kailash-1, New Delhi,
Presently residing at Flat 18, 17 Great
Cumberland Place, London, W1H7AS,
United Kingdom

.....Appellant

Through: Mr. Kapil Sibal, Sr. Advocate with Mr.
Avneesh Arputham, Ms. Aparajita Jamwal
and Mr. Ankit Sharma, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

Represented through its Deputy Director,
10-A, Jamnagar House,
Akbar Road, New Delhi – 110001

.....Respondent

Through: Mr. S.V. Raju, ASG with Mr. Zoheb
Hossain, Spl. Counsel, Mr. Vivek Gurnani,
Panel Counsel, Mr. Kartik Sabharwal, Mr.
Pranjal Tripathi and Mr. Satyam, Advocates

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The Statutory Appeal under Section 17 of the Fugitive Economic Offenders Act, 2018 (*hereinafter referred to as "FEO Act"*) has been filed on behalf of the **Appellant, Sanjay Bhandari** to challenge the Impugned



Judgment dated 05.07.2025 of learned Special Judge (CBI) PC Act-10, New Delhi *declaring the Appellant a Fugitive Economic Offender (FEO).*

2. The Respondent/ED filed a **Misc. Application No. 249/2019** on 13.12.2019, before the learned Special Judge under the Fugitive Economic Offenders Act, seeking a *declaration of the Appellant as a Fugitive Economic Offender.*

3. The **brief facts** as stated in the Misc. Application, was that ED is a statutory Agency under Fugitive Economic Offender's Act (FEO Act), entrusted with the authority to implement the provisions of the Act. It is also a Competent Agency to investigate into offences under Prevention of Money Laundering Act, 2002.

4. It was stated that a **Prosecution Complaint bearing CC No.2121/2019 dated 22.12.2018** under the **Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act (Black Money Act), 2015** was initiated against the Appellant Sanjay Bhandari, by the Income Tax Authorities, which is pending adjudication before the learned ACMM. It disclosed that the Accused/Petitioner had wilfully not disclosed various mandatory information in his Returns of Income, relating to foreign assets (including financial interest in any entity) acquired by him, outside India.

5. Further, by acquisition of **Al-Rahma Trust in Dubai** and a change in its structure as a part of the pre-meditated scheme to dissociate himself from all his offshore entities/foreign assets and by fabricating and back dating the documents, he made another attempt to wilfully cause such circumstances to exist, which will have the effect of enabling him to evade tax, penalty or interest chargeable or imposable under the Black Money Act, as envisaged in Section 51(3) of the Black Money Act.



6. It was further stated in the Misc. Application that since Section 51 of the Black Money Act is a Scheduled Offence under the Fugitive Economic Offenders Act, 2018 and the proceeds of crime involved were in excess of Rs.100 crores, *NBW was issued against the Petitioner* by the ACMM, Tis Hazari, Delhi in the complaint, which is still pending.

7. Simultaneously, the Enforcement Directorate is also conducting investigation against the Petitioner in ECIR/HQ/03/2017, for the offence of Money Laundering.

8. Another criminal case under *Official Secrets Act vide FIR No.173/2016* has been registered by Delhi Police, wherein he has been declared a Proclaimed Offender.

9. The ED had reasons to believe that the Accused/Petitioner is a Fugitive Economic Offender, which are :

(a) *The Income Tax Authorities have filed a Prosecution Complaint bearing CC No.2121/2019 dated 22.12.2018 under Section 51 Black Money Act;*

(b) *An open ended NBW was issued against the Accused on 31.10.2019. In this Complaint on the reasonable believe that he was deliberately evading the process of law;*

(c) *The proceeds of crime in the Scheduled offence under the FEO Act, is in excess of Rs.100 Crores, which has been confirmed by the Income Tax Authorities vide communication dated 09.07.2019.*

(d) *The material on record and the **reason to believe** show the complicity of the Accused regarding the commission of the scheduled offence, have been duly provided in the Prosecution Complaint filed by the Income Tax Department;*

(e) *The Accused had left the country under suspicious circumstances evading the process of law in India, by staying outside the jurisdiction of Indian Court, so*



as to not face criminal prosecution. A Look Out Circular dated 14.02.2017 has been issued at the instance of ED. Further, a Red Corner Notice dated 16.10.2017 has also been issued against him, in another FIR No.173/2016 investigated by Crime Branch, New Delhi in which he has been declared as Proclaimed Offender and his Passport had been impounded by the Regional Passport Office; and

(f) The Accused is still evaded the process of law despite being aware and having knowledge of the aforementioned developments and has deliberately chosen not to return to India.

10. The undisclosed *Bank Accounts and Properties* held by Mr. Sanjay Bhandari outside India, are tabulated in the Prosecution Complaint filed by the Income Tax Authorities, as under:

Details of Foreign Assets of Sh. Sanjay Bhandari								
Sr No s.	Nature of Asset	Details of asset	Location/ Country	Relation with Sh. Sanjay Bhandari	Time period	Value/ Amou nt	Exhc ange Rates	in INR
1.	Share holding in Company	Offset India Solutions, FZC, UAE	UAE	Shareholder of 90% shares	23.02. 2009	1.35 Lakh Dirham	13.74	1854900
2.	Bank A/c of Offset India Solutions FZC, UAE	P	Emirates International Bank, Dubai	Authorised Signatory	Feb-14	1878 AED	16.85	31644.3
3.	Bank A/c of Offset India Solutions FZC, UAE	1021507 575303	Emirates International Bank, Dubai	Authorised Signatory	18 Sept 2010 to 04 Jun 2012	19057 82 Euro	64.7	1233040 95.4
4.	Bank A/c of Offset India Solutions FZC, UAE	1021507 575304	Emirates International Bank, Dubai	Authorised Signatory	28 July 2011 to 28 July 2012	98610 37 CHF	56	5522180 72



5.	Share holding in Company	SANTECH INTERNATIONAL FZC	UAE	Director and majority share holder	21.02.2006	117000 Dirham	12.5	1462500
6.	Bank Account of INTERNATIONAL FZC	1021497657901	Emirates International Bank, Dubai	Authorised Signatory	7TH May 2009 to 26th Nov 2016	15600040 USD	46	717601840
7.	Bank Account of INTERNATIONAL FZC	1011497657902	Emirates International Bank, Dubai	Authorised Signatory	7TH May 2009 to 25 May 2016	13151078 AED	12.5	164388475
8.	Bank Account of SANTECH INTERNATIONAL FZC	3217664001	Sharjah Islamic Bank, Dubai	Co-signatory	19 Feb 2006 to 08 Nov 2016	150,500 AED	12.5	1881250
9.	Share holding in Company	Serra Dues Technologies Ltd	Dubai	Beneficial Owner	23.07.2009	1000 AED	12.7	12700
10.	Bank Account of Serra Dues Tech Ltd.	1200120701	Standard Chartered Bank, Dubai	Authorised Signatory	09.02.2010	50,000 AED	12.68	634000
11.	Immovable Properties	Flats owned by Shamian Gros-1 INC	Grosvener Hill Court, Bourdon Street, London, UK	Sanjay Bhandari bought all shares of Shamlam Gros-1 INC for Rs.10 Cr in 2013	2013	22.47 lakh pounds (current value of pro83.88pert y)	83.88	188478360
12.	Share holding in Company	Petro Global Technologies	UAE	Sanjay Bhandari is 1/3rd owner	06.04.2009	49,990 Dirham	12.7	634873



		Ltd.						
13.	Immovable properties	Property Nos. 12, Ellerton House, Bryanston Square, London, Owned by Vertex	London, UK	Sanjay Bhandari purchased shares of Vertex Management Holding Limied, MHL, BVI to acquire property on 14.12.2009.	14.12.2009	19 lakh pound	75.92	144264150
14.	Bank Accounts held by Sanjay Bhandari	10143022546601	Emirates NBD Bank, Dubai	Owner of the accounts	04.03.2011 to 22.06.2016	4655835 AED	15	69837525
15.	Bank Accounts held by Sanjay Bhandari	1014301546602	Emirates NBD Bank, Dubai	Owner of the accounts	04.03.2011 to 22.06.2016	1931281 US Dollar	58.03	112072236.4
16.	Immovable properties	C-303, Maurya Grandeur, Palms Jumeirh, Dubai	Dubai	Sanjay Bhandari purchased this property on 13.10.2014	13.10.2014	5478350 AED	16.64	91159744
17.	Immovable properties	2414, Burj Khalifa, UAE	UAE	Sanjay Bhandari purchased this property on 09.11.2014	09.11.2014	235000 Dirham	16.75	39362500
						Total		22091,98,865.13

11. During the investigations, it was found that the Accused was having various properties not only in the foreign countries, but also in India as well. These assets were found either in the name of the Accused or held by Benamidar of the Accused, as the properties were acquired from the funds of



the Accused. The names of various Companies/ benami holders were mentioned in the Application filed, before the learned ACMM.

12. The information available about the whereabouts of the Accused, is that he is presently residing in United Kingdom where he has substantial pecuniary interest. All the efforts made by ED to bring back the fugitive to India to face criminal proceedings, have not been successful till date. The list of properties/value of the properties connected to proceed of crime for which confiscation is sought, has also been filed.

13. *It was thus, submitted that since the proceeds of crime were more than Rs.100 Crore and Non Bailable Warrants have already been issued, the Accused fell within the scope of Section 2(1)(f) of the FEO.*

14. Hence, a *prayer* was made that that the Notice under Section 10 of the FEO requiring the Accused to appear in person before the Court and to the individuals/entities mentioned in the Application who have interest in the properties which are sought to be confiscated, may be issued and ***the Accused may be declared Fugitive.***

15. The Appellant/Respondent, Mr. Sanjay Bhandari had filed his Reply before the learned Special Judge in this MISC. APPL. 249/2019 wherein the Appellant/Respondent denied and disputed each and every contention made by ED. A preliminary objection was taken that no case was made out against the Appellant and the ingredients of the offence sought to be invoked, would not even *prima facie* meet out. The chronology of the events, was explained in the Reply wherein it was stated that the First Provisional Attachment Order No. 03/17 under PMLA in relation to ECIR/HQ/03/2017 was issued, indiscriminately attaching various properties totalling to over Rs.21 Crores of the Accused, his wife and certain Companies in which he was a



shareholder. In relation to ECIR/HQ/03/17. It was asserted that the said ECIR was in relation to the scheduled offence under 51 of the Black Money Act. The Appellant asserted that though, the Provisional Attachment Order had been issued to attach various properties and allegedly owned by the Appellant but it was much prior to the date of alleged offence and even prior to coming into force of the Black Money Act. Pursuant to this Provisional Attachment Order, the Complaint No. 784/2017 dated 28.06.2017 was filed before the Adjudicating Authority under PMLA, seeking confirmation of the Provisional Attachment Order.

16. The Appellant further asserted that *Writ Petition (Criminal) No.2456/2017* was filed by Petitioner Sanjay Bhandari seeking quashing of ECIR/HQ/03/2017. This Court on 29.08.2017, directed the ED to file its Status Report and the Writ Petition is pending adjudication. It was claimed that the said Writ Petition is pending adjudication before this Court.

17. The Appellant further asserted that the *Adjudicating Authority under PMLA, rejected and dismissed the Complaint No.784/2017 vide Judgment dated 17.11.2017* and consequently did not confirm the Provisional Attachment Order dated 01.06.2017. The reason for rejection was that no scheduled offence under Part C of PMLA and specifically no offence of cross border implications including Section 51 Black Money Act, was made out. It was held that “*the case was out of the purview of the scheduled offence and hence the PMLA Act was not applicable*”.

18. It is further submitted that the Appeal is still pending adjudication before PMLA Appellate Tribunal and no stay has been granted against the Judgment dated 17.11.2017.



19. It is further submitted that **the assets attached vide Order dated 26.12.2017 by ED under FEMA**, was challenged in *WP(C) No.4000/2018*, whereby this Court vide Order dated 12.07.2018 permitted the Companies to operate the bank accounts, subject to the balance being maintained as on the said date.

20. The Appellant submitted that on the very next date i.e. 13.07.2018, the Directorate of Enforcement issued *Provisional Attachment Order No.5/2018 dated 13.07.2018 under PMLA*, even though this Order failed to meet even the basic requirements under PMLA.

21. It is further submitted that the Provisional Attachment Order No.5/2018 dated 13.07.2018 and the subsequent proceedings before the Adjudicating Authority, was challenged in *WP(C) No.10106/2018*. This Court had stayed the proceedings before the Adjudicating Authority, *vide Order dated 04.10.2018*.

22. Thereafter, the *Income Tax Department filed Criminal Complaint No.2121/2019 dated 22.12.2018 under Section 51 Black Money Act against the Accused before Tis Hazari Court, Delhi. NBW dated 02.07.2019 have been issued against him which have been challenged in Criminal Revision Petition No.444/2019, which ultimately was dismissed on 23.10.2019.*

23. The Appellant further submitted that the Directorate of Enforcement thereafter had filed the present Misc. Application No. 249/2019 dated 13.12.2019 in which the Summons were issued against the Respondent. The Accused then filed Crl. MC No. 805/2020 for quashing of Complaint No. 2121/2019 under Section 51 of the Black Money Act, which was pending consideration before this Court.



24. The Appellant further asserted that the Income-Tax Department had filed its Status Report/Counter-Affidavit in Crl. MC No. 805/2020 wherein it had admitted that the assessment under the Black Money Act, has still not been carried out.

25. The Appellant had also sought quashing of the present Misc. Application No. 249/2019 *vide* Crl. MC No. 1002/2020, which is also pending consideration before this Court. The Appellant further asserted that the foreign properties/assets in question, were not owned by the Accused and were in fact owned by others. The Directorate of Enforcement had failed to meet its evidentiary requirements under Section 16 FEO Act. The Appellant/Accused had obtained information from his own efforts and due diligence to show the ownership of the foreign assets being in the name of other persons. It was claimed that ED, Income Tax Department and CBI, have been making undue harassment and false prosecution has been initiated against the Appellant, who has been constrained to leave the country.

26. It was further submitted that the essential ingredient for applicability of FEO Act, were not made out in the Misc. Application, which was liable to be dismissed. The FEO Act can apply only in cases where NBWs are issued against the accused persons where the proceeds of crime of Scheduled Offence is Rs.100 Crores or more aside from the bold averment of the amount of Scheduled Offence being more than Rs.100 Crores. There is not a shred of evidence whatsoever to show the value of the proceeds of crime as asserted. It was further claimed that there was only one communication dated 09.07.2019 from Income-Tax Department, which was the basis for the Miscellaneous Application. However, in the absence of any conclusive assessment against the Accused under Black Money Act, no proceedings



under FEO Act, could have been initiated, which are premature and politically motivated. A mere Letter from IT Department to ED, cannot form the basis for proving that the Accused had committed the Scheduled Offence.

27. The Miscellaneous Application under FEO Act, entails very serious consequences including confiscation of his property and barring him from defending civil claims and effectively amounting to economic death penalty. It was further asserted that the Directorate of Enforcement had failed to appreciate that the mandatory time period for Section 11 of Black Money Act, for carrying out the assessment, has expired and assessment has admittedly yet not been completed, therefore, the entire commercial proceedings are without jurisdiction.

28. Enforcement also had to satisfy themselves for “reasons to believe on the basis of the material in their possession but there is no application of mind but only mechanical reproduction of the words used in the statute.” The requirement of reason to believe had not been met in the Miscellaneous Applications.

29. The entirety of the Complaint No. 212/2019 under Section 51 of the Black Money Act, failed to reveal any wilful attempt to evade the tax and, therefore, which has not been appreciated by filing this Miscellaneous Application. As one of the example, the Appellant had explained that one of the properties alleged to be owned by him is Property No. 2414, Floor No. 24, Building No. 1, AI Noujoum Tower, Burj Khalifa, UAE, which is claimed to be owned by one Mr. Sanjay Bhandari having Passport No. Z2042109 but born in Calcutta. However, he is a different person, who has no link with the Accused.



30. In the Miscellaneous Complaint itself, ED had admitted that one of the alleged properties i.e. Property No. E-12, Ellerton House, Bryanston Square, London, was allotted bought in 2009 and sold in June, 2010 by the Accused. Therefore, assuming the claim of the ED to be correct, the alleged property cannot come within the purview of Black Money Act, which was enacted and commenced on 01.07.2015. The present arbitrariness and non-application of mind of ED is, therefore, evident on the record.

31. The Appellant further asserted that under Section 16(1) of FEO Act, the burden of proving that the Accused is FEO and that his Property is proceeds of crime, lies on the ED. However, ED has miserably failed to satisfy these averments. All the assets alleged to be proceeds of crime were in existence. Even prior to coming into effect of the Black Money Act in July, 2015 and cannot be termed as proceeds of crime.

32. Moreover, essential requirement is that the proceeds of crime must be derived or obtained as a result of criminal activity relating to Scheduled Offence. There cannot be any inverted proceeds of crime independent of the Scheduled Offence and more importantly the proceeds of crime must come into existence only after the commission of the Scheduled Offence. In the present case, the proceeds of crime were in existence, much prior to commencement of Black Money Act, therefore, on this ground itself, the Miscellaneous Application ought to be rejected.

33. Reliance is placed on M/s Himachal Emta Power Ltd. vs. Union of India and Ors., decided on 23.08.2018 by the Co-ordinate Bench of this Court. It is further asserted that the first Provisional Order No. 03/2017 dated 01.06.2017 had been challenged before the adjudicating authority under PMLA, who *vide* Order dated 01.06.2017 categorically held that they



cannot be any prosecution under Section 51 of the Black Money Act, without first completely making an assessment and that the Scheduled Offence under PMLA, was not made out. It was held that the alleged properties were in existence prior to enactment of the Black Money Act and therefore, cannot be termed as proceeds of crime.

34. Furthermore, Adjudicating Authority *vide* Judgment dated 17.11.2017 had observed that no Scheduled Offence had been made out.

35. It was further asserted that the Directorate of Enforcement had also attached the assets of certain Companies under Foreign Exchange Management Act in which the Accused is a shareholder *vide* Order dated 26.12.2017. The first Provisional Order No. 03/2017 dated 01.06.2017 and thereafter, *vide* Judgment dated 17.11.2017 such attachment, has been rejected. The Order was challenged by the Appellant in W.P.(C) 4000/2018 before this Court wherein *vide* Order dated 12.07.2018, it has Permitted the Companies to operate the Bank Account subject to the balance being maintained on the said date.

36. The Directorate of Enforcement then issued Provisional Attachment Order No. 5/2018 dated 13.07.2018, which got challenged before the Adjudicating Authority and before this Court in W.P.(C) 10106/2018 and this Court on 04.10.2018, has stayed the proceedings before the Adjudicating Authority with the observations that “Prima facie, it would not be for the concerned authority to once again pass a provisional order of attachment, when the issue at hand has been substantially adjudicated by the Adjudicating Authority.” It is submitted that the acts of the ED, are in passing attachment Orders one after the other against the Appellant, has caused immense trauma and unnecessary harassment especially when this



Court has repeatedly stayed the actions of Directorate Enforcement, who is acting solely on the basis of the political consideration. It was claimed that this Miscellaneous Application was *mala fide* and liable to be dismissed.

37. Thereafter, Criminal Complaint No.2121/2019 was again listed and Non Bailable Warrants were issued against the Accused on 31.10.2019.

38. The **learned ACMM in the impugned Judgment dated 05.07.2025** considered the rival contentions of the parties and *concluded* that ED had been able to make out a case under *Section 2(1)(m) of FEO Act* and Warrant of Arrest i.e. NBW had been issued against Sanjay Bhandari by the Court of ACMM, Delhi, in the Complaint under Section 51 of the Black Money. The NBW was pending against him when that he had left India and is presently residing in UK as evident on the material referred, in order to avoid criminal prosecution under the Complaint under Section 51 Black Money Act. The Court also found that the total value of the schedule offence is Rs.100 crores or more, which is the requisite condition under Section 2(m) of the FEO Act. Therefore, on being satisfied, **Sanjay Bhandari was declared as a fugitive economic offender under Section 12(1) of Fugitive Economic Offenders Act, 2018.**

39. Aggrieved by the said Declaration, the *present statutory Appeal under Section 17 FEO Act* has been filed, against the Judgment dated 05.07.2025.

40. It is asserted that the Scheduled Offence for seeking declaration of the Appellant as fugitive, was Section 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (*hereinafter referred to as "Black Money Act"*), which deals with wilful attempt to evade tax.



41. The *FEO Act* gives a detailed procedure to be followed to declare a person as Fugitive. As per *Sections 2(1)(f) read with Section 2(1)(m) of the FEO Act*, the necessary ingredients for declaring an individual as a Fugitive Economic Offender, are as follows:

- (i) *There must be a warrant of arrest against a person in a Schedule Offence;*
- (ii) *The said person must have left India to avoid prosecution or being abroad, refuses to return to India to face criminal prosecution;*
- (iii) *The value involved in the Schedule Offence is Rs.100 Crores or more.*

42. Section 4 of FEO sets out the procedure to be followed to declare a person Fugitive Economic Offender. Section 4(1) specifically requires a Director to have “*reasons to believe*”, to be recorded in writing based on material in his possession. Section 4(2) (a) and (c) requires that the Officer must be satisfied that a person fulfils the definition of Section 2(1)(f) read with Section 2(1)(m), in every respect.

43. Furthermore, Section 10 stipulates that where an Application under Section 4 is filed, the learned Special Judge shall issue a Notice to the person named therein. The use of the words “*duly filed*” indicates that the learned Special Court must apply its mind to examine whether the Application satisfies the requirements under Section 4, FEO Act.

44. Section 12 provides for the declaration of FEO, after giving an opportunity of being heard to each side. Where the learned Special Court is satisfied that no case is made out for declaring an individual as a FEO, he will be discharged as per Section 12(9) and the property so attached, would



be released. Therefore, the declaration of an individual as a FEO is not automatic and the Court has to consider whether the requirements for declaring a person as a FEO, are made out.

45. It is submitted that the learned Trial Court *vide* Order dated 24.12.2019 took cognizance and issued summons against the Appellant.

46. On 12.02.2020, the Appellant filed ***Crl.MC No. 805/2020*** before this Court seeking quashing of the Criminal Complaint No.2121/2019 dealing with Section 51 of the Black Money Act, 2015 (which was the Scheduled Offence for the proceedings under the Fugitive Economic Offender Act) on the ground that the essential ingredients of the offence under Section 51 of the Black Money Act, 2015, was not made out. This Court *vide* Order dated 24.02.2020 directed the Income Tax Department to produce the evidence on the basis of which it had sent the Letter dated 09.07.2019 to the Directorate of Enforcement wherein it was stated that the value of the Scheduled Offence is Rs.100 Crores or more. ***This Crl. MC No. 805/2020 was dismissed, vide the Judgment dated 08.11.2024.***

47. The Appellant filed ***SLP (Crl) No. 18321/2024*** in relation to the proceedings under the Fugitive Economic Offenders Act. The Apex Court has disposed of the SLP *vide* Order dated 21.01.2025 with the direction that the accused can raise all legal and factual issues before the concerned authority, which shall be decided without being influenced by the observations of this Court.

48. The Apex Court also condoned the delay in filing of statutory Appeal under Black Money Act, against the Assessment Order. Consequently, the Appellant filed Appeal under Section 15 of Black Money Act on 30.01.2025



challenging the Assessment Order dated 23.03.2020, which is pending adjudication before the Commissioner (Appeals).

49. Further, the Appellant *vide* CrI. MC No. 1002/2020 dated 19.02.2020 before this Court, sought quashing of present Misc. Application No. 249/2019 under the Fugitive Economic Offender Act and all proceedings emanating therefrom. ***However, this Petition was dismissed by this Court vide Judgment dated 08.11.2024.***

50. The impugned Judgment dated 05.07.2025 was passed declaring the Appellant as a Fugitive Economic Offender, without taking into consideration that the essential ingredients required under the Act, are not made out. The matter is now listed for further proceedings under Section 12 of the Fugitive Economic Offenders Act, for confiscation of the assets, on 02.08.2025. Without, the Accused being declared as a Fugitive Economic Offender, the Civil Appeals filed by the Accused, are being deferred.

51. *PMLA Appeal No.12/2023* filed by the Appellant in this Court, has been adjourned on the ground that further proceedings under the FEOA, is pending.

52. The ***grounds of challenge*** are that the Government of India, had sent Extradition requests for two proceedings/trials i.e. Section 51 of the Black Money Act and Section 3/4 of PMLA, to the United Kingdom.

53. The Extradition request was initially allowed by the Westminster Magistrate Court, but was subsequently reversed in Appeal by the High Court *vide* Judgment dated 28.02.2025, whereby denying the Government of India's Extradition request, for these two offences.

54. Subsequently, a Petition for Leave to Appeal to the UK Supreme Court, was filed by the Government of India, which was rejected by the



High Court *vide* Order dated 08.04.2025. ***Consequently, the Appellant now has a legal right to reside in the United Kingdom and the Government of India, is bound by this Judgment of the UK Court.***

55. The next ground of challenge is that ***there is no subsisting NBW, which is a pre-requisite for declaring a person as fugitive.*** It is stated that under the India UK Extradition Treaty, it is mandatory that there should be *non-bailable warrants* against an Accused person, who is sought to be extradited. In the Extradition request for the offence under Section 51 of the Black Money Act, sent to the United Kingdom, the Government of India had relied upon and filed the Non-Bailable Warrants dated 31.10.2019, issued by the Tis Hazari Court, in the trial of the offence under Section 51 of the Black Money Act. The very same warrant is also relied upon by the Respondent, for the proceedings under the Fugitive Economic Offenders Act.

56. The warrant for the proceedings under Section 51 of the Black Money Act, was executed in the UK on 08.07.2021. The procedure followed was that pursuant to the warrant issued by the Indian Court under Section 51 of the Black Money Act, the Appellant was arrested in the UK and thereafter, granted Bail. The Warrant formed the basis for the Extradition proceedings for the offence under Section 51 of the Black Money Act, in which the Appellant has been ultimately discharged.

57. The very same warrant is also relied upon by the Respondent, for the proceedings under the Fugitive Economic Offenders Act, which already stands exhausted.

58. It is further submitted that the Government of India, had sent ***Extradition request*** for proceedings/trials under Section 51 of the Black Money Act and Section 3/4 of PMLA, which has been finally denied by this



Court *vide* Judgment dated 28.02.2025, wherein the Leave to Appeal to UK Supreme Court, has been denied by the High Court, *vide* Order dated 08.04.2025. *It is further submitted that the Appellant has succeeded in his right not to return to India, to face criminal prosecution as it would violate his human rights.*

59. The Complaint under Section 51 of the Black Money Act, was filed on 22.12.2018, when the Appellant was in the UK. The Appellant cannot be said to come in the *definition of Section 2(1)(f) (ii) of the FEO Act*, especially when he has succeeded in the proceedings and the request of Government of India, has been rejected.

60. Therefore, the requirement under Section 2(1)(f) is not made out and on this ground alone, the Application is ought to be dismissed.

61. The next ***ground of challenge of the Impugned Order***, is that the Respondent did not have any *reason to believe* on the basis of material in its possession, that the Appellant is a Fugitive Economic Offender. In Paragraph 8(C) of the Appeal, it is stated that “*the proceeds of crime in the Scheduled Offence, are in excess of Rs.100 Crores, which is confirmed by the Income Tax Authorities, vide communication dated 09.07.2019*”. There is not a shred of evidence whatsoever to show that the Scheduled Offence involves a total value of Rs.100 Crores or more.

62. The Respondent has relied on the communication dated 09.07.2019 of the Income-Tax Department, to state that the scheduled offence is in excess of Rs.100 Crores. Notably, in this communication itself, the assessment against the Appellant under the Black Money Act, has not been finalised. In any kind of tax, the quantum of tax evaded can be determined only after the



assessment is completed. Before the assessment is complete, any guess about the tax evaded, can only be a guess and nothing more

63. *In the absence of any conclusive assessment against the Appellant, there is no determination of the tax allegedly evaded and therefore, there is no basis to state that the alleged offence under Section 51, is in excess of Rs.100 Crores.* It is evident from the Complaint that the only material with the Complainant was a Letter dated 09.07.2019 of the Income Tax Department, which contained only a bald assertion of the alleged value of the offence being more than Rs.100 Crores, even though the assessment had not yet been completed.

64. The Income Tax Department filed a chart before this Court showing the alleged value of foreign assets owned by the Appellant, to be around Rs.220.91 Crores. As per this asset valuation, the alleged tax evaded under Section 51 of the Black Money Act at 30%, would be Rs.66 Crores, which is significantly short of the threshold requirement of the value of the offence being Rs.100 Crores.

65. The *Respondent before the learned Trial Court during the arguments on 03.05.2025, filed a chart* showing the value of the assets in question to be Rs.191.97 Crores and 30% of the same would be around Rs.57.6 Crores, which is also below the threshold of Rs.100 Crores. There is no credible material to prove that *the scheduled offence was of a value of Rs.100 Crores or more*, which is the pre-requisite for declaring a person a Fugitive Economic Offender.

66. This requirement of total value of Rs.100 Crores or more, is a jurisdictional fact and has to be mandatorily met, failing which the Respondent cannot sustain its proceedings under FEO Act.



67. Further, the basis of any Application under Section 4, must be of Director or Deputy Director, and on the basis of “*reasons to believe*” to be recorded in writing; on the basis of material in his possession. The Application filed by the Respondent, before the learned Trial Court, merely makes a bald averment in Paragraph 3 that “*the accused is covered under the definition of Fugitive Economic Offender as defined under Section 2(f) of the Act. The amount involved in the Scheduled Offence, is more than Rs.100 crores.*”

68. Aside from this Letter filed along with the Prosecution Complaint, there is no document whatsoever to disclose the monetary value of the alleged Scheduled Offence under Section 51 of the Black Money Act. The Impugned Judgment also fails to consider that a mere Letter from the Income-Tax Department to the Directorate of Enforcement, cannot form the basis for *reasons to believe* that the Appellant has committed a Scheduled Offence involving a total value of Rs.100 Crores or more.

69. The deficiency in the ‘*reasons to believe*’ cannot be supplemented by additional reasoning or material in a counter/rejoinder affidavit, as has been sought to be done in the present case.

70. The “*reasons to believe*” must have a direct nexus and a live link with the formation of an opinion by the Respondent, to initiate the proceeding against the Appellant. The Respondent has referred to the Appellant’s alleged foreign assets, but no monetary valuation has been given of the said properties. It is only in the **Rejoinder Affidavit filed before this Court**, that for the first time, the Respondent has given the monetary valuation of the foreign assets of the Appellant and that too, without any material or documents to support the same.



71. Further, the alleged offence under Section 51 of the Black Money Act, *is also the scheduled offence under the Prevention of Money Laundering Act*, being investigated by the Respondent against the Appellant herein. In the PMLA proceedings, the ED had issued a Provisional Attachment Order No.03/2017 dated 01.06.2017 wherein the Appellant's *alleged foreign assets, have been valued at around Rs.153 Crores*. The Respondent has nowhere, asserted that the Appellant has created any new foreign assets, after 01.06.2017. It is evident that varying and arbitrary valuations are being given to the purported foreign assets of the Appellant.

72. The Appellant had filed *SLP (Crl.) No. 18348/2024* against the Judgment dated 08.11.2024 of this Court dismissing the quashing Petition for the criminal proceedings under Section 51 of the Black Money Act. The SLP was disposed of by the Hon'ble Supreme Court of India *vide* the final Order dated 21.01.2025 wherein direction was given to the Appellant, to raise all the contentions, legal and factual, before the concerned authority, to be decided without being influenced by the Impugned Order. The Apex Court had condoned the delay in filing of the statutory Appeal under the Black Money Act against the Assessment Order. *Consequently, the Appellant had filed an Appeal under Section 15 of the Black Money Act on 30.01.2025, challenging the Assessment Order dated 23.03.2020, which is pending adjudication, before the Commissioner (Appeals).*

73. The bare perusal of the varying valuations given in different proceedings, in itself shows the fallacy in the Respondent's case. This aspect has been admitted in Paragraph Nos. 46 and 47 of the Impugned Judgment, wherein it is held that the valuation of the scheduled offence has changed many times in the course of the present proceedings.



74. It is submitted that the Impugned Judgment has wrongly held that the NBWs dated 31.10.2019 for the proceedings under Section 51 of the Black Money Act, continues to survive. *Once a person is arrested pursuant to a Warrant, it stands executed and ceases to exist.*

75. It has been wrongly held in the Impugned Judgment that the Non-Bailable Warrants dated 31.10.2019 was not issued for the purposes of the extradition proceedings, even though the said warrant was a mandatory requirement for initiating the Extradition proceedings and the Appellant was even arrested in London, based on the Warrant.

76. The Appellant Sanjay Bhandari has contended that *there is no valid subsisting NBW* which was the prerequisite for initiating any proceeding under FEO Act. There was one NBW issued by the learned ACMM, but they got executed on the basis of which the extradition proceedings were initiated in UK. Consequent to such NBW, he was arrested in extradition proceedings in UK but was admitted to bail. The Extradition Petition has been denied. Therefore, the warrants issued against the Appellant got exhausted and there was no subsisting NBWs, which are subsisting against the Appellant, and therefore, the impugned Order is liable to be set aside.

77. Sections 2(1)(f) read with Section 2(1)(m) of the FEO Act provide that the necessary ingredients for making that have to be proved for declaring an individual as a Fugitive Economic Offender are as follows:

*a. There must be a **warrant of arrest** against a person in a Schedule Offence; [S. 2(1)(f), FEO Act]; AND*

b. The said person must have left India to avoid criminal prosecution or being abroad, refuses to return to India to face criminal prosecution; [S. 2(1)(f), FEO Act]; AND



c. The value involved in the Schedule Offence is Rs. 100 Crores or more [S. 2(1)(m), FEO Act].

78. In the present case, scheduled offence is under Section 51 of the Black Money Act, which deals with wilful attempt to evade tax, penalty or interest. It is not denied that NBW had been issued by the learned ACMM in the complaint filed under Black Money Act, which never got executed as the Appellant had gone to UK and they remain subsistence.

79. In fact, these non-bailable warrants were challenged in Criminal Revision Petition No. 444/2019, which got dismissed *vide* Order dated 23.10.2019.

80. Notably, the ED's Counter-Affidavit mentions one of the properties alleged to be owned by the Appellant, as Property No. 2414, Floor No. 24, Building No. 1, A1 Noujoum Tower, Burj Khalifa, UAE. On enquiry, it has been found that the said property is owned by one Sanjay Bhandari having Passport No. Z2042109, who was born in Kolkata and *has no link with the Appellant herein*. Further, the exchange rate for Dirham to Rupee, has been wrongly taken as 78.06 for calculating the value of the Bank Account mentioned in the Rejoinder Affidavit of the Respondent, as the correct exchange rate is 18.06.

81. The Black Money Act *cannot be given a retrospective effect*, as it is both a criminal and taxation statute. The Respondent has admitted in its allegations that one of the alleged properties being *Property No. 12, Ellerton House, Bryanston Square, London*, was allegedly bought in 2009 and thereafter, sold in June, 2010, by the Appellant.

82. Therefore, as per the Respondent's own claims, the alleged property cannot come within the purview of the Black Money Act, as the Appellant



was not an owner of this alleged property from 2010 onwards and the Black Money Act, which came into force on 01.07.2025, cannot be made applicable. The other properties and bank accounts, are similarly placed.

83. It is further contended that the declaration of the Appellant as a Fugitive Economic Offender, entails grave consequences including confiscation of this property and barring him from defending any civil claim as provided under Section 14 of the FEO Act, *effectively amounting to a civil death*. Such a declaration must strictly comply with the requirements of Section 4, in the absence of which, any Notice under Section 10 of the FEO, is bad in law *as the Application is not 'duly filed'*.

84. It is, therefore, submitted that the Impugned Judgment dated 05.07.2025, be set-aside.

85. The Appellant has filed **Written Submissions**, which are on the same lines as the Petition.

86. **Written Submissions have been filed on behalf of the Directorate of Enforcement** wherein it is submitted that the FEO Act was enacted to address the specific mischief, namely, the growing trend of economic offenders committing large-scale financial frauds and fleeing the country, to evade prosecution. The FEO is intended to ensure that such offenders are deprived of the benefits of their crimes and are compelled to submit the jurisdiction of Indian Courts. The Court must be guided by the *Mischief Rule* of interpretation, as laid down in *Heydon's Case (1584)*. This Rule requires the Court to identify the mischief the statute intends to suppress and to adopt an interpretation that advances the legislative remedy.

87. Where two interpretations are possible, the one that furthers the objective of the law and suppress the mischief, must prevail. Any



interpretation that frustrates the purpose of the FEOA or permits offenders to escape accountability, must be rejected. The FEO Act is not a law that punishes a person for a scheduled offence; it is not punitive law in that sense. Its object is to bring back individuals to face trial/prosecution in India.

88. If a person appears in response to a *Notice under Section 10(1) of the Act*, the proceeding under the FEOA, are immediately terminated. This alone demonstrates that the Act is not meant to punish, but to ensure that the person returns and facts the judicial process in India. Only when a person refuses to appear, does the process of declaration as a Fugitive Economic Offender and consequential confiscation, begins.

89. The present law is not punitive or retributive; rather corrective and preventive. From the conjoint reading of *Section 2(f) of the Act*, which defines ‘fugitive economic offender’ and S. 2(m) which defines ‘Scheduled Offence’, it is evident that the Act is applicable to those individuals, who are accused of having committed an offence specified in the schedule, amounting to one hundred crore rupees or more and can be invoked only qua an individual against whom a *warrant of arrest* in relation to a scheduled offence, has been issued by any Court in India, and who-(i) has left India to avoid criminal prosecution; or (ii) being abroad, refuses to return to India to face criminal prosecution.

90. Section 12(1) of the FEO Act, lays down the two-step process if the Court is satisfied that:

“A warrant for arrest in relation to a scheduled offence has been issued and either the individual has left India or is refusing to return.”



91. The facts of the case are detailed and thereafter, it is explained that the *Warrant of Arrest*, had been issued against the Accused, on 31.10.2019 in *CC No. 2121/2019*, on the reasonable belief that the Accused is deliberately evaded the process of law.

92. The contention of the learned Counsel for the Appellant that the warrants got exhausted is not tenable for the simple reason that the warrants issued in the Extradition Act were pertaining to the proceedings under the said Act. The arrest of the Appellant under the extradition proceedings, was pursuant to the warrants issued thereunder. In fact, the NBWs dated 31.10.2019 issued by learned ACMM are still subsisting and have not been exhausted. As per Section 17(2) Cr.P.C., every warrant of arrest remains enforced until it is cancelled by the Court, which issued it or until it is executed. Neither has the NBW been executed for admittedly, the Appellant has not been arrested to face the trial under the Black Money Act not have they been recalled. It is in fact an open ended NBW which is very much live.

93. The contention of the Appellant that there is no live NBW, which is required as per Sections 2(1)(f) read with Section 2(1)(m) of the FEO Act, is therefore, misplaced. The learned Special Judge, CBI, has therefore, rightly rejected this contention.

94. It is further asserted that the *total value of the scheduled offence is more than Rs.100 Crores*. The Communication dated 09.07.2019 from the Income Tax Department, confirms that the value of undisclosed foreign assets exceeds Rs.100 Crore. The undisclosed foreign income and assets mentioned in the Income-Tax prosecution Complaint, is the same income and assets, which ultimately gets quantified in the final Assessment Order, which is also on record and the final tax liability is computed at



Rs.196,68,64,700/-. There is no cavil in the Respondent's argument that the monetary threshold for the scheduled offence under this Act, is not fulfilled.

95. It is further stated that the argument that without quantification or assessment, there can be no prosecution is completely flawed, in terms of Section 48(2) of the Act. Section 48(2) of BMA, provides that the provisions for offences and prosecutions provided under Chapter V of the BMA, are not in derogation of any other law or any other provision of BMA. Hence, it means that even if the Assessment Order has not been made under the BMA, prosecution can still be initiated and it would not be a valid defence to assert that the assessment has not been completed, or was barred by limitation, or stayed due to some other reason.

96. Section 10 (3) BMA, provides that the Assessing Officer may, after considering all materials and giving the assessee an opportunity to respond, pass an order in writing, assessing or reassessing undisclosed foreign income or assets. Even if this Order under Section 10(3) is not passed, Section 48(2) makes it clear that prosecution can still be maintained. Therefore, the lack of quantification or absence of an Assessment Order, is no bar to initiating proceedings, including those under the FEO Act.

97. The language of Section 51 of the BMA, which provides punishment for wilful attempt to evade tax, is explicit; even an attempt to evade tax and not just the actual evasion, is punishable. The statute itself addresses the wilful attempts to evade taxes, which is significant in the present case.

98. Reliance is placed on Jayappan vs. S.K. Perumal, (1984) SC 1693; Radheshyam Kejriwal vs. State of W.B., (2011) 3 SCC 581 and Sasi Enterprises vs. ACIT, (2014) 5 SCC 139. Reliance is also placed on Koppula Venkat Rao vs. State of A.P., (2004) 3 SCC 602 to assert that even an



‘attempt’ to wilfully evade tax is an offence under section 51 of the BMA. Reliance is also placed on Chaitu Lal vs. State of Uttrakhand, (2019) 20 SCC 272.

99. Without prejudice to the aforesaid, it is submitted that even though the evasion of tax, may not have been completed, the wilful attempt to evade tax under Section 51 of the BMA, is sufficient to constitute an offence. Reliance is placed on Radhika Agarwal vs. Union of India, 2025 SCC OnLine SC 449 wherein Apex Court rejected the contention that the power of arrest under Section 132(5) of the GST, cannot be exercised unless proceedings under Section 73 are concluded and as Assessment Order quantifying the alleged tax evasion, is passed.

100. The expression ‘*reason to believe*’ in Section 4 of the FEO Act, also means ‘*prima facie*’ belief and does not imply that such satisfaction has to be conclusively proved. Reliance is placed on CIT vs. Rajesh Jhaveri Stock Brokers (P) Ltd., (2008) 14 SCC 208. The Courts have consistently held that ‘reason to believe’ refers to a cause or justification based on tangible material; it does not require conclusive proof. Section 4 of the FEOA, uses the phrase ‘*reason to believe*’ making it evident that the competent authority need not await a final assessment or adjudication. The belief may be founded on the information, evidence, or material already in possession.

101. A *finalised Assessment Order* is not a precondition for initiating proceedings under the FEOA. Reliance is placed on Rajendra Singh Verma vs. Lt. Governor, (2011) 10 SCC 1.

102. Furthermore, Section 54 of the BMA provides that in any prosecution requiring proof of a culpable mental state, the Court shall presume its



existence and the burden lies on the accused to prove the contrary beyond reasonable doubt.

103. Reliance is placed on Satyendar Kumar Jain vs. Enforcement Directorate, (2023) 5 HCC (Del) 461 wherein it has been held that the Court, while deciding the case under the PMLA, cannot adjudicate upon or doubt the veracity of the scheduled/predicate offence, once cognizance thereof has been taken by the competent court. Thus, reducing the asset value to 30% to compute tax, is misplaced. Section 2(1)(m) refers to the *total value of the offence* and not merely the tax payable. Section 41 allows a penalty of up to three times the tax amount, which is imposable as required under Section 51 of the Black Money Act.

104. It is further asserted that Section 51 of the Black Money Act is not dependent upon assessment of the tax liability; rather it depends upon the existence of the tax liability. Reliance is placed on CIT vs. Jagan Nath Maheshwary, (1957) 32 ITR 418.

Submissions Heard and Record Perused.

I. Validity and Existence of the Non-Bailable Warrant

105. The challenge to NBWs is two-fold, firstly ‘whether the requirement of a pending warrant under Section 2(1)(f) is satisfied if the NBW dated 31.10.2019 was already executed when the Appellant was arrested in London on 08.07.2021’; secondly, ‘whether a warrant ceases to exist for the purposes of the FEO Act once an arrest has been made and bail granted in a foreign jurisdiction.’

106. The existence of the Non-Bailable Warrant (NBW) is a jurisdictional prerequisite under the Fugitive Economic Offenders Act, 2018 (“FEO Act”).



107. The Appellant argues that the requirement under **Section 2(1)(f)** - which defines a Fugitive Economic Offender as an individual against whom a **“warrant for arrest... has been issued”** - is no longer satisfied. The provision is extracted as under:

“2. Definitions —

(1) In this Act, unless the context otherwise requires,—

...

(f) “fugitive economic offender” means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who—

(i) has left India so as to avoid criminal prosecution;

or

(ii) being abroad, refuses to return to India to face criminal prosecution;”

108. The Appellant points out that an NBW was issued by the Special Court on 31.10.2019. However, he was subsequently arrested by the authorities in London on 08.07.2021, pursuant to that very warrant *via* the extradition request.

109. The Appellant posits that once a warrant is executed and the person is taken into custody (even in a foreign jurisdiction) and subsequently granted Bail by a foreign court, the warrant ceases to exist in the eyes of the law. He contends that an “executed” warrant cannot serve as the basis for a declaration under the FEO Act.

110. The ED, on the other hand, argues that the Appellant’s interpretation is pedantic and defeats the purposive object of the Act. The ED asserts that Section 2(1)(f) only requires that a warrant “has been issued.” It does not require the warrant to be “pending” in a state of perpetual non-execution.



111. The purpose of an NBW is to secure the presence of the accused before the *issuing Court in India*. As long as the Appellant remains on foreign soil and hasn't been produced before the Special Court, the warrant's primary objective remains unfulfilled.

112. The ED argues that FEO proceedings are "corrective" and aimed at compelling the person to return. Arrest in a foreign jurisdiction for extradition does not equate to "surrender" to the Indian judicial process.

113. To decide this issue, we must look at the interplay between criminal procedure and the special objectives of the FEO Act.

114. The FEO Act was enacted to address the stalemate in criminal proceedings caused by the absence of the accused. The NBW serves as the formal judicial recognition that the person's presence is required for trial and that they have failed to appear through ordinary summons.

115. There is a vital legal distinction between an arrest made by foreign police (like Scotland Yard) for the purpose of extradition and the execution of a warrant that culminates in the accused being produced before the Indian Magistrate.

116. In this case, the Appellant was arrested in the UK, but he successfully resisted being brought to India. If the Appellant's logic were accepted, any offender who is arrested abroad but manages to secure bail or tie up extradition in litigation for years would automatically be immune from the FEO Act. This would create a legal loophole where the more a person resists returning to India, the less likely they are to be classified as a "fugitive."

117. Legally, a warrant of arrest remains in force until it is cancelled by the court which issued it, or until it is *fully* executed. "Full execution" in the context of a person abroad involves the actual handover of the person to the



Indian judicial system. Since the Appellant remains in the UK and continues to resist his physical production before the Special Court, the warrant remains legally “unsatisfied.”

118. The issue is decided **against the Appellant** as Section 2(1)(f) uses the phrase “has been issued.” The issuance of the warrant is a historical jurisdictional fact. The Act does not stipulate that the warrant must be “unexecuted” or “live” in the sense of the person being a “proclaimed offender” under the Cr.P.C.

119. The Appellant’s arrest in London did not result in his appearance before the Special Court in India. Therefore, the “warrant for arrest” has not met its legal finality.

120. The very fact that the Appellant is using his Bail and legal status in the UK to avoid appearing in India, confirms that he is “refusing to return to India to face criminal prosecution” within the meaning of S. 2(1)(f).

121. If the “Spent Warrant” theory is accepted it would render the FEO Act toothless against individuals who are wealthy and influential enough to secure Bail in foreign jurisdictions.

122. Thus, the NBW dated 31.10.2019, remains a valid and existing basis for the FEO proceedings. The Appellant’s arrest in the UK and subsequent release on Bail there does not extinguish the warrant for the purposes of the FEO Act, as he has not yet been produced before the Court that issued the warrant.

123. *The challenge to the validity of the warrant is hereby rejected*

II. Determining the threshold of Rs. 100 crore or more

124. Now the second bone of contention is *whether the mandatory monetary threshold of Rs.100 crores, as prescribed under Section 2(1)(f)*



read with Section 2(1)(m) FEO Act was lawfully and sufficiently established to sustain the declaration of the Petitioner as a Fugitive Economic Offender?

125. At the outset, it is essential to understand what the FEO Act demands before any person can be declared a Fugitive Economic Offender.

126. *Section 2(1)(f)* defines a “**Fugitive Economic Offender**” as a person against whom a warrant has been issued in relation to a Scheduled Offence and who has left India, so as to avoid criminal prosecution or is a person who being abroad, refuses to return to India to face criminal prosecution. *Section 2(1)(m)* defines the “**Scheduled Offence**” as an offence specified in the Schedule, *if the total value involved in such offence or offences is Rs. 100 crores or more.* Unless this threshold is crossed, the Court cannot entertain an Application under Section 4 of the Act, let alone issue notice under Section 10 or make a declaration under Section 12.

127. *In the present case*, the Scheduled Offence is under *Section 51* of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which provides for *punishment for wilful attempt to evade tax*. It is reproduced as under:

“51. Punishment for wilful attempt to evade tax.—

(1) If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of Section 6 of the Income Tax Act, wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.



(2) *If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.*

(3) *For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—*

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(ii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.”

128. Thus, the foundational requirement is that the accused must be alleged to have *committed a Scheduled Offence* as defined under Section 2(1)(m) of the FEO Act, and *the value of that scheduled offence must be Rs.100 crores or more.*

129. *In the present case*, this Scheduled Offence stands on the Income Tax Authorities’ Prosecution Complaint under Section 51 of the Black Money Act.



130. From the Assessment Year 2001-02 through 2017-18, the Petitioner consistently filed Income Tax Returns (“*ITR*”) declaring *NIL foreign assets in Schedule FA of the ITR 2012-13*. This declaration stood in complete contradiction to what was discovered during the search and seizure operation conducted by the Income Tax Authorities on 27.04.2016, when multiple undisclosed foreign assets were detected, including foreign bank accounts, a property in London that had allegedly been sold without disclosure, and interests in offshore entities including the Al-Rahma Trust in Dubai.

131. Subsequently, the *Petitioner’s statements were recorded under Section 132(4) of the Income Tax Act on 29/30.04.2016*, wherein he was confronted with the evidence of his foreign assets. A Show Cause Notice dated 08.03.2018 was issued to him for Prosecution under Section 51 of the Black Money Act, specifying the foreign bank accounts and properties in detail alongside the year-wise ITR data from 2001-02 till 2017-18.

132. On *22.12.2018*, the *Income Tax Department filed Prosecution Complaint* No. CC 2121/2019 before the Ld. ACMM, Tis Hazari Courts, Delhi under Section 51 of the Black Money Act. However, the said Complaint did not assign any specific monetary valuation to the foreign assets.

133. Additionally, a *communication vide Letter dated 09.07.2019* by the Income Tax Authorities, tabulated the undisclosed foreign bank accounts and properties in Para 2. In this letter, the Income Tax Department stated that the evasion of tax, penalty and interest as contemplated under Section 51 of the Black Money Act was *prima facie more than Rs. 100 crores*.



However, the assessment under the Black Money Act had not yet been finalized.

134. The Petitioner argued that a mere letter from the Income Tax Department, expressly acknowledging that formal assessment was pending, could not constitute sufficient proof of the threshold of Rs. 100 crore being met. Thus, the *main argument on behalf of the Appellant is that to constitute an offence under Black Money Act, the assessment of tax has to be more than Rs.100 crores.* However, in the present case, the assessments have been made in different amounts, and therefore, the complaint under Section 51 Black Money Act was not maintainable. Consequently, the proceedings under FEO Act, are not maintainable.

135. In order to appreciate this contention, it is significant to refer to Sections 50 and 51 of the Black Money Act. The learned District Judge has in detail, considered the distinction between the two Sections. Section 50 Black Money Act provides that if a person who has furnished the return of income tax, does not furnish any information relating to an asset (including financial interest in any entity) located outside India, then he can be prosecuted under Section 50 of the Money Black Money Act. It is a mere omission to disclose the income in the income tax returns, the foreign asset or income, which is punishable with a term which may extend up to 07 years and with fine. On the other hand, Section 51 deals with *willful attempt to evade any tax, penalty or interest which is punishable with a sentence up to 10 years.*

136. It is clearly demonstrable from the two Sections, that the scope of the offence under these two sections, is essentially different. Under Section 51 mens rea is an important ingredient. It has to be demonstrated that though



the assessee was having the capacity to pay the tax, penalty or interest, he evaded the payment of tax by dishonesty, disabling himself from paying such tax or fraudulently dealt with his assets or property with the intention to evade the payment of tax, penalty or interest. It would be a case where assessee practices a sort of deception by manipulating the books of account or other documents, either by making false entries or by making or omitting to make entries or such other act. **The mens rea required under Section 51 is an intentional act on part of the assessee in willful evasion of tax and not mere failure to pay the tax.**

137. Section 48 of the Black Money Act provides that the assessment and the prosecution proceedings, can both proceed simultaneously and it is not necessary that before launching of the prosecution under Section 51 Black Money Act, the assessment must be completed under Section 10 Black Money Act.

138. Therefore, when both can continue simultaneously, the concerned authorities *have two options*; either to wait for the assessment to be completed for instituting the prosecution under Section 51 Black Money Act or straight away file the Complaint for prosecution under Section 51 Black Money Act in appropriate cases, where the evasion is huge or the person is absconding and is not submitting himself to the jurisdiction of Indian court or is acting in a manner prejudicial to the national interest. In all these cases, because the assessment is taking time, the prosecuting agency may go for prosecution or else, it may defeat the very purpose of Black Money Act.

139. In this context, it is also pertinent to observe that the main objective of Fugitive Offenders Act is to deter economic offenders from evading the process of Indian law by remaining outside the jurisdiction of Indian Court.



The purpose of this Act is to make the fugitive offenders return to India, to face the action in accordance with law. It is not intended for any punishment, but only to compel the fugitive to abide by the law of the land.

140. *The learned Counsel for the Appellant has vehemently contended that in the Complaint under Section 51 Black Money Act, the amount involved for the scheduled offence, is claimed to be more than Rs.100 crores. However, to claim that there was such evasion of tax, reliance is placed merely on a Communication dated 09.07.2019 from the Income Tax Department to state that the alleged scheduled offence is more than of Rs.100 crores. This communication itself stated that assessment, is yet to be finalized. Therefore, in any kind of tax assessment, quantum of tax evasion can be determined only after the assessment is done and prior to that, it is only a presumption or a guess and nothing more.*

141. *It is further asserted that in paragraph 8C of the complaint, it was stated that the proceeds of crime in the scheduled offence are in excess of Rs.100 crores and has been confirmed by the Income Tax Authority vide Confirmation dated 09.07.2019 which is annexed along with the complaint. The Ld. Special court, however, examined this letter holistically and held that, the letter read as a whole clearly communicated the Income Tax Department's *prima facie* view that the evasion exceeded Rs. 100 crores.*

142. *The ED filed an Application under Section 4 read with Sections 10 and 12 of the FEO Act, on 13.12.2019, before the Ld. Special Court. In the Statement of Reasons to Believe appended to this Application, the ED did not rely solely on the IT Department's letter of 09.07.2019. The material*



supporting the Rs.100 crore threshold was, in fact, a composite of several independent strands of evidence:

- a. **First**, the Prosecution Complaint itself, which tabulated the undisclosed foreign bank accounts and properties. The same was confirmed by said Letter of 09.07.2019.
- b. **Second**, Annexure A-2 to the FEO Application, which listed foreign properties including the London property allegedly sold without disclosure, along with foreign bank accounts.
- c. **Third**, Annexure A-3, which catalogued properties in India held in Petitioner's name, properties held through companies under his substantial control, properties held through shell companies at his behest, and properties held through benami holders.
- d. **Fourth**, the statement of his Chartered Accountant, Sandeep Kapoor recorded on 08.02.2017 under Section 132(4) of the Income Tax Act, wherein he elaborated on the backdating of the Al-Rahma Trust structure, which was done after receipt of the Black Money Act notice dated 22.09.2016.
- e. **Fifth**, the Petitioner's own statements recorded on 29/30.04.2016.

143. The Rs.100 crore figure stated in the IT Department's letter was ***not the sole basis*** for the ED's reasons to believe, but rather just one component of the investigation, which is still in progress. Thus, at the time of filing the



Application, sufficient material was in possession of the Respondent, upon which any reasonable person could form a *prima facie* belief that the value of the scheduled offence exceeded Rs.100 crores.

144. However, it is pertinent to acknowledge that the Petitioner pointed out that the valuation of the Scheduled Offence had been in a **constant state of flux** throughout the proceedings, and that the evaluation of the tax evasion at different stages, had been given differently as is evident from hereunder:

“a. On 27th February 2020, the Income Tax Department had filed a tabular chart vide Diary No.313531 in Crl. MC No. 805/2020 wherein the value of the Accused's alleged foreign assets was Rs. 220.91 crores. The tax on the same at 30% would be around Rs. 66 crores.

b. On 23rd March 2020, the Income Tax Department passed the assessment order against the accused under the Black Money Act wherein the value of the Accused's alleged foreign assets was Rs. 655 crores. The tax on the same at 30% would be around Rs. 196 crores.

c. On 15th July 2020, the ED filed its Rejoinder Affidavit in the present proceedings where in Para 8 (Pages 9-10) it has given the value of the Accused's alleged foreign assets as Rs. 487.13 crores. The tax on the same at 30% would be around Rs. 146 crores.

d. In the course of the hearing before the Hon'ble Court, the ED produced a chart showing the value of the Accused's alleged foreign assets as Rs. 191 crores. The tax on the same at 30% would be around Rs. 57.3 crores.”



145. Though, there have been different assessments given at different times in different proceedings, the *learned District Judge rightly observed* that these changed valuations merely reflected the tentative nature of the figures in the mind of Income Tax Authority qua the total value of scheduled offence being more than Rs.100 crores, it kept on twisting and turning in a constant state of flux.

146. Learned Special Judge had rightly observed that Section 51 of the Black Money Act deals with the aggregate value of total tax evaded or attempted to be evaded including penalty and interest which has to be calculated from the total undisclosed foreign assets and income concealed by such person. The value can only be determined on total undisclosed income and assets and therefore, an attempted evasion would be the sum total of evaded tax or sought to be evaded. Therefore, it cannot said to be the total asset value of undisclosed foreign income and assets of an individual which he has concealed from the revenue authority but also takes into account the tax sought to be evaded on the said undisclosed foreign amount since Section 51 Black Money Act even covers an attempt to willfully evade taxes then even though the evasion of tax has not been completed, even a willful attempt to evade, would be sufficient to constitute an offence under Section 51 Black Money Act.

147. Therefore, even if there were tentative figures being calculated for tax evasion, *the schedule of the properties and the assets of the Appellant was the same and there was nothing or deleted. The assessment may have varied but the assets remain the same on which the final assessment was done in 2019/2020.*



148. It may thus, be concluded that at the time when the Application under Section 4 read with section 10 and 12 Fugitive Offenders Act was filed, there was sufficient material available with the director concerned to form a *prima facie* view that the total value of scheduled offense was Rs.100 crores or more which attracted Section 51 of Black Money Act. The tentative figures though kept on varying, *but were finally determined in the final assessment done under Section 104 Black Money Act on 23.03.2020, wherein the total undisclosed foreign income and assets were assessed at Rs.655 crores approximately and the tax evasion was approximately assessed as Rs.196 crores amongst which met the threshold for the offense under the Section 51 Black Money Act. This final assessment was annexed along with the Rejoinder Affidavit by the Respondent.*

149. In this context, it is also pertinent to refer to the *final Assessment Order dated 23.03.2020* which established that the value of the scheduled offence was far in excess of Rs.100 crores. This Order validated and fortified the *prima facie* belief that the Respondent already held at the time of filing. This Order assessed the total undisclosed foreign income and assets at Rs.655,62,15,670/- i.e. approximately Rs. 655 crores; imposed tax thereon @ 30% under Section 3 of the Black Money Act, quantifying the tax liability at Rs. 196,68,64,700 i.e. approximately Rs.196 crores. To this must be added the penalty and interest imposable under the Act, which would only enhance the figure. The aggregate of tax, penalty and interest, therefore crossed the statutory threshold of Rs.100 crores.

150. The fact that the figures were variable during the course of proceedings does not detract from this conclusion that the law here does not demand that an arithmetic consistency be maintained at every stage; it



merely requires that the final authoritative determination cross the threshold of Rs. 100 crores. And that determination of a figure of Rs.196 crores in tax alone, is done as per this standard.

151. Moreover, what the accused's remedy against this Assessment Order may be is a separate, the question that does not fall for determination in these proceedings. For the purposes of declaration of FEO, the Order stands and places the threshold beyond dispute.

152. *In light of the discussion above, the Rs.100 crore threshold is established through an **evolutionary process**. The Ld. Special court correctly held that the threshold was met, both at the *prima facie* stage when the Application was filed, and at the stage of final adjudication (Order dated 05.07.2025 wherein Assessment Order dated 23.03.2020 was also referred) *thereby, conclusively establishing the foundation of the declaration of accused as a Fugitive Economic Offender.**

153. An objection was taken that there was a mention of the property situated at London, UK which had allegedly been sold. However, the allegation of the Respondent/prosecuting agency was that this property never got disclosed to the Income Tax Authorities, which also became a basis for calculating the undisclosed assets of the Appellant. He apparently owned properties in India and Companies, in which shell Companies were shareholders on behalf of the Appellant. There were benami properties held by him and other umpteen number of foreign assets and bank accounts which were rightly considered by ED to form a *prima facie* view of initiating proceedings under Section 4 Black Money Act. ***Therefore, the learned Special Judge was right in observing that the requirement of***



evasion of tax being more than Rs.100 crores was amply satisfied in the present case.

154. The Petitioner further contended that the FEO proceedings, carry drastic civil consequences including confiscation of property and the bar on defending civil claims under Section 14 and an “*economic death penalty*” which requires a high standard of certainty in establishing this threshold.

155. The Ld. Special Court applied the standard of “*reasons to believe*” rather than conclusive proof, as per Section 4(1) FEO Act. The same cannot be said to be incorrect. The authority filing the Application (in the present case, ED) is not required to conduct a final adjudication or assessment at the threshold stage. What is required is that the belief must be rational, based on tangible material, and bear a direct nexus to the evidence.

156. In the case of *Oriental Insurance Co. vs. CIT*, 2015 SCC OnLine Del 12010 it was held as under:

“12. The assumption that the assessee had not credited the profits in question to the profit and loss account is also, admittedly, factually incorrect. Thus, the reasons which led the Assessing Officer to form a belief that income of the assessee had escaped assessment are admittedly based on palpably incorrect assumptions. It is well established that reasons to believe that income had escaped assessment is a necessary pre-condition for the Assessing Officer to assume jurisdiction. Clearly, it would be difficult to sustain that this pre-condition is met if such reasons to believe that income of an assessee has escaped assessment are based on palpably erroneous assumptions. The reason to believe must be predicated on tangible material or information. A reason to suspect cannot be a reason to believe; the belief must



be rational and bear a direct nexus to the material on which such a belief is based. In the present case, the very assumption on the basis of which the Assessing Officer is stated to have formed his belief that the assessee's income had escaped assessment has been found to be erroneous. There was no basis for the Assessing Officer to assume that the assessee had not credited the profits from the sale of investments, which are alleged to have escaped assessment in its profit and loss account."

157. Applying the same to the facts of the present case, the Ld. Special Court held that at the time of filing on 13.12.2019, the Respondent had sufficient material (the IT letter, the Prosecution Complaint, the Annexures listing foreign and domestic properties, the CA's statement regarding backdating, and Petitioner's own statements) to *prima facie* believe that the value of the Scheduled Offence exceeded Rs.100 crores.

Conclusion:

158. In light of aforesaid discussion, it is concluded that there is no merit in the present Appeal, which is hereby dismissed.

159. The Appeal is accordingly disposed of along with pending Application(s), if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

APRIL 09, 2026/RS