

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			WPCRL No.261 of 2025 <u>Hon'ble Pankaj Purohit, J.</u> Mr. Shaurya Dhoundiyal and Mr. Priyanshu Gairola, Advocates for the petitioner. 2. Mr. S.C. Dumka, A.G.A. with Ms. S.B. Dobhal, B.H. for the State. 3. Ms. Monika Pant, Advocate for respondent no.2. 4. By means of the writ petition, the petitioner has put to challenge the Provisional Attachment Order No.01 of 2025 dated 20.01.2025 issued by the Deputy Director Enforcement Directorate, Dehradun and proceedings arising therefrom. 5. It is contended by learned counsel for the petitioner that the impugned order is not in conformity with the provisions of Section 5(1) (a)(b) and second proviso to Section 5(1) of The Prevention of Money Laundering Act, 2002 (hereinafter referred to as "Act of 2002"). 6. In order to consider the submission made by learned counsel for the petitioner the provisions of Section 5(1)(a)(b) and second proviso to 5(1) section of the Act of 2002, are quoted hereinbelow:- "5. Attachment of property involved in money-laundering.- [(1)] Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that— (a) any person is in possession of any proceeds of crime; and (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter." Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in which possession that if such property involved in money-

laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.”

7. Further in support of his submission, learned counsel for the petitioner has relied upon two judgments:-

1. Hon’ble High Court of Jharkhand at Ranchi in *Kaushlaya Infrastructure Development Corporation Ltd. Vs. Union of India and another* reported in 2021 SCC Online Jhar 1053.

2. Hon’ble High Court of Gauhati in *Aftabuddin Ahmed and another Vs. Enforcement Directorate, Govt. of India and others* reported in 2024 SCC Online Gau 401.

On the strength of aforesaid judgment, it is submitted that if there is patent illegality in the provisional attachment order, the same can be challenged before a High Court under Article 226 of the Constitution of India.

8. I have gone through both the judgments relied upon by learned counsel for the petitioner and there is no manner of doubt in the mind of this Court that before invoking the provision under Section 5(1) of Act of 2002 to issue a “provisional attachment order” the condition specified in clause 5(1)(a)(b) should have been satisfied.

9. From the reading of the impugned order, it is reflected that the first ingredient contained in Section 5(1)(a) of Act of 2002 is made out, but so far as the provision of Section 5(1)(b) of Act of 2002 is concerned, it is nowhere reflected from the order impugned that there is reason to believe to the respondent-Deputy Director, Enforcement Directorate, that the property in-question, is likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter.

10. *Per contra*, learned counsel for the respondent vehemently, argued that the writ petition is not maintainable as the petitioner has a remedy to

		show cause because it is only a show cause notice and against that petitioner has opportunity to appear before the Adjudicating Authority, therefore, before doing that he cannot avail the writ jurisdiction. 11. It is further submitted by learned counsel for respondent no.2 that the order impugned satisfies both the ingredients of Section 5(1)(a)(b) of Act of 2002. 12. Learned counsel for the petitioner took this Court to para no.17 and 18 of the impugned order, word-by-word, but this Court, <i>prima facie</i>, is of the view that the ingredient contained in Section 5(1)(b) of the Act of 2002 is not made out and there is no likelihood of property being transferred or alienated etc. 13. Having heard learned counsel for the parties, this Court is of the view that in view of the case laws relied upon by learned counsel for the petitioner, this Court has ample jurisdiction to entertain and maintain the writ petition. 14. The matter requires deliberation to test the veracity of the order impugned for which a detail counter affidavit is needed. 15. Learned counsel for the respondents may file counter affidavit within two weeks’. 15. List this case on 14.05.2025. 16. Till the next date of listing, effect and operation of the impugned Provisional Attachment Order No.01 of 2025 dated 20.01.2025 issued by the Deputy Director Enforcement Directorate, Dehradun, shall remain stayed. (Pankaj Purohit, J.) 04.04.2025 SK
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