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Synopsis

The present Petition has been preferred by the Directorate of Enforcement u/s 406 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), seeking transfer of the Trial in the case numbered SC No. 610 of 2020 pending before the Special Court for PMLA cases, Ernakulam to a Special Court for PMLA cases in the State of Karnataka, on the ground that the Respondents No. 1-3 are being influenced and intimidated through threats and false cases by Senior Officials of the Kerala Police and the State Government at the behest of the Respondent No. 4, in order to thwart and derail the trial and thereby protect certain powerful individuals holding important positions in Government who are involved in the case. The Respondent No. 4 Mr. M. Sivasankar is one of the Senior-most IAS Officers in the State of Kerala who at the relevant time when the offence under section 3 of PMLA was committed was the Principal Secretary to the Chief Minister of the State. He wields substantial power and influence in the State of Kerala and has been actively deploying the same to thwart and frustrate the proceedings and trial under PMLA by trying to threaten the other co-accused in the matter.

The facts of the case, briefly put, are that The Customs Commissionerate (Preventive), Cochin had registered OR.No.07/2020 against Shri Sarith P.S., former PRO at UAE Consulate, Smt. Swapna Prabha Suresh, former Secretary to Consul General of UAE Consulate, Shri Sandeep Nair and others relating to the seizure of 30 KG of 24 Karat gold worth Rs. 14.82 crores at Trivandrum International Airport which was camouflaged as diplomatic baggage to UAE Consulate which is immune to checking at airport as per the Vienna Convention on Consular Relations. This seizure was only the tip of the iceberg and there were 21 such consignments of

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gold which was smuggled into India, which runs to more than Rs. 80 crores.

It is submitted that thereafter, a case had been registered by National Investigation Agency ("NIA"), Kochi, as RC-02/2020/NIA/KOC under sections 16, 17 and 18 of Unlawful Activities (Prevention) Act, 1967 against the aforesaid three individuals on 10.07.2020. Both offences registered by NIA and the Customs are scheduled offences under the PMLA, 2002.

It is submitted that, based on the case registered by the NIA, an Enforcement case in ECIR/KCZO/31/2020 was recorded on 13.07.2020 by the Enforcement Directorate ("E.D").

It is submitted that Investigation under PMLA, it was revealed that the accused persons had committed the offence of Money Laundering defined under Section 3 and punishable under Section 4 of the PMLA, 2002 and therefore a Prosecution Complaint was filed before the Hon'ble Special Court (PMLA), Ernakulam on 06.10.2020 which was numbered as SC 610/2020.

Thereafter, a supplementary Prosecution Complaint was filed u/s 45 of PMLA, 2002 before the Special Court under PMLA, Ernakulam against Mr. M. Sivasankar on 24.12.2020 arraigning Shri. M. Sivasankar as Accused No. 4 in the Complaint filed on 06.10.2020 numbered as SC 610/2020. Mr. M. Sivasankar is a powerful Senior IAS Officer of the Kerala Cadre who, at the relevant time, was serving as the Principal Secretary to the Chief Minister of the State.

Trial in the aforesaid case of SC No. 610 of 2020 is presently ongoing before the Ld. Special Court for PMLA cases, Ernakulam.

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Due to the involvement of powerful persons in the State of Kerala, from the very beginning, there has been a concerted effort by the State machinery at the behest of the Respondent No. 4 to thwart and derail investigation under PMLA and subsequently, the proceedings before the Ld. Trial Court. This is made out from (i) an Application for Protection filed by the Respondent No. 2 stating that while she was in judicial custody she was threatened by certain police/prison officials against disclosing names of persons in high authority involved in the case; (ii) a false Petition filed before the Ld. Sessions Court by the Respondent No. 3 on 05.03.2021, more than six months after he was released from the custody of the Directorate of Enforcement, falsely alleging that he was harassed and pressurized by the Investigating Officer into stating that the Chief Minister and other Ministers of the State were involved in the case; (iii) a false FIR numbered FIR No. 94/2021 dated 17.03.2021 registered by the Kerala Police against the Investigating Officer for alleged commission offence u/s 116, 120-B, 167, 193 and 195-A of the Indian Penal Code, 1860; (iv) Complaint filed by the Respondent No. 1 before the NIA Judge stating that he was being harassed by the jail Superintendent and Jailor of Central Prison, Trivandrum to retract the statements given before the ED and Customs as was done by the Respondent No. 3; and (iv) the absurd act of the State Government in setting up a one man Judicial Commission to enquire into the correctness of the PMLA investigation i.e., enquire into the correctness of a matter which was investigated by a Central Investigating Agency against Senior and powerful officials and functionaries of the State Government while Trial was pending.

Recently, on 06.06.2022 and 07.06.2022, the Respondent No. 2 has given a Statement u/s 164 CrPC before the Ld. Judicial Magistrate First Class-

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III, Ernakulam wherein she has leveled allegations against Chief Minister Pinarayi Vijayan and his family members besides some top bureaucrats, including M. Sivasankar, the former Principal Secretary to the Chief Minister, in connection with some smuggling activities.

The aforesaid statement u/s 164 CrPC has been reported extensively by the Media. Following this the case has come under intense media gaze and coverage and the Respondent No. 2 has been intimidated and threatened with more vigour.

The Statements made u/s 164 CrPC by the Respondent No. 2 on 06.06.2022 and 07.06.2022 leveling allegations against the Chief Minister of the State of Kerala and his family members, shall, with the permission of the Hon'ble Court be placed before this Hon'ble Court in a Sealed Cover due to the confidential and sensitive nature of the allegations and due to the direction of the Ld. Judicial Magistrate First Class- III, Ernakulam to not bring the Statements before the public domain.

Due to the power and influence wielded in the State of Kerala by the Respondent No. 4 and other persons involved in the case, and keeping in view the suspicious events narrated hereinabove, in the interest of ensuring a free and fair trial where all accused persons and witnesses can appear and give their statements freely without fear, the Trial deserves to be transferred away from the State of Kerala.

It is submitted that at every stage of the investigation there has been an intervention and interference by the State machinery in the exercise of power under the PMLA by the Directorate of Enforcement. Timely judicial intervention is necessary to ensure that illegal attempts to derail proceedings are thwarted. Recent events have demonstrated that illegal

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means are being deployed to apply pressure on the co-accused to taint and influence the co accused and thereby interfere with the course of justice. These overwhelming facts demonstrate that Local police and State Government Machinery are trying to manipulate and influence the accused and witnesses. All these facts necessitate that Trial be transferred from the State of Kerala. Due to the proximity of the State of Karnataka to the State of Kerala, the present Petition seeks for a transfer of Trial to the State of Karnataka.

The present Petition has been preferred broadly on the following grounds:

- (i) Because the State Police at the behest of a highly influential accused is trying to subvert and derail the investigation under PMLA.
- (ii) Because important persons including the Respondent No. 2 are being pressurized to retract statement(s) given u/s 50 of the PMLA and S. 164 CrPC. This is clear from the Statements u/s 164 made by her on 06.06.2022 and 07.06.2022, and also from the subsequent media reports.
- (iii) Because if the trial is continued in the State of Kerala, the highly influential accused persons will create hurdles and also the the co accused would be pressurised and threatened to make false allegations and to make false evidence and thereby derail the ongoing investigation and trial.
- (iv) Because the false and frivolous allegations are made against the IO with an ulterior motive to tarnish the image of the Investigating Agency and to sabotage the further investigation with the aid and assistance of highly influential accused and other persons. The Civil

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Police Officers are intimidating the IO by giving false statements. Continuance of trial in the State of Kerala worsen the situation.

(v) Because there is a gross Misuse of the State Machinery against the Investigation Agency and its Officers which is clearly evident from the registration of two FIRs No. 94/2021 and 98/2021 by Crime Branch Police Station, Ernakulam District against the officials of ED leading to an unprecedented situation where implementation of rule of law would have become impossible. This has given rise to an unprecedented situation wherein the State Police is intimidating the ED officers from carrying out their statutory duties under the PMLA. In such circumstance, it would be impossible to conduct a fair trial.

(vi) Because the ED had filed two writ petitions vide WP(C) No. 7641/2021 and 8290/2021 before the High Court of Kerala against the above mentioned FIRs. On hearing both sides, the Single Bench of the High Court of Kerala quashed the FIRs vide order dated 16.04.2021. However, the Single Bench further directed to submit the material collected by the State Crime Branch in a sealed cover before the Special Judge (PMLA) to consider whether the enquiry u/s 340 Cr. P.C. is required or not. This has caused further interruption in carrying out a fair investigation and trial. Against the said direction of the High Court, ED filed SLP No. 5145-5146/2021 and this Hon'ble Court was pleased to grant stay of operation of the impugned directions.

(vii) Because the State Government acted without authority of law and in a Mala fide manner in appointing a one man Judicial Commission by way of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home

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Department, to enquire into the correctness of the PMLA investigation and thereby trying to fabricate false evidence and also to intimidate the IO.

(viii) Because, by way of Order dated 11.08.2021 in WP(C) No. 13112 of 2021, the Hon'ble High Court of Kerala was pleased to Stay the operation and implementation of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home Department, Government of Kerala.

(ix) Because during the ED custody, the accused were produced before the Special Judge (PMLA) for extension of custody. They did not make any allegation before the court either directly or through their counsel whenever they are produced and also in their respective bail applications. This is sufficient proof that the abovementioned FIRs were bogus and baseless on the face of it and nothing but an attempt to fabricate false evidence against the Investigating Officers of ED at the behest of the accused M. Sivasankar in order to thwart the investigation being conducted in the gold smuggling case. The same is also evident from the fact that Accused No. 2 Ms. Swapna Suresh and Accused No. 4 Mr. Sandeep Nair have never raised any such allegation of coercion/pressure being exerted by ED ever before the Ld. Sessions and Special Court for PMLA Cases, Ernakulam.

(x) Because intentional public statements are made by Shri Sandeep Nair to contaminate the public and sensitize the matter to stagnate the investigation. On 09.10.2021, Shri Sandeep Nair was released from jail on completion of his COFEPOSA detention period and on coming out of the prison, he addressed the media stating that he was pressurized by ED officials to implicate the Chief Minister of

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Kerala, former Minister Shri. K.T. Jaleel and former Speaker Shri. Sreeramakrishnan in the Gold Smuggling case. He also stated that Shri M. Sivasankaran former Principal Secretary to the CM seemed to be innocent in this case. The statement of Shri. Sandeep Nair vindicate the stand of ED that he was acting as a tool of the accused Shri. M. Sivasankar.

(xi) Because, in the case of *Gurcharan Das Chadha Vs. State of Rajasthan, 1966 (2) SCR 678 at SCR p.686*, this Hon'ble Court had observed as follows:

*'A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the State of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.'*



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(xii) In light of the concept of fair trial, this Hon'ble Court had observed as follows in *Mrs. Maneka Sanjay Gandhi Vs. Ms. Rani Jethmalani*, (1979) 4 SCC 167,

*'Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.'*

(xiii) Because, in *Abdul Nazar Madani Vs. State of Tamil Nadu*, (2000) 6 SCC 204, this Hon'ble court pointed out in paragraph 7 at page SCC p.210 as under,

*'The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and*

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*anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.'*

(xiv) In the matter of ***K. Anbazhagan vs The Superintendent Of Police & Ors, Transfer Petition (crl.) 77-78 of 2003***, pertaining to the transfer of trial of the then Chief Minister of Tamil Nadu to a different state, the Hon'ble Supreme Court observed the following on the reasonable apprehension of bias and fair trial:

*'There is strong indication that the process of justice is being subverted. Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal*

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*trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner. In the present case, the circumstances as recited above are such as to create reasonable apprehension in the minds of the public at large in general and the petitioner in particular that there is every likelihood of failure of justice.'*

(xv) Because, the universally settled principle of fair trial that 'Justice should not only be done, but seem to be done' will be vitiated if the trial is continued in the State of Kerala.

Hence this Petition.

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List of Dates

<b>Dates</b>	<b>Events</b>
06.07.2020	<p>The Customs, Commissionerate (Preventive), Cochin registered OR. No. 07/2020 against Shri Sarith P.S., former PRO at UAE Consulate, Smt. Swapna Prabha Suresh, former Secretary to Consul General of UAE Consulate, Shri Sandeep Nair and others relating to the seizure of 30 KG of 24 Karat gold worth Rs. 14.82 crores at Trivandrum International Airport which was camouflaged as diplomatic baggage to UAE Consulate as Diplomatic cargo is immune to checking at airport as per the Vienna Convention on Consular Relations.</p> <p>On the basis of intelligence report, the Customs decided to check the baggage with the permission of the Ambassador of the United Arab Emirates in India and cylindrical-shaped gold as stated above was seized.</p>
10.07.2020	<p>A case was registered by National Investigation Agency ("NIA"), Kochi, as RC-02/2020/NIA/KOC under sections 16, 17 and 18 of Unlawful Activities (Prevention) Act, 1967 against the aforementioned persons.</p>
13.07.2020	<p>Since the offences under section 16, 17 and 18 of the Unlawful Activities (Prevention) Act, 1967 are scheduled offences under the Prevention of Money Laundering Act, 2002 the Directorate of Enforcement recorded ECIR/KCZO/31/2020 to initiate investigation under the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA").</p>

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- 22.07.2020 Accused persons Sarith P S, Swapna Prabha Suresh and Sandeep Nair were formally arrested by E.D.
- 05.08.2020- Accused persons Sarith P S, Swapna Prabha Suresh and  
17.08.2020 Sandeep Nair were remanded to the custody of the Directorate of Enforcement.
- Accused persons Sarith P S, Swapna Prabha Suresh and Sandeep Nair were remanded to Judicial Custody.
- 06.10.2020 The Directorate of Enforcement filed a Prosecution Complaint before the Hon'ble Special Court for PMLA Cases, under the Prevention of Money Laundering Act, (PMLA) 2002 at Ernakulam arraying (1) Sh. Sarith P S; (2) Smt. Swapna Prabha Suresh, (3) Shri. Sandeep Nair as accused.
- 06.11.2020 The Special Court for PMLA Cases, Ernakulam took cognizance of Offence u/s 3 of the PMLA committed by the Respondents and directed issuance of production warrants.
- 08.12.2020 The Respondent No. 2 Smt. Swapna Suresh alleged in an application for protection while in judicial custody filed by her before the Ld. Addl. Chief Judicial Magistrate Court (Economic Offences), Ernakulam in the Customs Case being O.R. No. 13/2020, as under:

*"While I was in judicial custody in the above mentioned prison, some persons identifiable by sight claiming to be prison and police officials had visited me and had warned me against disclosure of the names of persons in*

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*high authority suspected to have involved in the alleged criminal activities and such incriminating materials against them and had asked me not to co-operate with any investigation agency for the same. They had threatened me that they are capable of causing harm to my family members outside the prison and even capable of doing away with my life inside the prison if I indulge in any such disclosures."*

- 24.12.2020 A supplementary complaint was filed by the Enforcement Directorate on 24.12.2020 arraigning the Respondent No. 4 Mr. M. Sivasankar as Accused No. 4 in the Complaint filed on 06.10.2020 numbered as SC 610/2020.
- 25.01.2021 The Hon'ble High Court of Kerala at Ernakulam has allowed the Bail Application No. 7878 of 2020 thereby granting Bail to the Respondent No. 4.
- 05.02.2021 The order of the Hon'ble High Court of Kerala at Ernakulam dated 25.01.2021 in Bail Application No. 7878 of 2020 was challenged on merits before this Hon'ble Court in the SLP No. 1403/2021
- After coming out on bail, Shri M. Sivasankar, IAS has been influencing other accused and is using the state machinery to fabricate false evidence against the Investigating Officer and the Investigating Agency. In the process two Women State Police Constables who were allegedly on guard duty during the Custody of the accused

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Smt. Swapna Suresh from 05.08.2020 to 17.08.2020 had given false statements against the investigating officer that he exerted pressure on one of the prime accused to name the Chief Minister of Kerala in the gold smuggling case. The said false statements were tendered by the lady constables in connection with an enquiry purportedly conducted by the State Police into the leakage of audio recording purportedly containing the voice of accused Smt. Swapna Suresh (A-2). The alleged statements of the Women State Police Constables were leaked to the media on 08.03.2021 and 09.03.2021 respectively whereas the accused Smt. Swapna Suresh did not make any such allegation of pressurizing her to name the Chief Minister of Kerala or any other person.

05.03.2021 Respondent No. 3 Shri Sandeep Nair who was in Judicial Custody and was also serving detention under COFEPOSA sent a petition dated 05.03.2021 to the Hon'ble Sessions Court, Ernakulam containing allegations that he was harassed by the Investigating Officer during Enforcement Custody from 05.08.2020 to 17.08.2020 and that he was pressurized to name the Chief Minister of Kerala and three more Ministers in the gold smuggling case and also to name son of a high-profile person. He further alleged that during his Judicial Custody the Investigating Officer visited him in the jail with the permission of the Hon'ble Court and at that time the Investigating Officer had a list containing names of certain

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companies and that the IO asked him to state that these Ministers had investments in those companies which he never heard of.

17.03.2021 On the basis of purported statements of the abovementioned 2 women Police constables who were allegedly on guard duty during the Custody of the accused Smt. Swapna Suresh from 05.08.2020 to 17.08.2020, a vexatious, bogus and baseless FIR No. 94/21 dated 17.03.2021 has been registered by the State Police against "ED Officials" u/s 116, 120-B, 167, 193 and 195-A of the Indian Penal Code, 1860, in an attempt to thwart the proceedings being carried out by the Enforcement Directorate in the gold smuggling case. The said FIR also mentions about the complaint written by Sandeep Nair to the District and Sessions Judge, Ernakulam allegedly regarding coercion to give false evidence against the Chief Minister.

Against the FIRs so registered, ED had filed two writ petitions vide WP(C) No. 7641/2021 and 8290/2021 before the Hon'ble High Court of Kerala.

16.04.2021 On hearing both sides, the Single Bench of the High Court of Kerala quashed the FIRs vide order dated 16.04.2021. However, the Single Bench further directed to submit the material collected by the State Crime Branch in a sealed cover before the Special Judge (PMLA) to consider whether the enquiry u/s 340 Cr. P.C. is required or not.

18.06.2021 Against the direction of the Hon'ble High Court of Kerala



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in its Order dated 16.04.2021 in WP(C) No. 7641/2021 and 8290/2021, the Enforcement Directorate filed SLP No. 5145-5146/2021. In the said matter, the Hon'ble Supreme Court was pleased to allow stay of the operation of the impugned order.

The State Government had appointed an one man Judicial Commission to enquire into the correctness of the PMLA investigation and thereby trying to fabricate false evidence and also to intimidate the IO.

10.07.2021 Shri Sarith P.S., Accused No. 1 had complained to the NIA Judge that he was being harassed by the jail Superintendent and Jailor of Central Prison, Trivandrum to retract the statements given before the ED and Customs as was done by another accused Sandeep. The complaint was recorded by the NIA Judge on 10.07.2021.

Hence the present petition.

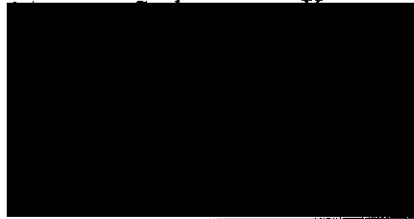
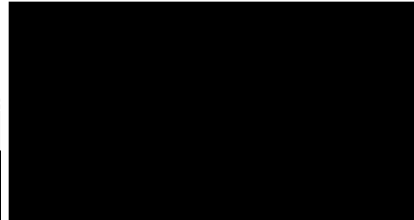
IN THE SUPREME COURT OF INDIA  
CRIMINAL TRANSFER JURISDICTION


[Under S.C.R. Order XXXIX Rule 1]

TRANSFER PETITION (CRIMINAL) NO. OF 2022

(Transfer Petition under Section 406 of the Code of Criminal Procedure, 1973 seeking transfer of Trial in the case of Union of India vs. Sarith P.S. & Ors., SC No. 610 of 2020 pending before the Ld. Special Court for PMLA Cases, Ernakulam to a Special Court for hearing PMLA cases in the State of Karnataka)

**IN THE MATTER OF:**

	Parties	Before the Trial Court	Before this Court
1.	Directorate of Enforcement, Through its Assistant Director, Directorate of Enforcement, Cochin Zonal Office	Complainant	Petitioner
<b>Versus</b>			
1.	SARITH P.S. 	Accused No. 1	Respondent No. 1
2.	Swapna Prabha Suresh, 	Accused No. 2	Respondent No. 2

3.	Sandeep Nair, 	Accused No. 3	Respondent No. 3
4.	M. Sivasankar	Accused No. 4	Respondent No. 4

TO

HON'BLE THE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE

SUPREME COURT OF INDIA

The humble application by

the Petitioner above named

**MOST RESPECTFULLY SHOWETH:-**

1. The present Petition has been preferred u/s 406 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC"), seeking transfer of the Trial in the case numbered SC No. 610 of 2020 before the Special Court for PMLA cases, Ernakulam to a Special Court for PMLA cases in the State of Karnataka, on the ground that the Respondents No. 1-3 are being influenced and intimidated through threats and false cases by Senior Officials of the Kerala Police and the State Government at the behest of the Respondent No. 4, in order to thwart and derail the trial and thereby protect certain powerful individuals holding important positions in State Government who are involved in the case.

**BRIEF FACTS OF THE CASE:-**

2. The Customs Commissionerate (Preventive), Cochin had registered OR.No.07/2020 against Shri Sarith P.S., former PRO at UAE Consulate, Smt. Swapna Prabha Suresh, former Secretary to Consul General of UAE Consulate, Shri Sandeep Nair and others relating to the seizure of 30 KG of 24 Karat gold worth Rs. 14.82 crores at Trivandrum International Airport which was camouflaged as diplomatic baggage to UAE Consulate which is immune to checking at airport as per the Vienna Convention on Consular Relations. This seizure was only a tip of the iceberg and there were 21 such consignments of gold which was smuggled into India, which runs to more than Rs. 80 crores.
3. It is submitted that thereafter, a case had been registered by National Investigation Agency ("NIA"), Kochi, as RC-02/2020/NIA/KOC under sections 16, 17 and 18 of Unlawful Activities (Prevention) Act, 1967 against them on 10.07.2020. Both offences registered by NIA and the Customs are scheduled offences under the PMLA, 2002.
4. It is submitted that, based on the case registered by the NIA, an Enforcement case in ECIR/KCZO/31/2020 was recorded on 13.07.2020 by the Enforcement Directorate ("E.D") and subsequently a report including the customs case too was added to the above numbered ECIR/KCZO/31/2020.
5. It is further submitted that the accused persons Sarith P S, Swapna Prabha Suresh and Sandeep Nair were arrested by E.D on 22.07.2020. They were produced before the Ld. Court of Sessions, Ernakulam on 05.08.2020, 11.08.2020 and 14.08.2020 when the Ld. Court was pleased to grant ED custody and further on 17.08.2020 when the Ld. Court was pleased to remand the accused persons to judicial custody. While presented before the Ld. Court,

the said accused persons never raised any complaint regarding any pressure or coercion. In fact, when enquired by the Ld. Judge the accused persons said that they have no complaints and the same has been recorded by the Ld. Judge in the abovementioned remand orders. A True Copy of the order dated 05.08.2020 passed by the Ld. Court of Sessions, Ernakulam in CrI.M.P. No. 1159 of 2020 is attached herewith as **Annexure P-1 (at Pgs. 35 to 38)**. A True Copy of the order dated 11.08.2020 passed by the Ld. Court of Sessions, Ernakulam in CrI.M.P. No. 1182 of 2020 is attached herewith as **Annexure P-2 (at Pgs. 39 to 41)**. A True Copy of the order dated 14.08.2020 passed by the Ld. Court of Sessions, Ernakulam in CrI.M.P. No. 1215 of 2020 is attached herewith as **Annexure P-3 (at Pgs. 42 to 46)**. A True Copy of the order dated 17.08.2020 passed by the Ld. Court of Sessions, Ernakulam in CrI.M.P. No. 1218 of 2020 is attached herewith as **Annexure P-4 (at Pgs. 47 to 49)**.

6. During the investigation under PMLA, statements of the Respondents No. 2 and 3 were initially taken on 05.08.2020, 06.08.2020, 07.08.2020, 08.08.2020, 10.08.2020, 13.08.2020, 15.08.2020, 16.08.2020 and 03.11.2020. A True Copy of the statement of Ms. Swapna Suresh dated 05.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-5 (at Pgs. 50 to 53)**. A True Copy of the statement of Ms. Swapna Suresh dated 06.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-6 (at Pgs. 54 to 55)**. A True Copy of the statement of Mr. Sandeep Nair dated 06.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-7 (at Pgs. 56 to 61)**. A True Copy of the statement of Ms. Swapna Suresh dated 07.08.2020 recorded by the

Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-8** (at Pgs. 62 to 72). A True Copy of the statement of Mr. Sandeep Nair dated 07.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-9** (at Pgs. 73 to 77). A True Copy of the statement of Ms. Swapna Suresh dated 08.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA attached herewith as **Annexure P-10** (at Pgs. 78 to 83). A True Copy of the statement of Ms. Swapna Suresh dated 10.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-11** (at Pgs. 84 to 94). A True Copy of the statement of Mr. Sandeep Nair dated 10.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA attached herewith as **Annexure P-12** (at Pgs. 95 to 96). A True Copy of the statement of Ms. Swapna Suresh dated 13.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-13** (at Pgs. 97 to 104). A True Copy of the statement of Ms. Swapna Suresh dated 15.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-14** (at Pgs. 105 to 109). A True Copy of the statement of Ms. Swapna Suresh dated 16.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-15** (at Pgs. 110 to 112). A True Copy of the statement of Mr. Sandeep Nair dated 16.08.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-16** (at Pgs. 113 to 115). A True Copy of the statement of Ms. Swapna Suresh dated 03.11.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-17** (at Pgs. 116 to 153). A True Copy of the statement of Mr. Sandeep Nair dated 03.11.2020 recorded by the

Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-18 (at Pgs. 154 to 156)**.

7. It was revealed from the investigation that the accused persons Sarith P. S., Swapna Prabha Suresh and Sandeep Nair have indulged in criminal activities and committed scheduled offences and by indulging in criminal activities related to scheduled offences, huge amount of Proceeds of Crime were generated and the accused persons are possessing/concealing/using such proceeds of crime for which the Complainant has been collecting evidences with corroborative evidences to initiate action under Chapter III of the PMLA such as Provisional Attachment, Adjudication, Taking Possession etc. It is submitted that Investigation under PMLA revealed that the accused persons have committed offence of Money Laundering under section 3, punishable under section 4 of PMLA narrated under Chapter II of the PMLA, 2002 and therefore a Prosecution Complaint was filed before the Hon'ble Special Court (PMLA), Ernakulam on 06.10.2020 which was numbered as SC 610/2020. A True Copy of the Prosecution Complaint SC No. 610/2020 filed before the Special Court for PMLA Cases, Ernakulam is attached herewith as **Annexure P-19 (at Pgs. 157 to 182)**.
8. The Ld. Special Court (PMLA) was pleased to take cognizance of the offence disclosed in Prosecution Complaint bearing SC No. 610 of 2020 filed by the Directorate of Enforcement and on 06.11.2020, directed issuance of production warrants against the accused persons.
9. The statement of the Respondent No. 2 Smt. Swapna Suresh u/s 50 PMLA was again recorded on 10.11.2020. A True Copy of the statement of Ms. Swapna Suresh dated 10.11.2020 recorded by the

Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-20 (at Pgs. 183 to 20)**.

10. The Respondent No. 2 Smt. Swapna Suresh has alleged in an application for protection while in judicial custody filed by her before the Ld. Addl. Chief Judicial Magistrate Court (Economic Offences), Ernakulam in the Customs Case being O.R. No. 13/2020, as under:

“While I was in judicial custody in the above mentioned prison, some persons identifiable by sight claiming to be prison and police officials had visited me and had warned me against disclosure of the names of persons in high authority suspected to have involved in the alleged criminal activities and such incriminating materials against them and had asked me not to co-operate with any investigation agency for the same. They had threatened me that they are capable of causing harm to my family members outside the prison and even capable of doing away with my life inside the prison if I indulge in any such disclosures.”

A True Copy of the application for protection while in Judicial custody submitted by Swapna Suresh before the Hon'ble Additional Chief Judicial Magistrate (Economic Offences), Ernakulam dated 08.12.2020 in O.R. No. 7/2020 of Customs (Preventive), Cochin is attached herewith as **Annexure P-21 (at Pgs. 202 to 203)**.

11. That the Ld. Addl. Chief Judicial Magistrate (EO), Ernakulam was pleased to allow the abovementioned application filed by Ms.



Swapna Suresh vide order dated 08.12.2020 and directed as follows:

- “1. Director General of Prison & Correctional Services and Superintendent of Women’s Prison and Correctional Home, Thiruvananthapuram, are directed to provide most effective protection to the petitioner/accused
2. They shall ensure that, petitioner/accused shall not be threatened or tortured in any manner either from internal or external sources directly or by electronic means.”

A True Copy of the order dated 08.12.2020 passed by the Ld. Addl. Chief Judicial Magistrate (EO), Ernakulam is attached herewith as **Annexure P-22 (at Pgs. 204 to 207)**.

12. That against the abovementioned order dated 08.12.2020, the Director General of Prisons and Correctional Services, Kerala filed a CrI.M.C. No. 5743 of 2020 before the Hon’ble Kerala High Court.
13. The Statement of the Respondent No. 2 Smt. Swapna Suresh u/s 50 PMLA was again recorded on 14.12.2020, 15.12.2020 and 16.12.2020. A True Copy of the statement of Ms. Swapna Suresh dated 14.12.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-23 (at Pgs. 208 to 210)**. A True Copy of the statement of Ms. Swapna Suresh dated 15.12.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-24 (at Pgs. 211 to 224)**. A True Copy of the statement of Ms. Swapna Suresh dated 16.12.2020 recorded by the Enforcement Directorate u/s 50 of the PMLA is attached herewith as **Annexure P-25 (at Pgs. 225 to 240)**.

14. In the meanwhile, the NIA had conducted searches at the premises of Ms. Swapna Suresh and had seized her mobile phones and laptops. These digital devices were handed over to the NIA Court and subsequently they were sent to C-DAC, Trivandrum for analysis and mirror image. The Enforcement Directorate (“ED”) requested the Hon’ble NIA Court for permission to obtain the mirror image from C-DAC, which was granted. Subsequently, mirror image of the digital devices (i-Phone and laptop of Ms. Swapna Suresh) were obtained from C-DAC, Trivandrum on 8<sup>th</sup> October, 2020. Further, the Customs Department had conducted searches at the premises of M. Sivasankar, IAS, the then Principal Secretary to Chief Minister of Kerala and seized digital devices including his mobile phone. Mirror image of the mobile phone was obtained from C-DAC on 22.10.2020. The ED analyzed the said mirror image of the digital devices and started further investigation which is still going on.
15. M. Sivasankar was arrested on 28.10.2020 and his custody was granted by the Court to the Directorate of Enforcement on 29.10.2020. In custody, he was questioned, and his statement was recorded U/S 50 of PMLA. The material unearthed upon investigation revealed that M. Sivasankar played a significant role in committing offences under the PMLA. In his statement dated 12.08.2020 and 15.08.2020 given under section 50 of PMLA, the M. Sivasankar *inter alia* admitted that he had facilitated Smt. Swapna Prabha Suresh (A-2) to open bank locker jointly with his chartered accountant Shri. P Venugopal with S.B.I, Trivandrum City branch, Trivandrum. The investigation disclosed that A-2 is directly involved in the gold smuggling through diplomatic baggage and had earned lucrative profits from the smuggling. The investigation further revealed that Ms Swapna Suresh and Mr M.

Sivasankar had received kick-backs (illegal gratification other than legal remuneration received by Sivasankar as a motive or reward for doing favours to M/s Unitac Builders which is punishable under Sec.7 of the Prevention of Corruption Act and at the same time, A-2 accepts kickbacks from same company for Mr.Sivasankar with knowledge that it is illegal gratification for the above mentioned) from M/s. Unitac Builders (which is already mentioned in the MoU between UAE Red Crescent and the Life Mission CEO) for facilitating award of contract of one of the projects under LIFE Mission, a prestigious and ambitious initiative by Kerala Government to provide low budget housings to the homeless and a hospital for poor people in the State. The Proceeds of Crime so derived from such activities had been kept in the said bank locker jointly owned by them in the form of gold and cash which were already seized by NIA, Kochi.

16. It is submitted that during the course of the investigation, the evidence collected in the form of confession statements and WhatsApp messages revealed that Mr. M. Sivasankar was involved in gold smuggling activities with full knowledge of the offences he is doing and accepting kickbacks in the UAE Red Crescent funded LIFE Mission Project which comes to Rs. 20 Crore as per MoU signed on July, 2020. Hence, Shri. M. Sivasankar was summoned and his statements were recorded and thereafter he was arrested by ED on 28.10.2020 and was remanded to Enforcement Custody from 29.10.2020 to 12.11.2020. After completion of Enforcement Custody, Shri. M. Sivasankar was remanded to Judicial Custody. Thereafter, a supplementary Prosecution Complaint was filed u/s 45 of PMLA, 2002 before the Special Court under PMLA, Ernakulam against Mr. M. Sivasankar on 24.12.2020 arraigning Shri. M. Sivasankar as Accused No. 4 in the

Complaint filed on 06.10.2020 numbered as SC 610/2020. A True Copy of the Supplementary Prosecution Complaint dated 24.12.2020 filed in SC No. 610/2020 before the Ld. Special Court for PMLA Cases, Ernakulam is attached herewith as **Annexure P-26 (at Pgs. 24 to 298)**.

17. The Hon'ble High Court of Kerala at Ernakulam granted bail to Shri. M. Sivasankar vide Order dated 25.01.2021 in Bail Application No. 7878 of 2020. A True Copy of the Order dated 25.01.2021 of the Hon'ble High Court of Kerala in Bail Application No. 7878 of 2020 is attached herewith as **Annexure P-27 (at Pgs. 299 to 331)**.
18. The order of the Hon'ble High Court of Kerala at Ernakulam has been challenged on merits before this Hon'ble Court in the SLP (Crl.) No. 1403/2021 and notice has been issued.
19. That further, the Commissioner of Customs (Preventive), Cochin, filed a statement before the Hon'ble Kerala High Court in the abovementioned Crl.M.C. No. 5743 of 2020 filed by the the Director General of Prisons and Correctional Services, Kerala against the Order dated 08.12.2020 directing provision of effective security to the Respondent No. 2. It was stated by the Commissioner of Customs (Preventive), Cochin therein that:

*"9. It is submitted that in the 108 Statement and 164 Statement the 1<sup>st</sup> respondent has made shocking revelations about the Hon'ble Chief Minister, Hon'ble Speaker of Kerala Legislative Assembly and some Hon'ble Ministers of the State Cabinet. She has made shocking revelations about the Chief Minister's close connections with the previous Consul General of UAE and the illegal monetary transactions carried out. Her close*

*connection with the Chief Minister and his Principal Secretary and a personal staff was also revealed by the 1<sup>st</sup> respondent. She has also stated with clarity about smuggling of foreign currency at the instance of the Hon'ble Chief Minister and the Hon'ble Speaker with the help of the Consulate. She has also clearly stated about the improper and illegal activities of 3 Hon'ble ministers of the State Cabinet and the Hon'ble Speaker. She has further stated about the involvement and the kickbacks received by high-profile persons from various deals. The 1<sup>st</sup> Respondent had stated that she is aware of all these transactions and was a witness to the same as she is well versed in Arabic language and hence was forced to act as the translator between the above said persons and persons of Middle East origin in all their crucial interactions. The role of former Principal Secretary in acting as the link between the high-profile politicians of Kerala and the UAE Consulate officials as well as some others and in coordinating the illegal financial dealings under the cover of various activities and projects of the State Government was also revealed by her."*

A True Copy of the Statement filed by the Commissioner of Customs (Preventive), Cochin before the Hon'ble Kerala High Court dated 04.03.2021 is attached herewith as **Annexure P-28 (at Pgs. 332 to 347)**.

20. It is common knowledge that the accused Shri M. Sivasankar, IAS is a highly influential person in the State of Kerala by virtue of being the senior most civil servant and having worked as Principal Secretary to the Chief Minister of Kerala. After coming out on bail, Shri M. Sivasankar, IAS has been influencing other accused and is

using the state machinery to fabricate false evidence against the Investigating Officer and the Investigating Agency. In the process two Women State Police Constables who were allegedly on guard duty during the Custody of the accused Smt. Swapna Suresh from 05.08.2020 to 17.08.2020 had given false statements against the investigating officer that he exerted pressure on one of the prime accused to name the Chief Minister of Kerala in the gold smuggling case. The said false statements were tendered by the lady constables in connection with an enquiry purportedly conducted by the State Police into the leakage of audio recording purportedly containing the voice of accused Smt. Swapna Suresh. The alleged statements of the Women State Police Constables were leaked to the media on 08.03.2021 and 09.03.2021 respectively whereas the accused Smt. Swapna Suresh did not make any such allegation of pressurizing her to name the Chief Minister of Kerala or any other person.

21. It is submitted that Respondent No. 3 Shri Sandeep Nair who was in Judicial Custody and was also serving detention under COFEPOSA sent a petition dated 05.03.2021 to the Hon'ble Sessions Court, Ernakulam containing allegations that he was harassed by the Investigating Officer during Enforcement Custody from 05.08.2020 to 17.08.2020 and that he was pressurized to name the Chief Minister of Kerala and three more Ministers in the gold smuggling case and also to name son of a high-profile person. He further alleged that during his Judicial Custody the Investigating Officer visited him in the jail with the permission of the Hon'ble Court and at that time the Investigating Officer had a list containing names of certain companies and that the IO asked him to state that these Ministers had investments in those companies which he never heard of. A True Translated Copy of

the petition dated 05.03.2021 of Sh. Sandeep Nair filed before the Hon'ble Sessions Court, Ernakulam is attached herewith as **Annexure P-29 (at Pgs. 348 to 349)**.

22. It is submitted that the aforesaid false allegations of the accused were made to subvert the investigation and influence and pressurize the IOs to derail the entire investigation and trial. The IO had never recorded the statement of the accused in Judicial Custody. These are cooked up stories to tarnish the goodwill of the Investigating Agency and to sabotage the ongoing investigation with the aid and assistance of highly influential accused and other persons. Those Civil Police Officers were mere puppets in the hands of the A-4 and the state police machinery and its might is misused by him in order to intimidate the IO by giving false statements and to register false cases against the IOs. The complainant department and their officers firmly believe and has reasons to believe from the conduct and manner of things happened so far that the state machinery, the politicians behind the ruling party and the accused are in many ways jointly and severally trying to thwart the investigation and the proceedings of justice system by one way or the other.
23. The Ld. Special Court for PMLA cases was pleased to grant ED custody of Mr. Sandeep Nair for 7 days vide order dated 05.08.2020, which was further extended by orders dated 11.08.2020 and 14.08.2020 till 17.08.2020. On 17.8.2020 the Court was pleased to send him to judicial custody. It is also pertinent to note that the accused was produced before the Hon'ble Court on 14.08.2020 and 17.08.2020 and he did not make any such complaint of pressure or coercion on him before the Hon'ble Court. In fact, when enquired by the Ld. Judge the accused persons said that they have no complaints and the same has been recorded



by the Ld. Judge in the abovementioned remand orders. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *State of Orissa vs. Ganesh Chandra Jew* (2004) 8 SCC 40, wherein it was held as under:

*"20. When the background facts of the case are considered, the question regarding applicability of Section 197 of the Code takes a temporary back seat. The factual scenario as indicated above goes to show that on 28-2-1991 the respondent was produced before the Magistrate. He was specifically asked as to whether there was any ill-treatment. Learned SDJM specifically records that no complaint of any ill-treatment was made. This itself strikes at the credibility of the complaint. Additionally, the doctor who has examined him stated that for the first time on 2-3-1991 he treated the complainant. Though there are several other aspects highlighted in the version indicated in the complaint and the materials on record are there, we do not think it necessary to go into them because of the inherent improbabilities of the complainant's case and the patent mala fides involved. It is no doubt true that at the threshold interference by exercise of jurisdiction under Section 482 of the Code has to be in very rare cases, and this case appears to be of that nature. It fits in with Category (7) of broad categories indicated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]. It is to be noted that though plea regarding non-complaint before the Magistrate was specifically taken to justify interference, the High Court has not dealt with this aspect at all thereby adding to the vulnerability thereof."*



24. On the basis of purported statements of the abovementioned 2 women Police constables who were allegedly on guard duty during the Custody of the accused Smt. Swapna Suresh from 05.08.2020 to 17.08.2020, a vexatious, bogus and baseless FIR No. 94/21 dated 17.03.2021 has been registered by the State Police against "ED Officials" u/s 116, 120-B, 167, 193 and 195-A of the Indian Penal Code, 1860, in an attempt to thwart the proceedings being carried out by the Enforcement Directorate in the gold smuggling case. The said FIR also mentions about the complaint written by Sandeep Nair to the District and Sessions Judge, Ernakulam allegedly regarding coercion to give false evidence against the Chief Minister. This has given rise to an unprecedented situation wherein the State Police is intimidating the ED officers from carrying out their statutory duties under the PMLA. A True Translated Copy of the FIR No. 94/21 dated 17.03.2021 is attached herewith as **Annexure P-30 (at Pgs. 350 to 355)**.
25. Against the aforesaid FIR No. 94/2021 dated 17.03.2021, ED had filed WP(C) No. 7641/2021 before the High Court of Kerala.
26. In the meanwhile, on 27.03.2021, another FIR being Crime No. 98/CB/ALP/D/2021 was registered by the state crime Branch Police, Alappuzha alleging offences punishable under Section 116, 167, 192, 195 A of I.P.C alleging that, while Sandeep Nair was in the custody of the Directorate of Enforcement, he was compelled to give evidence against the Chief Minister etc., and for the said purpose he was harassed and intimidated by the investigating officer of ED. The said crime case has been registered on the basis of a complaint given to the state Police Chief by one Adv. R. Sunil Kumar via email and the said complaint has been forwarded to the ADGP Crime Branch for further action and as per the directions contained in proceedings

No. Ptn- 7388/2021 CB dated 27/3/2021 the crime Branch Detective Inspector- II, Ernakulam purportedly recorded statement of the above said SUNILKUMAR and registered the above mentioned crime case on the basis of the same and the F.I.R and other documents were forwarded to the Judicial 1st class Magistrate Court-II, Ernakulam. A True Translated Copy of the FIR No. 98/CB/ALP/D/2021 dated 27.03.2021 is attached herewith as **Annexure P-31 (at Pgs. 356 to 359)**.

27. Against the FIR No. 98/CB/ALP/D/2021 dated 27.03.2021, the ED had filed two WP(C) No. 8290/2021 before the High Court of Kerala.
28. WP(C) No. 7641 of 2021 and WP(C) No. 8290 of 2021 were jointly heard by the Hon'ble Court which by way of a Common Order dated 16.04.2021, was pleased to quash the FIR No. 91/2021 dated 17.03.2021 and FIR No. 98/CB/ALP/D/2021 dated 27.03.2021. However, the Single Bench further directed to submit the material collected by the State Crime Branch in a sealed cover before the Special Judge (PMLA) to consider whether the enquiry u/s 340 Cr. P.C. is required or not. A True Copy of the Common Order of the Hon'ble High Court of Kerala dated 16.04.2021 in WP(C) No. 7641 of 2021 and WP(C) No. 8290 of 2021 is attached herewith as **Annexure P-32 (at Pgs. 360 to 367)**.
29. Against the direction of the High Court, the Enforcement Directorate filed SLP (Crl.) No. 5145-5146/2021. In the said matter, this Hon'ble Court by way of its Order dated 21.10.2021, was pleased to allow stay of the operation of the impugned order to the extent assailed. A True Copy of the Order of this Hon'ble Court dated 21.10.2021 in SLP (Crl.) No. 5145-5146/2021 is attached herewith as **Annexure P-33 (at Pgs. 398 to 399)**.

30. It is humbly submitted that during the ED custody, the accused were produced before the Special Judge (PMLA) for extension of custody. They did not make any allegation before the court either directly or through their counsel whenever they are produced and also in their respective bail applications.
31. It is submitted that the above mentioned FIRs are bogus and baseless on the face of it and nothing but an attempt to fabricate false evidence against the Investigating Officers of ED at the behest of the accused M. Sivasankar in order to thwart the investigation being conducted in the gold smuggling case. The same is evident from the fact that Accused No. 2 Ms. Swapna Suresh and Accused No. 4 Mr. Sandeep Nair have never raised any such allegation of coercion/pressure being exerted by ED ever before the Honourable Special Court for PMLA Cases, Ernakulam.
32. It is also submitted that, the accused persons i.e. Ms. Swapna Suresh and Mr. Sandeep Nair were produced before the Hon'ble Court of Sessions, Ernakulam on 05.08.2020, 11.08.2020 and 14.08.2020 when the Hon'ble Court was pleased to grant custody to E.D and further on 17.08.2020 when the Hon'ble Court was pleased to remand the accused persons to judicial custody and the said accused persons never raised any such complaint regarding any pressure or coercion before the Ld. Court. In fact, when enquired by the Ld. Judge, the accused persons said that they have no complaints and the same has been recorded by the Ld. Judge in the above mentioned remand orders.
33. It is submitted that the said accused persons namely Swapna Suresh and Sandeep Nair have given their statements u/s 50 of the PMLA voluntarily which is admissible in evidence, as evident from a perusal of the said statements which are countersigned by

the said accused as well. In the said statements, both Swapna Suresh and Sandeep Nair have admitted their involvement in the gold smuggling and have disclosed the modus operandi and roles of various other persons in detail. Similar statements and evidences were given by them to Customs and NIA too.

34. However, as demonstrated above, no such complaint was ever made by either of the accused persons. Even till date there is no such complaint by Ms Swapna Suresh. On the contrary Swapna Suresh has alleged in her application for protection while in judicial custody filed by her before the Ld. Addl. Chief Judicial Magistrate Court (Economic Offences), Ernakulam in the Customs Case being O.R. No. 13/2020, as under:

*"While I was in judicial custody in the above mentioned prison, some persons identifiable by sight claiming to be prison and police officials had visited me and had warned me against disclosure of the names of persons in high authority suspected to have involved in the alleged criminal activities and such incriminating materials against them and had asked me not to co-operate with any investigation agency for the same. They had threatened me that they are capable of causing harm to my family members outside the prison and even capable of doing away with my life inside the prison if I indulge in any such disclosures."*

No satisfactory investigation has so far conducted regarding such officers trying to meddle with the investigation and its officers which ought to have been conducted by the state police, even though a written complaint is forwarded to the D.G.P of the State of Kerala.

35. The State Government by way of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021, had appointed a one

man Judicial Commission under the provisions of the Commission of Inquiry Act, 1952 to enquire into the correctness of the PMLA investigation and thereby trying to fabricate false evidence and also to intimidate the IO. A True Copy of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home Department, Government of Kerala is attached herewith as **Annexure P-34 (at Pgs. 400 to 407)**.

36. The Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home Department, Government of Kerala was challenged by the Directorate of Enforcement before the Hon'ble High Court of Kerala in WP(C) No. 13112 of 2021 which was filed on 25.06.2021.
37. It is submitted that in the meanwhile, Shri Sarith P.S., Accused No. 1 had complained to the NIA Judge that he was being harassed by the jail Superintendent and Jailor of Central Prison, Trivandrum to retract the statements given before the ED and Customs as was done by another accused Sandeep. The complaint was recorded by the NIA Judge on 10.07.2021. A True Copy of the Complaint of Sarith P.S. dated 10.07.2021 made before the NIA Judge is attached herewith as **Annexure P-35 (at Pgs. 408 to 409)**.
38. By way of Order dated 11.08.2021 in WP(C) No. 13112 of 2021, the Hon'ble High Court was pleased to Stay the operation and implementation of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home Department, Government of Kerala. A True Copy of the Order of the Hon'ble High Court of Kerala dated 11.08.2021 in WP(C) No. 13112 of 2021 is attached herewith as **Annexure P-36 (at Pgs. 410 to 422)**.
39. It is submitted that the State Police at the behest of a highly influential accused and other persons is trying to subvert and derail the investigation under PMLA. There is every reason to believe

Sandeep Nair is influenced at the behest of the accused M. Sivasankar and the jail authorities are aiding to derail the investigation and to defeat the process of law initiated by the Enforcement Directorate by way of the prosecution complaints submitted on the basis of the strong evidence collected during investigation under PMLA.

40. It is submitted that on 09.10.2021, Shri Sandeep Nair was released from jail on completion of his COFEPOSA detention period. On coming out of the prison, he addressed the media stating that he was pressurized by ED officials to implicate the Chief Minister of Kerala, former Minister Shri. K.T. Jaleel and former Speaker Shri. Sreeramakrishnan in the Gold Smuggling case. He also stated that Shri M. Sivasankaran former Principal Secretary to the CM seemed to be innocent in this case. The statement of Shri. Sandeep Nair vindicate the stand of ED that he was acting as a tool of the accused Shri. M. Sivasankar.
41. The Respondent No. 2 over the course of 06.06.2022 and 07.06.2022 made a Statement u/s 164 CrPC before the Judicial Magistrate First Class- III, Ernakulam wherein she has leveled allegations against Chief Minister Pinarayi Vijayan and his family members besides some top bureaucrats, including M. Sivasankar, the former Principal Secretary to the Chief Minister, in connection with some smuggling activities.
42. This has been widely reported in the media and following this the case has received wide media coverage and the Respondent No. 2 has been threatened and intimidated with more vigour. A True Copy of Article titled "Swapna raises allegation against CM and others" dated 07.06.2022 published in The Hindu is attached herewith as **Annexure P-37** (at Pgs. 42 to 1). A True Copy of Article titled "Kerala CM sees political plot to discredit govt."

dated 08.06.2022 published on The Hindu is attached herewith as **Annexure P-38 (at Pgs. 424 to /)**. Article titled "Swapna's revelations trigger political drama" dated 08.06.2022 published on The Hindu is attached herewith as **Annexure P-39 (at Pgs. 425 to /)**. A True Copy of Article titled "Shaj warned me against dragging the CM's daughter into the controversy: Swapna Suresh during release of audio clip" dated 10.06.2020 published on On Manorama is attached herewith as **Annexure P-40 (at Pgs. 426 to /)**. A True Copy of Article titled "'Kill me so story gets over': Kerala gold smuggling accused Swapna Suresh breaks down" dated 12.06.2022 published on the Indian Express is attached herewith as **Annexure P-41 (at Pgs. 427 to /)**.

43. It is submitted that the Statements u/s 164 CrPC made by the Respondent No. 2 on 06.06.2022 and 07.06.2022 leveling allegations against the Chief Minister of the State of Kerala and his family members, shall, with the permission of the Hon'ble Court be placed before this Hon'ble Court in a Sealed Cover due to the confidential and sensitive nature of the allegations and due to the direction of the Ld. Judicial Magistrate First Class- III, Ernakulam to not bring the Statements before the public domain.
44. It is submitted that at every stage of the investigation there has been an intervention and interference in the exercise of power under the PMLA by the Directorate of Enforcement. Timely judicial intervention is necessary to ensure that illegal attempts to derail proceedings are thwarted. Recent events have demonstrated that illegal means are being deployed to apply pressure on the accused to taint and influence the accused and thereby interfere with the course of justice. These overwhelming facts demonstrate that Local police and State Government Machinery are trying to



manipulate and influence the accused and witnesses. All these facts necessitate that Trial be transferred from the State of Kerala.

**45.   GROUNDS**

The present transfer petition is preferred on inter alia the following grounds which are without prejudice to one another:

- A. Because the State Police at the behest of a highly influential accused namely Respondent No 4 is trying to subvert and derail the investigation under PMLA.
- B. Because important persons including the Respondent No. 2 are being pressurized to retract statement(s) given u/s 50 of the PMLA and 164 CrPC. This is clear from the Statements u/s 164 made by her on 06.06.2022 and 07.06.2022, and also from the subsequent media reports.
- C. Because the Statements u/s 164 CrPC made by the Respondent No. 2 on 06.06.2022 and 07.06.2022 leveling allegations against the Chief Minister of the State of Kerala and his family members, shall, with the permission of the Hon'ble Court be placed before this Hon'ble Court in a Sealed Cover due to the confidential and sensitive nature of the allegations and due to the direction of the Ld. Judicial Magistrate First Class- III, Ernakulam to not bring the Statements before the public domain.
- D. Because if the trial is continued in the State of Kerala, the highly influential accused persons will create hurdles and also the co-accused would be pressurised and threatened to withdraw their earlier statements and to make false allegations and to make false evidence and thereby derail the ongoing investigation and trial.
- E. Because the false and frivolous allegations are being made against the IO with an ulterior motive to tarnish the image of the



Investigating Agency and to sabotage the ongoing investigation with the aid and assistance of highly influential accused and other persons. The Civil Police Officers are intimidating the IO by giving false statements. Continuance of trial in the State of Kerala worsen the situation.

- F. Because there is a gross Misuse of the State Machinery against the Investigation Agency and its Officers which is clearly evident from the registration of two FIRs No. 94/2021 and 98/2021 by Crime Branch Police Station, Ernakulam District against the officials of ED leading to an unprecedented situation where implementation of rule of law would have been impossible. This has given rise to an unprecedented situation wherein the State Police is intimidating the ED officers from carrying out their statutory duties under the PMLA. In such circumstance, it is impossible to conduct a fair trial.
- G. Because the ED had filed two writ petitions vide WP(C) No. 7641/2021 and 8290/2021 before the High Court of Kerala against the above mentioned FIRs. On hearing both sides, the Single Bench of the High Court of Kerala quash the FIRs vide order dated 16.04.2021. However, the Single Bench further directed to submit the material collected by the State Crime Branch in a sealed cover before the Special Judge (PMLA) to consider whether the enquiry u/s 340 Cr. P.C. is required or not. This has caused further interruption in carrying out a fair investigation and trial. Against the direction of the High Court, ED filed SLP No. 5145-5146/2021 and Hon'ble Supreme Court was pleased to grant stay of operation of the impugned directions.
- H. Because the State Government acted without authority of law and in a Mala fide manner in appointing one man Judicial

Commission by way of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home Department, to enquire into the correctness of the PMLA investigation and thereby trying to fabricate false evidence and also to intimidate the IO.

- I. Because, by way of Order dated 11.08.2021 in WP(C) No. 13112 of 2021, the Hon'ble High Court of Kerala was pleased to Stay the operation and implementation of Notification No. NO.HOME-SSA2/67/2021-HOME dated 07.05.2021 issued by the Home Department, Government of Kerala.
- J. Because during the ED custody, the accused were produced before the Special Judge (PMLA) for extension of custody. They did not make any allegation before the court either directly or through their counsel whenever they are produced and also in their respective bail applications. This is sufficient vindication that the abovementioned FIRs are bogus and baseless on the face of it and nothing but an attempt to fabricate false evidence against the Investigating Officers of ED at the behest of the accused M. Sivasankar in order to thwart the investigation being conducted in the gold smuggling case. The same is also evident from the fact that Accused No. 2 Ms. Swapna Suresh and Accused No. 4 Mr. Sandeep Nair have never raised any such allegation of coercion/pressure being exerted by ED ever before the Ld. Sessions and Special Court for PMLA Cases, Ernakulam.
- K. Because the accused persons namely Ms. Swapna Suresh and Mr. Sandeep Nair, after being remanded to judicial custody have been interrogated by the ED after taking permission of the Ld. Court of Sessions, Ernakulam and no complaint was made by the said accused persons to the Ld. Court.

- L. Because intentional public statements are made by Shri Sandeep Nair to contaminate the public and sensitize the matter to stagnate the investigation. On 09.10.2021, Shri Sandeep Nair was released from jail on completion of his COFEPOSA detention period and on coming out of the prison, he addressed the media stating that he was pressurized by ED officials to implicate the Chief Minister of Kerala, former Minister Shri. K.T. Jaleel and former Speaker Shri. Sreeramakrishnan in the Gold Smuggling case. He also stated that Shri M. Sivasankaran former Principal Secretary to the CM seemed to be innocent in this case. The statement of Shri. Sandeep Nair vindicate the stand of ED that he was acting as a tool of the accused Shri. M. Sivasankar.
- M. Because It is submitted that the aforesaid false allegations of Mr. Sandeep Nair were made to subvert the investigation and influence and pressurize the IOs to derail the entire investigation and trial. The IO had never recorded the statement of the accused in Judicial Custody. These are cooked up stories to tarnish the goodwill of the Investigating Agency and to sabotage the ongoing investigation with the aid and assistance of highly influential accused and other persons. Those Civil Police Officers were mere puppets in the hands of the A-4 and the state police machinery and its might is misused by him in order to intimidate the IO by giving false statements and to register false cases against the IOs. The complainant department and their officers firmly believe and has reasons to believe from the conduct and manner of things happened so far that the state machinery, the politicians behind the ruling party and the accused are in many ways jointly and severally trying to thwart

the investigation and the proceedings of justice system by one way or the other.

N. Because, the Ld. Special Court for PMLA cases was pleased to grant ED custody of Mr. Sandeep Nair for 7 days vide order dated 05.08.2020, which was further extended by orders dated 11.08.2020 and 14.08.2020 till 17.08.2020. On 17.8.2020 the Court was pleased to send him to judicial custody. It is also pertinent to note that the accused was produced before the Hon'ble Court on 14.08.2020 and 17.08.2020 and he did not make any such complaint of pressure or coercion on him before the Hon'ble Court. In fact, when enquired by the Ld. Judge the accused persons said that they have no complaints and the same has been recorded by the Ld. Judge in the abovementioned remand orders. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of *State of Orissa vs. Ganesh Chandra Jew (2004) 8 SCC 40*, wherein it was held as under:

*"20. When the background facts of the case are considered, the question regarding applicability of Section 197 of the Code takes a temporary back seat. The factual scenario as indicated above goes to show that on 28-2-1991 the respondent was produced before the Magistrate. He was specifically asked as to whether there was any ill-treatment. Learned SDJM specifically records that no complaint of any ill-treatment was made. This itself strikes at the credibility of the complaint. Additionally, the doctor who has examined him stated that for the first time on 2-3-1991 he treated the complainant. Though there are several other aspects highlighted in the version indicated in the complaint and the materials on*

*record are there, we do not think it necessary to go into them because of the inherent improbabilities of the complainant's case and the patent mala fides involved. It is no doubt true that at the threshold interference by exercise of jurisdiction under Section 482 of the Code has to be in very rare cases, and this case appears to be of that nature. It fits in with Category (7) of broad categories indicated in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]. It is to be noted that though plea regarding non-complaint before the Magistrate was specifically taken to justify interference, the High Court has not dealt with this aspect at all thereby adding to the vulnerability thereof."*

O. Because, in the case of **Gurcharan Das Chadha Vs. State of Rajasthan, 1966 (2) SCR 678 at SCR p.686**, the Hon'ble Supreme Court had observed as follows:

*'A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. To judge of the reasonableness of the apprehension the State of the mind*

*of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained but must appear to the Court to be a reasonable apprehension.'*

P. In light of the concept of fair trial, this Hon'ble Court had observed as follows in ***Mrs. Maneka Sanjay Gandhi Vs. Ms. Rani Jethmalani, (1979) 4 SCC 167,***

*'Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.'*

Q. Because, in ***Abdul Nazar Madani Vs. State of Tamil Nadu , (2000) 6 SCC 204,*** this court pointed out in paragraph 7 at page SCC p.210 as under,

*'The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. The convenience of the parties does not necessarily mean the convenience of the petitioners alone who approached the court on misconceived notions of apprehension. Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society.'*

R. In the matter of **K. Anbazhagan vs The Superintendent Of Police & Ors, Transfer Petition (crl.) 77-78 of 2003**, pertaining to the transfer of trial of the then Chief Minister of Tamil Nadu



to a different state, the Hon'ble Supreme Court observed the following on the reasonable apprehension of bias and fair trial:

*'There is strong indication that the process of justice is being subverted. Free and fair trial is sine qua non of Article 21 of the Constitution. It is trite law that justice should not only be done but it should be seen to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner. In the present case, the circumstances as recited above are such as to create reasonable apprehension in the minds of the public at large in general and the petitioner in particular that there is every likelihood of failure of justice.'*

- S. Because the State of Karnataka to which transfer is being sought is geographically proximate to the State of Kerala.
- T. Because, the universally settled principle of fair trial that '*Justice should not only be done, but seem to be done*' will be vitiated if the trial is continued in the State of Kerala.
- U. Because it is extremely urgent and necessary to transfer the trial outside the State of Kerala to safeguard rule of law and to assure fair trial in the matter at hand.



**PRAYER**

Under the aforementioned circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Pass an Order directing the Transfer of the trial in the case numbered SC No. 610 of 2020 pending before the Special Court for PMLA cases, Ernakulam to a Special Court for PMLA cases in the State of Karnataka;
- (b) Pass such other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE HUMBLE  
APPLICANT AS IN DUTY BOUND SHALL EVER  
PRAY**

PLACE:

DATE:

ADVOCATE FOR PETITIONER