

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE SRINAGAR

CNR NO: JKSG-0305-1841-2024
File NO: IA/2/2024
Date of Inst: 18.09.2021

CNR NO: JKSG-0305-1841-2024
File NO: 51784/2024
Date of Inst: 27.08.2024

Date of order: 02.03.2026

In the Case of:-

Central Bureau of Investigation, Special Crime-II, New Delhi
FIR NO: 05/2015

Offence(s) under section 120-B, 406 and 409 RPC

...Investigating agency

Adv. Farhat Zia prosecutor present

Adv. Umar Rashid for E/D present

VERSUS...

1. Md. Saleem Khan S/o Lt. Shah Zaman Khan
R/o 16, Iqbal Colony, Chanpora, Srinagar
2. Ahsan Ahmad Mirza S/o Sh. Mirza Mohi ud din
R/o H. No. 5, Mirza Bagh, Nigeen, Srinagar
3. Manzoor Gazanfar Ali S/o Sh. Ghulam Rasool Mir (**Pardon granted**)
R/o Pandrethan, Srinagar
4. Bashir Ahmad Misgar S/o Lt. Ghulam Ahmad Misgar
R/o H. No. 3, Basra Colony, Ellahi Bagh, Buchpora, Srinagar
5. Dr. Farooq Abdullah S/o Lt. Sheikh Mohammad Abdullah
R/o 40, Gupkar Road, Srinagar
6. Gulzar Ahmad Beigh S/o Sh. Ali Mohd Beigh (**Pardon granted**)
R/o Nigeen near Green Land School, Srinagar

...Accused persons

Adv. N. A. Ronga for accused no. 1

Adv. Shariq Jan for accused no. 2

Accused no. 3 present

Adv. M. D. Khan for accused no. 4

Adv. Ishtiyaq Khan for accused no. 5

Accused no. 6 present

In the matter of: Application on behalf of directorate of enforcement govt. of India in terms of liberty granted by the Hon'ble High court of J&K and Ladakh in CRM (M) No. 160/2020 vide judgment dated 14.08.2024 for adding sections 411 and 414 of IPC to the charges in the captioned case by exercise powers u/s 216 of Cr.PC.

AND

In the matter of: Plea regarding charge/discharge of accused.

CORAM:

Ms. Tabasum

JO Code:- JK-00173.

ORDER

1. This file has come up for hearing today. Accused no. 3 and accused no. 6 have been given pardon by virtue of order dated 10.07.2018 during trial of the

case. Counsel for the accused no. 1, 2, 4 and 5 argued seeking discharge of accused.

2. By virtue of this order this court shall decide application filed by Enforcement Directorate for adding of offences and also shall decide plea vis-à-vis charge/discharge of the accused persons. It is imperative to mention herein that a charge sheet has been filed by the Central Bureau of Investigation against the accused persons under Sections 120-B, 406 and 409 of the RPC. Thereafter, an application on behalf of Directorate of Enforcement has been filed in terms of the liberty granted by the Hon'ble High Court of J&K and Ladakh seeking addition of certain offences to the charges. It is important to state here that the investigation and prosecution in the above titled criminal case is done by the CBI and the applicant/Enforcement Directorate is neither the investigating agency nor the prosecution agency (CBI) in the instant case. It is settled position of law that the E.D can initiate action only upon the existence of a predicate offence and cannot act on its own. There must be criminal activity coming within the Schedule of the Prevention of Money Laundering Act, 2002 and there should be proceeds of crime based on which the ED will have jurisdiction to commence an action. The essential element for the ED to seize jurisdiction is the presence of a predicate offence. As per law, if the ED comes across a violation of law, it cannot assume the role of an investigating agency and the ED has the duty to inform the appropriate agency, which would commence an investigation. If after investigation the agency did not find any case with respect to the aspects pointed put by the ED, the ED could not suo-motu proceed & assume power. In the instant case, there is nothing on record which suggests that the ED has informed the CBI about the commission of the offence under Section 411 & 424 the RPC. The applicant in its application at Para 11 itself states:

11. "That in view of ongoing facts and circumstances, the ECIR/SRZO/01/2018 dated 28-12-2018, the attached properties of the accused under the provisions of PMLA, 2002 and the Prosecution Complaints, filed therein by the Directorate after a thorough investigation under PMLA, have been quashed by the Hon'ble High Court of J&K vide the judgement dated 14-08-2024 in lack of the offences under sections

411 and 424 of the RPC (Pari-Materia to IPC) in the charge sheet of the predicate agency.” Hence, the applicant department being the aggrieved agency may be arrayed as a party in the present case to arrive at a just conclusion in the case”.

3. But keeping in view the facts & circumstances of the case, provisions of law & Judicial precedents, ED cannot be made as a party in a case which is investigated, filed and prosecuted by the CBI & where no schedule offence is disclosed in the charge sheet by the CBI. Therefore, the applicant has no locus standi as per the law to seek addition of charge in the present case as such the instant application on behalf of ED is not maintainable. It is further observed that the application of the applicant (ED) is vague and is seeking contradictory reliefs. In some places of the application, the applicant is seeking addition of Section 411 & 414 of the IPC by exercise of powers under section 216 of the Cr.P.C but the matter of the fact is that the applicant is seeking to invoke repealed provisions of law because the Indian Penal Code is not applicable in the instant case and the said IPC was repealed with effect from 01/07/2024. In some place, the applicant is seeking addition of Section 411 & 424 of the IPC & in some place the applicant is praying to frame the charges under Section 411 & 424 of RPC. It manifestly shows that the application is misconceived & lacks clarity.
4. It is worthwhile to mention here that the power of ED to investigate and enquire stands mainly connected to the offence of money laundering as defined in the PMLA. ED cannot assume from the material gathered by it, that a predicate offence stands committed. The predicate offence has to be necessarily investigated and tried by the authorities empowered by law. In the instant case, the CBI which is the main investigating and prosecuting agency did not incorporate any schedule offence in the charge sheet. **The Hon’ble High Court of Delhi in a case titled as “ M/S Prakash Industries Limited V. Union of India & Anr 2023 Live Law (Del) 79** held that enforcement directorate can only investigate money laundering offence, can’t assume commission of predicate offence. Its power to investigate and enquire stands confined to the offence of money laundering as defined in that Section. However, the same cannot be a reason enabling it to assume from the material that it may gather in the course

of that investigation that a predicate offence stands committed. The predicate offence has to be necessarily investigated and tried by the authorities empowered by law in that regard. ED cannot possibly assume unto itself the power to investigate or enquire into the alleged commission of those offenses. In any cases, it cannot on its own motion proceed on the surmise that a particular set of facts evidence the commission of a scheduled offense and based on that opinion initiate action under the PMLA. The Court referred to the **Supreme Court Judgement in Vijay Madanlal V. Union of India 2022 (SC) 633** wherein it was held that the authorities under PMLA cannot resort to action against a person for money laundering on an assumption that a scheduled offence had been committed. Further it has been held that the authorities under the PMLA cannot prosecute on assumption that a scheduled offence has been committed, unless it is registered with the jurisdiction police or pending enquiry or trial. **Further, the Hon'ble High Court of Madras in a case titled as R.K.M Powergen Private Limited V. The Assistant Director & Others 2025 Live Law (Mad) 245** held that the ED is not a super cop to investigate anything and everything which comes to its notice. There should be a criminal activity which attracts the schedule to PMLA & on account of such criminal activity, there should have been proceeds of crime. It is only then the jurisdiction of ED commences. The terminus a quo for the ED to commence its duties and exercise its powers is the existence of a predicate offence. Once there exists a predicate offence & the ED starts investigation under the PMLA and file a complaint then it becomes a stand alone offence. The essential ingredient for the ED to seize jurisdiction is the presence of a predicate offence. It is like a limpet mine attached to a ship. If there is no ship, the limpet cannot work. The ship is the predicate offence and proceeds of crime. The court added that without the ship, the limpet mince could not work. Therefore keeping into view above stated discussion application of the ED is not made out and same is accordingly dismissed and disposed off and be made part of the main file.

5. Heard with respect to charge/discharge and after carefully perusing the material on record & applicable law, this court finds that the essential ingredients of the offence under sections 120-B, 406 & 409 of the RPC are prima facie made out against all the accused persons and offence under section 120-B, 406 & 409 r/w

section 109 RPC against accused no. 4 and 5 and therefore the accused persons shall be charged for the commission of the said offences. However, addition of charges can be done suo moto at any stage during the trial of the case before pronouncement of judgment after recording of statement of the material witnesses. List the main file on 12/03/2026 for framing of charge. After framing of charge statement of approvers i.e, accused no. 3 and 6 shall be recorded as evidence, in case they resile from their stand appropriate orders shall follow.

**Announced:
02.03.2026**

**(Ms. Tabasum)
Chief Judicial Magistrate
Srinagar**

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