

such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusation as false?

3. Whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or that the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

4. Whether proceeding with the trial would result in an abuse, of process of the Court and hence, would not serve the end of Justice?"

26. It is trite law that it would not only be sufficient for the court to look into the averments made in the first information report/complaint alone to find out whether the necessary ingredients to constitute the alleged offence are disclosed, but, the court owes a duty to look into the other attending circumstances emerging from the record of the case over and above the averments and if it is required, the court with due care and caution, would try to read in between the lines. So far as the present case is concerned, the background of the circumstances indicates that the allegations levelled in the first information report, seem to be with a motive to wreaking vengeance and malafide.

27. Accordingly, this court finds that the material, which is relied upon by the applicants/accused persons, is sound and reasonable and the material, which is placed, would persuade a reasonable person to dismiss and condemn the factual basis. Further, even the prosecution has not refuted the specific pleadings and grounds raised for quashing of the criminal proceedings against the applicants in the Counter Affidavit and therefore, this court is of the considered opinion that the trial would result in a gross abuse of process of

the law and would not serve the ends of justice.

28. In view of the aforesaid submissions and discussions, there is sufficient ground for quashing of the impugned summoning order as well as the entire criminal proceedings of the case.

29. Consequently, the whole criminal proceedings including the impugned orders dated 19.12.2007 and 22.7.2013 passed by the learned Chief Judicial Magistrate Lucknow in Case No. 17162/2007, State Vs Ramesh Kumar Srivastava and Others, as well as the impugned Chargesheet No. 202/207 dated 18.12.2007 under Section 325 and 506 I.P.C., Case Crime no. 77/2007, Police Station-Kotwali Hazratganj, district-Lucknow, are hereby quashed.

30. Resultantly, the application under section 482 Cr.P.C. is *allowed*.

31. The registry is directed to send a copy of this order to the trial court concerned, forthwith.

(2025) 4 ILRA 733
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.04.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 8370 of 2024

Danish Khan		...Applicant
	Versus	
State of U.P. & Anr.		...Respondents

Counsel for the Applicant:
 Anuuj Taandon

Counsel for the Respondents:

G.A., Kuldeep Srivastava, Rohit Tripathi

Criminal Law - The Prevention of Money-Laundering Act, 2002 - Section 44 (1) - Indian Penal Code, 1860 - Sections 419, 420, 467, 468, 471 & 120-B - Code of Criminal Procedure, 1973 - Sections 323 & 325 - Transfer of case - Validity - ED filed Complaint before Sessions Judge, based on FIR lodged by ATS for offences - Applicant is accused in said FIRs but not named in ED complaint - Case was committed to Sessions Court on 03.02.2016, later transferred to Special PMLA Court upon its creation - Applicant's plea to transfer trial from Special PMLA Court to Magistrate rejected - Even if offence exceeds Magistrate's sentencing powers, Magistrate must conduct trial, record evidence and if higher sentence is warranted, refer case to Chief Judicial Magistrate for committal to Sessions Court - Thus, trial by Magistrate does not bar maximum punishment under law - Applicant's claim that trial by Magistrate limits punishment to seven years is misconceived and transfer of trial to Special Court does not cause prejudice - Impugned order lacks merit, dismissed. (Para 3, 4, 5, 14, 15, 17)

Application dismissed. (E-13)

List of Cases cited:

1. Vijay Madan Lal Chaudhary Vs U.O.I.: (2023) 12 SCC 1, (Para 264)

2. Rana Ayyub Vs Directorate of Enforcement, (2023) 4 SCC 357, (Para 28, 30, 31)

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Anuj Taandon, the learned counsel for the applicant and Sri Kuldeep Srivastava, the learned counsel for the respondent-Directorate of Enforcement.

2. By means of the instant application filed under Section 528 BNSS, the

applicant has challenged validity of an order dated 03.07.2024 passed by the Special Judge, Anti Corruption, CBI West/ED, Lucknow in complaint No. 2/2025 whereby an application filed by the applicant for transferring the case from Special Judge under PMLA Act to the Court of Magistrate has been rejected.

3. On 28.03.2014 the Directorate of Enforcement filed complaint no. 1/2014 arising out of ECIR/15/PMLA/LZO/2012 in the Court of Session Judge, Lucknow. The aforesaid complaint has been filed against seven persons but the applicant has not been made an accused in the complaint. The complaint has been filed on the basis of scheduled offences regarding which FIRs No. 1/2011, 2/2011 and 3/2011 have been lodged by Anti Terrorist Squad (ATS), U.P. Police, Lucknow on 17.08.2011 at Police Station ATS for offences under Sections 419, 420, 467, 468, 471, 120-B IPC in which the applicant is also an accused person.

4. The charge sheet regarding scheduled offence were filed before the Additional Chief Judicial Magistrate and on 03.02.2016, the First Additional Chief Judicial Magistrate, Lucknow passed an order committing the case to the Session Court as at that point of time, the Sessions Judge, Lucknow was the designated special court for trial of offence under Section 45 PMLA Act. Subsequently after creation of special court in PMLA, the trial has been transferred to the Special Judge, PMLA.

5. On 24.05.2024, the applicant filed an application seeking transfer of trial of the scheduled offence from the court of Special Court, PMLA to the court of Magistrate which application has been

rejected by the impugned order dated 03.07.2024.

6. It is also relevant to note that the case was committed to the Special Court way back in the year 2016, the applicant has been participating in the trial since then. The application for transfer of case to the court of magistrate has only been filed in the year 2024.

7. The learned counsel for the applicant submitted that the reason for filing an application is a judgment of the Hon'ble Supreme Court **Vijay Madan Lal Chaudhary v. Union of India**: (2023) 12 SCC 1, wherein the Hon'ble Supreme Court has held that: -

“264. The petitioners may be justified in making grievance that the provision though permits the Special Court to proceed with the trial in respect of scheduled offence, yet it may be oppressive as against the accused who is not charged with the offence of money laundering but only scheduled offence. For, he may be denied of opportunity of one appeal or revision, as the case may be before the higher forum. Such a grievance can certainly be looked into by the Special Court if an application is moved by the authority authorised. Since we have held that the provision is only to bestow enabling power in the Special Court, it must follow that the Special Court will examine the request of the authority authorised for transfer of trial of predicate offence to itself on case-to-case basis. Similarly, request for trial of offence under another special statute, such as the PC Act, the NDPS Act, etc. can also be considered by the Special Court on case-to-case basis after examining all aspects of the matter.”

8. Assailing validity of the impugned order dated 03.07.2024 the learned counsel for the applicant has submitted that although the applicant is an accused in scheduled offence, he is not an accused in the complaint filed by the ED under PMLA. As he is not an accused under PMLA, his case cannot be tried by the special court under provisions of PMLA. He has submitted that trial of the case relating to the scheduled offence by the Special Court under PMLA would cause serious prejudice to the applicant as his right of appeal will vanish.

9. Before dealing with this submission of the learned Counsel for the applicant. It would be appropriate to have a look at the provision contained in Section 44(1) of the PMLA, which reads as follows: -

“44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of

such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.

Explanation.—For the removal of doubts, it is clarified that—

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.”

After considering the provision contained in Section 44(1) of the PMLA, the Hon’ble Supreme Court held in **Rana**

Ayyub v. Directorate of Enforcement, (2023) 4 SCC 357, that: -

“28. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.

** * **

30. A careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two rules, namely: (i) that the offence punishable under PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering.

31. It is only because of the Special Court constituted under Section 43(1) being conferred primacy that Section 44(1) begins with the words “notwithstanding anything contained in the Code of Criminal Procedure”. Though PMLA contains a non obstante clause in relation to the CrPC, both in Section 44(1) and in Section 45(1), there are two other provisions where the Code of Criminal Procedure is specifically declared to apply to the proceedings before a Special Court. Section 46(1) specifically makes the

provisions of the CrPC applicable to proceedings before a Special Court. Similarly, Section 65 of the PMLA makes the provisions of CrPC apply to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act.”

10. In the impugned order dated 03.07.2024, the trial court has relied upon the aforesaid law laid down by the Hon’ble Supreme Court in the case of **Rana Ayyub** (Supra).

11. Even if the applicant is not an accused in the case relating to money laundering but the other co-accused persons in the scheduled offence are accused in the case relating to money laundering, the trial court has rightly come to a conclusion that trial of the applicant should be held in the Special Court as the trial of other co-accused persons has to be conducted by the Special Court under the PMLA.

12. The second ground urged by the learned counsel for the applicant is that in case the scheduled offences are tried by the Court of Additional Chief Judicial Magistrate, in case of his conviction he can only be punished with imprisonment for a period upto 7 years only whereas in case of trial by the Special Court, he may be inflicted a punishment of imprisonment for a period upto his life.

13. The relevant statutory provision in this regard are contained in Sections 323 and 325 Cr.P.C., which provide as follows:
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“323. Procedure when, after commencement of inquiry or trial, Magistrate finds case should be committed.—If, in any inquiry into an

offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made

* * *

325. Procedure when Magistrate cannot pass sentence sufficiently severe.—

(1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under Section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.

(2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.

(3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

14. Even where an offence carries a maximum punishment beyond the powers

of a Magistrate, the Magistrate has to proceed with the trial, record evidence, form an opinion that the accused is guilty and thereafter form an opinion that the accused should be given a punishment higher than that which he is empowered to inflict. Thereafter that he can submit the proceedings to the Chief Judicial Magistrate, who may commit the proceedings to the Court of Sessions. Therefore, trial of the offence by a Magistrate does not mean that the accused cannot be inflicted with the maximum punishment for the offence prescribed by law.

15. Therefore, the submission of learned counsel for the applicant that if the case is tried by the Magistrate, the applicant can be punished with a sentence of imprisonment up to seven years only and transfer of trial to the special court would prejudice the applicant as in that case he may be awarded a punishment of seven years is misconceived.

16. No other submission was advanced by the learned Counsel for the applicant.

17. In view of the foregoing discussion, no case for any interference in the impugned order dated is made out. The application under Section 528 BNSS lacks merit and the same is *dismissed*.

(2025) 4 ILRA 738

**APPELLATE JURISDICTION
CRIMINAL SIDE**

DATED: LUCKNOW 01.04.2025

BEFORE

THE HON'BLE MANISH MATHUR, J.

Criminal Misc Anticipatory Bail Application u/s
438 CR.P.C. No. 118 of 2025

Tatheer Jafri & Ors.

...Applicants

Versus

State of U.P.

...Respondent

Counsel for the Applicants:

Anjani Kumar Mishra, Nadeem Murtaza,
Shashank Tilhari

Counsel for the Respondent:

G.A.

Criminal Law -Criminal Procedure Code,1973-Section 438-BNSS,2023-Section 482-U.P. Gangsters and Anti Social Activities(Prevention) Act,1986-Maintainability-The applicant sought anticipatory bail in connection with a case registered under Gangster act-The State opposed the application , citing the U.P. Amendment to the CrPC,1973 which barred anticipatory bail in Gangster Act cases-the application was not maintainable since the charge sheet and bailable warrants were issued before the BNSS 2023 came into effect on 1st july 2024-The Court rejected the objection, holding that the second bailable warrant issued on 2nd july 2024(post enforcement of BNSS 2023) constituted a fresh cause of action and anticipatory bail would be governed by section 482 BNSS 2023 which permits such applications-Relying on the Deepu Vs. St. of UP and Eera Vs. St., the court emphasized that anticipatory bail is a beneficial provision linked to Article 21 and must be interpreted broadly-Finding only one previous case against the applicants, in which bail was earlier granted, the Court granted anticipatory bail subject to condition-Thus, Anticipatory bail application is maintainable under BNSS 2023.(Para 1 to 24)

The application is allowed. (E-6)

List of Cases cited: