IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APELLATE SIDE

The Hon'ble **JUSTICE SUVRA GHOSH**

CRM (SB) 17 of 2025

Joseph Stalin
v/s.
The State of West Bengal & Anr.

For the Petitioner:	Mr. Milon Mukherjee Mr. Goutam Dey Mr. S. Ravi Mr. Suresh Babu Mr. D. Dutta Mr. Karan Kumar Mr. Abhijit Mondal Ms. Ankita Ghosh
For the Enforcement Directorate:	Mr. Arijit Chakraborty Mr. Debsoumya Basak Ms. S.K. Singh
Hearing concluded on:	11.09.2025
Judgment delivered on:	24.09.2025

SUVRA GHOSH, J. :-

1. The petitioner is in custody since 14th August, 2024. The petitioner started a company in the name and style of M/s. Studio 21 Technologies Private Limited on 13th August, 2019. Since the company was facing loss, he proposed to sell out the company to Pei Pengyun for Rs. 80,000/-. In response thereto, Pei Pengyun offered the petitioner to continue as director of the company and to add him as another director. He was accordingly inducted as a shareholder and director of the company on 9th August, 2020 by complying with statutory procedure. The petitioner also

formed a company in the name and style of M/s. Ishapps Technologies Private Limited in 2021 for crypto currency trading when the bank account of M/s. Studio 21 Technologies maintained with the Axis bank was closed.

2. Learned counsel for the petitioner has submitted that the petitioner handed over the credentials of bank accounts of both the companies to Pei Pengyun who utilised the services of the petitioner to convert USDT to INR. The petitioner opened Binance account for receiving USDT from Pei Pengyun. The petitioner worked on commission basis and was offered commission on profit of the business as he sold the USDT and credited the sale proceeds to the bank accounts of the two companies. He did not receive any share in the profit of the operation. In the meantime, one Shekhar Pal lodged a complaint on 16th May, 2023 wherein he stated that he joined an online gaming app "Fiewin" and started playing the money related games therein. He started by paying small amounts of money initially and later invested huge amounts. Out of a total amount of Rs. 21,69,079/- paid by him, he got back Rs. 13,94,485/-, the transactions being done through three UPI Ids. The complaint was lodged against unknown persons and charge sheet has not been submitted as yet.

3. The Enforcement Directorate (for short the E.D.) registered the present ECIR on 21 February, 2024 against unknown responsible persons of Fiewin app. The petitioner was called on several occasions and his statement was recorded under Section 50 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the PMLA). Prosecution

complaint was filed against the petitioner and the others on 7th October, 2024.

4. Learned counsel submits that the petitioner's role was limited to selling crypto currencies in Binance app to the registered and verified users and deposit the sale proceeds in the bank accounts of the companies. He used to receive commission on daily basis which amounted to Rs. 2,00,000/- per month. Trading in crypto currency in Binance trading platform is not illegal in India and is allowed subject to payment of tax. Fiewin app is still in operation and has not been banned. The petitioner was not aware of the transactions made in the bank accounts of the two companies or about payment received from the app or any person in the app. He had no *mens rea* to cheat anyone or contravene any statutory provision. The ECIR has its source in the complaint of the predicate offence which was lodged with a malafide intention. Despite being aware of the nature of the game, the complainant chose to indulge in the same voluntarily and was not cheated. Also, allegations under Sections 420 and 406 of the Indian Penal Code cannot go hand in hand.

5. No person has been named in the FIR and the ECIR. None of the other accused or the complainant has implicated the petitioner in the alleged offence. His arrest is based solely on his statements recorded under Section 50 of the PMLA which is required to be weighed during trial. The arrest of the petitioner is in contravention of Section 19 of the PMLA. No other victim besides the defacto complainant has either been examined or cited as a witness. The arrest of the petitioner is not founded on legal principles. The petitioner has prayed for bail.

6. Learned counsel for the petitioner has placed reliance on the following authorities in support of his contention.

i. Vijay Madanlal Choudhary & Ors. Vs. UOI & Ors reported in 2022 SCC OnLine SC 929;

ii. Prakash Industries vs. UOI and Ors reported in 2023 SCC OnLine Del 336;

iii. K. Govindaraj Vs. Union of India and Ors. reported in MANU/TN/3531/2024;

iv. State of Punjab Vs. Davinder Pal Singh Bhuller & Ors. reported in 2011 SCC OnLine 1545;

v. Arvind Kejriwal Vs. Directorate of Enforcement reported in 2024 SCC OnLine SC 848, 2024 SCC OnLine Sc 3581;

vi. Pankaj Bansal Vs. Union of India (UOI) and Ors. reported in 2023 SCC OnLine SC 2122;

vii. Directorate of Enforcement vs. Subhash Sharma reported in 2025 SCC OnLine SC 240;

viii. V. Senthil Balaji Vs. The Deputy Director, Directorate of Enforcement reported in 2023 SCC OnLine SC 934;

ix. Dilbag Singh Vs. Union of India and Ors. reported in 2024 SCC OnLine P&H 2705;

x. Directorate of Enforcement and Anr vs. Dilbag Singh reported in 2024 SCC OnLine SC 5586;

xi. Prem Prakash vs. UOI reported in 2024 SCC OnLine SC 2270;

xii. V. Senthil Balaji vs. Enforcement Directorate reported in 2024 SCC OnLine SC 2626;

xiii. Anwar Dhebar vs. Directorate of Enforcement in Criminal Appeal No.(S). 2669 of 2025 arising out of S.L.P (Criminal) No (S). 3592/2025.

7. Vehemently opposing the prayer, learned counsel for the E.D. has submitted that delayed ECIR does not affect the merits of the case. A person who is cheated and suffers loss while participating in a gaming app can only name the app in his complaint and has no scope to identify the persons behind the app. The names of the petitioners and others came to light in course of investigation. Section 24 of the PMLA casts reverse burden on the accused/petitioner to prove his innocence.

8. The petitioner was the authorized signatory of the companies. During investigation it was found that there were seven Binance accounts in the names of Chinese nationals that have been created with 51.6 million USDT worth around Rs. 400 crores. These accounts were being operated from China as found from the log I.P. addresses. Huge proceeds of crime were generated, accumulated and laundered through crypto currency by these Chinese nationals, one of whom being Pei Pengyun. Indian currency amounting to Rs. 39,00,000/- has been seized and provisional attachment of properties to the tune of Rs. 25.78 crores has been identified as proceeds of crime. The petitioner along with the other accused defrauded common people through their online gaming app and laundered the POC generated therefrom. The amount collected from the users through the recharge persons were transferred to the Binance

accounts of the petitioner or his companies and transmitted to different offshore Chinese citizens after conversion of crypto currencies and also after keeping aside his commission on the profit derived therefrom.

9. The petitioner has failed to overcome the rigours of Section 45 of the PMLA. Proceeding under the PMLA is independent of a predicate offence and it is not necessary that the petitioner should be charge sheeted under Section 173 of the Code of Criminal Procedure for committing scheduled offence under the PMLA. The offence is a serious threat to the economic backbone of the country and possibility of his tampering with evidence and influencing/initimidating witnesses cannot be ruled out if released on bail at this stage. Trading in bit coins has no legal sanction in India and the petitioner has no licence in dealing with the same. Charges has been framed and witness action is about to commence. The petitioner is not entitled to bail at this stage.

10. Learned counsel for the E.D. has placed reliance on the following authorities in support of his contention.

    i. Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation reported in (2013) 7 SCC 439;

    ii. Nandini Ramchandani & Ors. v. State of U.P. & Ors. reported in 2015 SCC OnLine All 9470;

    iii. Amit Banerjee v. Shri Manoj Kumar, Assistant Director, ED reported in 2016 OnLine Cal 6708;

    iv. Vijay Madanlal Choudhury & Ors v. UOI & Ors. reported in 2022 SCC OnLine SC 929.

    v. Suhail v. State of Haryana in CRM-M-22968-2025.

11. I have considered the rival submission of the parties and material on record.

12. The petitioner has been charged with an offence under Section 3 of the PMLA. It shall be useful to reproduce Section 3 of the Act.

> 3. "*Offence of money-laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
>
> *Explanation- For the removal of doubts, it is hereby clarified that-*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-*
>
> *(a) concealment; or*
>
> *(b) possession; or*
>
> *(c) acquisition; or*
>
> *(d) use; or*
>
> *(e) projecting as untainted property; or*
>
> *(f) claiming as untainted property,*
>
> *in any manner whatsoever;*

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

13. In the authority in Vijay Madanlal Choudhary (supra) the Hon'ble Supreme Court has observed that once the three foundational facts are established by the prosecution, the onus shifts on the person facing the charge of offence of money laundering to rebut the legal presumption that the proceeds of crime are not involved in money laundering, by producing evidence which is within his personal knowledge. The three foundational facts are as follows:

i. That the criminal activity relating to a scheduled offence has been committed,

ii. That the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity,

iii. The person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime.

14. The existence of a scheduled offence is a sine qua non for alleging the existence of proceeds of crime. In the case in hand, it is to be considered whether the prosecution has been able to establish the three basic or foundational facts.

15. One Shekhar Pal lodged a complaint before Cossipore Police Station on 16th May, 2023 wherein he stated that on finding a you tube link of an online gaming app named Fiewin, he indulged in playing the said game and gradually got addicted. He paid a total amount of Rs. 21, 69, 079/- and won Rs. 13,94,485 from the game. When he was unable to withdraw the winning amount, he suspected that he was cheated by the app and lodged the complaint. The case was registered under Sections 420/406/120B of the Indian Penal Code against unknown responsible persons of the gaming app. Section 420/120B of the Code being scheduled offence, an ECIR was recorded on 21st February, 2024 against the app and others under the PMLA. The petitioner was summoned by the authority on several occasions in course of investigation and was finally arrested on 14th August, 2025. It is trite law that mere non-cooperation of the petitioner or his failure to respond to the questions put by the E.D. would not be enough to render him liable for arrest under Section 19 of the Act. {Pankaj Bansal (supra)}. The reasons for arrest recorded by the E.D. demonstrates that the petitioner was arrested on the anvil of allegedly incriminating material collected against him during investigation and the grounds of arrest made over to the petitioner reflect such material. Therefore the arrest was not merely on the ground of non-cooperation by the petitioner. It is crystal clear that there is an allegation

of a scheduled offence being committed and the same has been registered with the jurisdictional police and is pending investigation. That being so, the E.D. has rightly assumed jurisdiction to proceed under the PMLA {K. Govindaraj (supra)}.

16. In the authority in Prakash Industries Limited (supra), the Hon'ble High Court of Delhi has emphasized that the PMLA empowers the E.D. to investigate Section 3 offences only. It cannot be read as enabling it to assume from the material that it may gather in the course of that investigation that a predicate offence stands committed. In other words, the competent authority should have reason to believe that the person is in possession of proceeds of crime. The Hon'ble Supreme Court, in the authority in Amit Banerjee (supra) has held that there is no whisper in Section 3 of the PMLA that an offender under the said provision must be prosecuted in respect of a scheduled offence. Subsequent action of an individual pursuant to the acquisition of proceeds of crime in concealing or dealing with the same or portraying the same as untainted property with requisite *mens rea* definitely falls within the penal ambit of Section 3 of the Act. Any real and tangible nexus of a person in dealing with proceeds of crime with the requisite knowledge and *mens rea* would be sufficient to attract the aforesaid penal provision.

17. Herein, the petitioner being the owner/director of the two companies introduced Pei Pengyun, a Chinese national as another director of the company. Seven Binance accounts are found to have been opened in the names of Chinese nationals with 51.6 million USDT worth around Rs. 400 crores which were being operated from China. The petitioner was engaged

in bit coins/crypto currency trading. He used to receive crypto currency in his Binance accounts and sell them to various users. The money earned therefrom was deposited in the bank accounts maintained in the names of his companies, he being the authorized signatory of all the bank accounts. Investigation reveals that the bank accounts were operated by Pei Pengyun who had access to the said accounts. The two companies are not in operation at present. The primary allegation against the petitioner is trading in crypto currency which is not illegal in India. The Hon'ble Supreme Court, in the authority in Internet and Mobile Association of India v/s Reserve Bank of India reported in 2020 SCC OnLine SC 275, struck down a Reserve Bank of India circular that had effectively imposed a ban on virtual currency trading in India. Though the Indian Government does not recognize crypto currency as legal currency, trading in the same is legal and 30% tax is imposed on profits from crypto transactions from April 2022.

18. Allegation against the petitioner is two fold:- First, he has received huge amount of money directly from the recharge persons of the gaming app Fiewin. Second, he has received money in the form of USDT from Chinese nationals and converted the same into INR and has also used it for his personal expenses/investment. Whether money acquired in course of trading in crypto currency can be termed as proceeds of crime is required to be assessed at the appropriate stage of the proceeding. Though the first allegation may have some nexus with the scheduled offences, the second allegation is independent of any scheduled offence and in absence thereof, it is not understood how Section 3 of the PMLA is attracted.

19. The E.D. is empowered to investigate Section 3 offences only and such investigation is confined to offence of money laundering as defined in that Section. The predicate offence has to be necessarily investigated and tried by the authorities empowered by law in that regard. E.D. cannot possibly arrogate unto itself the power to investigate or enquire into the alleged commission of other offences. {Prakash Industries Limited (supra)}. The scheduled offence pertains to the gaming app Fiewin and the alleged cheating of the complainant after luring him to invest huge amount of money and nothing further. It is pertinent to state that the complainant voluntarily joined the gaming app without any influence from any corner whatsoever and continued to invest therein, upon being addicted to the game. He ought to have been aware that such speculative games do not always yield positive results or fetch the desired returns.

20. Investigation reveals that the amount debited in the complainant's account was credited to the accounts of various recharge persons from which it went to the account of M/s. Studio 21 Technologies. The flow chart which is part of the complaint demonstrates that money is deposited by the gamers into the accounts of recharge persons. They are changed to crypto currency with the help of USDT sellers and then deposited in the Binance accounts. It is not in dispute that the petitioner received commission from the profit of the trade. It is trite law that mere possession/accumulation of money, of whatever volume it may be, does not ipso facto constitute an offence under the PMLA. There should be reason to believe that the person is in possession of proceeds of crime. Such fact can be established only when the allegation in the predicate

offence is substantiated. As stated earlier, trading in crypto currency is legal and in the event of evasion of tax, the appropriate authority can take care of the same. The petitioner has been implicated primarily on the anvil of his statement recorded under Section 50 of the PMLA. Though it is alleged that several gullible victims have fallen prey to the widely spread web of the petitioner and others, no such victim has either been examined, or cited as a witness in the complaint.

21. The principles governing grant of bail are well settled and they are as follows:-

i. Nature and gravity of the offence;

ii. The material collected in course of investigation in support of the accusation and involvement of the accused;

iii. Requirement of detention for the purpose of investigation/trial;

iv. Flight risk, i.e., possibility of abscondence or evasion of the process of law;

v. Possibility of commission of similar offences;

vi. Intimidation of witness and/or tampering of evidence.

22. While considering the issue of “bail or jail”, the Court requires to balance the cry of liberty of the accused against other equally weighty issues like nature and gravity of the offence, requirement of incarceration for the purpose of investigation, nature and impact of his release on the progress of trial, etc.

23. The case is based on documentary evidence which are in custody of the investigating authority. The petitioner has co-operated in the investigation of the case by responding to the summons issued by the E.D. Therefore there is little chance of his abscondence or evasion of the process of law. The witnesses are official witnesses and there is no scope for the petitioner to influence/intimidate them. Investigation is complete and charges framed. So further custodial interrogation of the petitioner may not be required.

24. The predicate offence is still at the investigation stage. Charge sheet is yet to be submitted. Law enjoins that the existence of proceeds of crime at the time of trial of the offence under Section 3 of the PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Even if the trial of the PMLA case proceeds, it cannot be finally decided unless the trial of the scheduled offences conclude {V. Senthil Balaji (supra)}. In the facts of the present case, since there is no possibility of trial of the scheduled offence commencing shortly, trial of the PMLA offence can also not be concluded in near future.

25. True, the twin conditions laid down in Section 45 of the PMLA are the guiding factors for grant of bail to an accused under the said Act and the accused is to satisfy the said conditions to obtain bail. However, the proviso to Section 45(1) of the PMLA envisages that in a case of money laundering of a sum of less than one crore rupees, the accused may be released on bail. In the present case, the predicate offence which is the foundation of the ECIR pertains to Rs. 21,69,079/-.

26. Violation of Section 19 of the Act has been alleged by the petitioner. Though the petitioner appears to have been informed of the grounds of arrest in compliance with Section 19(1) of the Act, there is nothing on record to suggest compliance of Section 19(2).

27. In dealing with the right to life and personal liberty under Article 21 of the Constitution of India, the Hon'ble Supreme Court has time and again emphasised that the constitutional Court cannot be restrained from granting bail to an accused of account of restrictive statutory provisions in a penal statute if it finds that the right of the accused under Article 21 of the Constitution of India has been infringed. However stringent a penal statute may be, a constitutional Court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part. It cannot be said that under a particular statute, bail cannot be granted. In addition thereto, in the present case, since the money allegedly laundered is far below rupees one crore in so far as the predicate offence is concerned, the rigours of Section 45 of the Act is diluted.

28. In the light of the observation made hereinabove, this Court is of the view that since trial has commenced and there is remote possibility of it being concluded in near future in view of the fact that the predicate offence is still at the investigation stage, detention of the petitioner for an indefinite period shall amount to violation of his personal liberty enshrined under Article 21 of the Constitution of India. Also, he has no criminal antecedent to his credit.

29. Accordingly, this Court is inclined to release the petitioner on bail subject to stringent conditions.

30. The petitioner be released on bail on furnishing bond of Rs. 1,00,000/- (Rupees one lakh only) with adequate sureties of like amount each, half of whom should be local, subject to the following conditions:

    (i) The petitioner shall surrender his passport before the learned Trial Court at once;

    (ii) He shall appear before the learned Trial Court on every date of hearing fixed before the learned Court;

    (iii) He shall not tamper with evidence or intimidate witnesses in any manner whatsoever;

    (iv) He shall not leave the territorial jurisdiction of the learned Trial Court without leave of the learned Court.

    (v) He shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses;

    (vi) He shall provide his mobile phone number before the learned Trial Court and the E.D and shall not change the same without prior intimation to them.

31. In the event the petitioner fails to adhere to any of the conditions stated above, the learned Trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.

32. It is made clear that the observation made in this judgment is for the limited purpose of deciding the bail application and shall not be construed as an expression of opinion on the merits of the case. The learned Trial Court shall be at liberty to deal with the matter independently in accordance with law without being influenced by any observation which may have been made in the judgment.

33. CRM (SB) 17 of 2025 is allowed.

34. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

35. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)