2023:PHHC:138899-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23005-2023

Pronounced on : 31.10.2023
Reserved on 18.10.2023

Roop Bansal ..... Petitioner

Versus

Union of India and another ..... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Abhishek Manu Singhvi, Senior Advocate
Mr. Randeep S. Rai, Senior Advocate,
Mr. Chetan Mittal, Senior Advocate,
Mr. Aashish Chopra, Senior Advocate
Mr. Kunal Dawar, Ms. Rubina Virmani, Mr. Vipul Sharma,
Mr. Arjun S.Rai and Mr. Varun Arjun Sharma, Advocates
Mr. Varun Aryan Sharma, Mr. Sajal Bansal,
Mr. Hargun Sandhu and Mr. Viren Sibal, Advocates
for the petitioner.

Mr. Jagjot Singh Lalli, Deputy Solicitor General and
Mr. Lokesh Narang, Senior Panel Counsel,
Mr. Simon Benjiamin, SPP, for ED
Mr. Gaurav Dutt Sharma, Asstt. Legal Advisor,
Ms. Jaya Devi, Legal Consultant, Directorate of Enforcement
(Through Hybrid Mode).

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VIKRAM AGGARWAL, J

1. The petitioner herein has preferred the present Civil Writ Petition praying for the following substantial reliefs:-

(i) In consonance with the ratio laid down by the Hon'ble Supreme Court in "***Vijay Madanlal Choudhary Versus Union***

of India & Ors. 2022 SCC Online SC 929" hold that any transaction that may have occurred prior to the coming into existence of the Schedule/Predicate Offence, cannot be covered for the said offence under Prevention of Money Laundering Act, 2002 as "*proceeds of crime*" defined under Section 2 (1)(u) thereof are dependent on illegal gain of property as a result of criminal activity relating to such scheduled offence and cannot have any independent existence of its own;

(ii) In consonance with the principles laid down by the Hon'ble Supreme Court vide order dated 3.10.2023 passed in ***Criminal Appeal No.3051-3052 of 2023 in Pankaj Bansal Versus Union of India and others*** quash and set aside the arrest of the petitioner and consequential Arrest Order dated 8.6.2023 (Annexure P-15) as there has been grave violation of the mandatory postulates interdicting and governing the invocation of powers under Section 19 of Prevention of Money Laundering Act, 2022;

(iii) As a sequel and consequence to the prayer supra this Hon'ble Court may be pleased to set aside and quash the remand orders dated 9.6.2023 (Annexure P-19), 16.6.2023 (Annexure P-21) & 20.6.2023 (Annexure P-23) as well as subsequent remand orders passed by the Court of Special Judge, Panchkula whereby the petitioner has been remanded to Enforcement Directorate custody and/or to judicial custody as the remand orders so passed are patently routine and mechanical in nature and cannot cure the constitutional infirmities as guaranteed under Article 21 and 22 (1) & (2) of the Constitution.

(iv) Direct the forthwith release of the petitioner from

custody as his any further incarceration would be anathema to law and gravely detrimental to the cause of justice;

2. The facts essential for the purpose of decision of the present petition and as emanating from the paper book are that certain FIRs were registered from 2018 to 2020 with different law enforcement agencies namely Haryana Police, Delhi Police and Delhi EOW, under Sections 120-B, 420, 467, 471 IPC against M/s IREO Private Limited and others. These FIRs were registered at the instance of allottees of residential projects developed by the IREO Group. Since the offences under IPC are scheduled offences (as defined under Section 2(1)(y) of the Prevention of Money Laundering Act, 2002) (for short 'the PMLA'), the Enforcement Directorate recorded an Enforcement Case Information Report No.ECIR/GNZO/10/2021 dated 15.06.2021 (hereinafter referred to as 'the First ECIR') against one Lalit Goyal, Vice Chairman and Managing Director of M/s IREO Private Limited and others with a view to investigate the offence of Money Laundering as defined under Section 3 and punishable under Section 4 of PMLA.

2(i). During the course of investigation, searches as envisaged under Section 17 of PMLA were conducted and based upon the material evidence collected, a prosecution complaint under Sections 44 and 45 of PMLA bearing No.COMA/01/2022 was filed against Lalit Goyal and six IREO Group of Corporate entities.

2(ii). Attachment of properties etc. was carried out in terms of the provisions of PMLA. During the further course of investigation, it was

allegedly found that in addition to identified 'proceeds of crime' of Rs.1376 crores, IREO group had further diverted its funds of more than Rs.400 crores through M3M Group of Companies. In so far as the M3M Group of Companies is concerned, its Managing Director was Basant Bansal and Directors were Pankaj Bansal and the present petitioner Roop Bansal. Further surveys and searches were carried out and ultimately the present petitioner was arrested on 08.06.2023. He was produced before the Special Court PMLA, Panchkula on 09.06.2023. He was remanded to seven days ED custody which was later on extended by four days. Finally he was committed to judicial custody on 20.06.2023. At present, the petitioner is lodged in Central Jail, Ambala. A supplementary prosecution complaint was, therefore, filed on 04.08.2023 wherein the present petitioner was arraigned alongwith 51 other managerial persons/associates and corporate entitites of IREO Group and M3M Group. The said complaint is at the stage of cognizance.

3. It would be essential to refer here that apart from the first ECIR, another ECIR bearing **No.ECIR/GNZO/17/2023** (hereinafter referred to as 'the Second ECIR') had been registered by the Enforcement Directorate on 13.06.2023 in which also Basant Bansal, Pankaj Bansal, Roop Bansal and other persons are accused. It would be further essential to notice that the second ECIR arises out of scheduled offences alleged to have been committed under Sections 7, 8, 11 and 13 of the Prevention of Corruption Act, 1988 read with Section 120-B IPC qua which FIR No.0006 dated 17.04.2023 stands registered at the instance of the Anti Corruption Bureau,

Panchkula, Haryana. The accused in the said FIR are (i) Sudhir Parmar, (the then Special Judge, CBI and ED, Panchkula), (ii) Ajay Parmar [nephew of Sudhir Parmar and Deputy Manager (Legal in M3M Group)], (iii) Roop Bansal (the present petitioner) and other unknown persons.

4. Basant Bansal is stated to be the father of Pankaj Bansal and paternal uncle of Roop Bansal. Basant Bansal and Pankaj Bansal had filed anticipatory bail applications in the first ECIR in which interim protection had been granted to them by the Delhi High Court vide orders dated 09.06.2023, passed in their separate petitions. This interim protection was granted upto 05.07.2023. These orders were challenged by the ED before the Hon'ble Apex Court by way of Special Leave Petitions (criminal) Nos.7384 and 7396 of 2023 which are stated to be pending.

5. Upon summons having been issued to Pankaj Bansal and Basant Bansal in the first ECIR, they appeared before the ED on 14.06.2023. However, they were arrested by the ED on 14.06.2023 itself in the second ECIR which had been registered on 13.06.2023.

6. Consequent upon their arrest, they were produced before the learned Vacation Judge/Addl. Sessions Judge, Panchkula on 15.06.2023 where they were remanded to ED custody for a period of five days which was lateron extended.

7. They challenged their remand to ED custody before the Delhi High Court vide **WP (Crl.)** Nos.1770 and 1771 of 2023. The Delhi High Court, vide order dated 16.06.2023 opined that it did not have the jurisdiction to deal with the matter and the appropriate remedy would be to

challenge the order of remand before the High Court of Punjab and Haryana.

8. The duo then approached the Hon'ble Apex Court wherein they withdrew their SLPs with liberty to approach the Punjab & Haryana High Court. Pankaj Bansal and Basant Bansal filed writ petitions before this Court which were dismissed leading to the filing of a special leave petition before the Hon'ble Apex Court. The special leave petition was allowed and Criminal Appeals No.3051-3052 of 2023 filed by Basant Bansal and Pankaj Bansal against the order dated 20.07.2023, passed by a Coordinate Bench of this Court in CWP Nos.14536 of 2023 and 14539 of 2023 were allowed by the Hon'ble Supreme Court vide judgment dated 03.10.2023.

9. The petitioner Roop Bansal, who is stated to have filed a regular bail application under Section 439 Cr.P.C. (in the first ECIR) before the Special Court, Panchkula, purportedly withdrew the same (as stated during the course of arguments on a query raised by this Court) and filed the present petition. Another application filed under Section 167 (2) Cr.P.C. for the grant of default bail is stated to be pending.

10. The present petition has now been filed praying for the reliefs referred to in the opening part of the petition and essentially laying challenge to his arrest on 08.06.2023 and the subsequent remand orders passed by the Vacation Judge/Addl. Sessions Judge, Panchkula.

11. We have heard learned counsel for the parties and have perused the petition, the reply submitted by the respondents as also other documents placed on record during the course of arguments.

12 Learned Senior Counsel representing the petitioner restricted

the claim of the petitioner only to prayers No.(ii), (iii) and (iv) and submitted that the first prayer was not being pressed.

12(i) Sh.Abhishek Manu Singhvi, learned Senior counsel representing the petitioner submitted that the present case is covered by the decision dated 03.10.2023 given by the Hon'ble Supreme Court in **Pankaj Bansal's case (supra)**. Referring to the provisions of Section 19 of the PMLA, learned Senior counsel submitted that there was no material in possession of the ED which could have given reason to believe that the petitioner was guilty of an offence punishable under the PMLA. It was further submitted that the grounds of arrest had not been conveyed to the petitioner in writing and that the petitioner was arrested on the basis of his non-cooperation in the investigation and his having given evasive replies during the same which is impermissible.

12(ii) Learned Senior Counsel referred to the arrest order dated 08.06.2023 (Annexure P-15), the three remand applications dated 09.06.2023, 16.06.2023 and 20.06.2023 (Annexures P-18, P-20 and P-22 respectively), moved by the Enforcement Directorate and the orders dated 09.06.2023, 16.06.2023 and 20.06.2023 (Annexures P-19, P-21 and P-23 respectively), passed thereon. Reference was made to the averments made in the remand applications (ibid) and the findings recorded in the remand orders (ibid). It was submitted that the orders passed on the remand applications reflect complete non-application of mind by the Court concerned. Learned Senior Counsel contended that the Court concerned did not record its satisfaction with regard to compliance of the provisions of

Section 19 of the PMLA. It was submitted that under the circumstances, it is manifestly clear that the arrest of the petitioner was illegal and the petitioner, therefore, deserves to be released from custody. Reference was made to the judgment of the Hon'ble Supreme Court in Pankaj Bansal's case (supra) which was extensively referred to by learned Senior counsel during the course of arguments.

12(iii) Learned Senior Counsel further submitted that the word ***'henceforth'*** used by the Hon'ble Supreme Court in paragraph 35 of Pankaj Bansal's case (supra) would not be interpreted to say that the grounds of arrest would have to be conveyed in writing in subsequent cases but would be interpreted to say that this would be the requirement of Section 19 of the PMLA and any violation of the same would render the arrest illegal. Reference was made in this regard to the judgment of the Hon'ble Apex Court in the case of ***Assistant Commissioner, Income Tax, Rajkot versus Saurashtra Kutch Stock Exchange Limited (2008) 14 SCC 171.*** It was submitted that since in the present case, the grounds of arrest were not conveyed to the petitioner in writing, the same would amount to non-compliance of the provisions of Section 19 of PMLA in terms of the ratio laid down by the Hon'ble Apex Court in Pankaj Bansal's case (supra). Reference was also made to the judgment of the Hon'ble Apex Court in the case of ***Vijay Madan Lal Chaudhary and others versus Union of India and others 2022 (10) Scale 577*** and **V.Senthil Balaji Versus State represented by Deputy Director and others, 2023 (3) Law Herald (SC) 2088;** ***2023 SCC Online SC 934*** (Criminal Appeals No.2284-2285 of 2023, decided on

07.08.2023).

12(iv) Reference was also made to the judgment of the Hon'ble Apex Court in the case of ***Arnab Manoranjan Goswami versus State of Maharashtra and others (2021) 2 SCC 427*** to contend that deprivation of **liberty even** for a single day is one day too many. It was contended that since the arrest is illegal, the petitioner deserves to be set free forthwith. Though a compilation with other judgments was also supplied, reference was made only to the judgments mentioned in the preceding paragraphs. Learned senior counsel placed reliance upon the judgments of Hon'ble Supreme Court in the cases of ***Union of India Vs. Ashok Kumar Sharma and others (2021) 12 SCC 674***; ***SLP (C) No.11039 of 2022 titled as Manoj Parihar and Ors. Vs. State of Jammu & Kashmir and Ors. decided on 27.06.2022; Mohammed Zubair Vs. State of NCT of Delhi and Ors. decided on 20.07.2022; SLP (Criminal) No.4634 of 2014 titled as Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. decided on 27.07.2022***; ***Criminal Appeal No.377 of 2007 titled as CBI Vs. R.R. Kishore decided on 11.09.2023,*** a judgment of Bombay High Court in ***Criminal Writ Petition (Stamp) No.22494 of 2022 with Interim Application (Stamp) No.54 of 2023 titled as Chanda Deepak Kochhar Vs. Central Bureau of Investigation decided on 09.01.2023,*** a judgment, passed by the Allahabad High ***Court in Writ Tax No.834 of 2023 titled as Ashish Kakkar Vs. Union of India and Anr.Criminal Appeal Nos.3051-3052 of 2023 titled as Pankaj Bansal Vs. Union of India and Ors. decided on 03.10.2023*** as well as the judgment dated 09.05.2023 passed by a

Coordinate Bench of this Court in ***Bhawana Gupta and others Vs. State of Punjab*** (in ***CRM-M-23437-2023).***

13. Per contra, it was submitted by learned counsel representing the respondents that the case of the petitioner is not covered by the ratio laid down by the Hon'ble Supreme Court in Pankaj Basnsal's case (supra). It was submitted that the Hon'ble Apex Court has held that a copy of the written grounds of arrest is to be furnished to the arrested person ***'henceforth'*** and that it would not apply to the present case but would apply to arrests to be made in future. Reliance was placed upon a judgment of Hon'ble Supreme Court of India in ***Ranjan Kumar Chadha Vs. State of Himachal Pradesh in Criminal Appeal Nos.2239-2240 of 2011, decided on 06.10.2023.***

13(i) In addition to the written reply, learned counsel also furnished a compilation containing a note, the details of the material in possession of the Investigating Officer, the reasons to believe that the petitioner was guilty of an offence punishable under PMLA etc. and a document containing the grounds of arrest pertaining to the petitioner. It was contended that a perusal of the documents would show that there was due compliance of the provisions of Section 19 of the PMLA and in the present case, on information having been given to the petitioner about the grounds of arrest, he read the same and was also read over the same in the local language and further he alongwith two witnesses appended their signatures on the said documents containing the grounds of arrest. It was contended that under the circumstances, it cannot be said that there was violation of Section 19 of

PMLA.

13(ii) Learned counsel referred to the judgments of the Hon'ble Supreme Court in *Pankaj Bansal Versus Union of India and others* (supra) and submitted that the Hon'ble Apex Court declared the arrest of Basant Bansal and Pankaj Bansal to be illegal on account of the manner in which they were arrested in the second ECIR after joining them investigation in the first case and not solely on account of the fact that the grounds of arrest had not been supplied to them in writing.

13(iii) Learned counsel submitted that the case of the petitioner would be covered by the ratio laid down by the Hon'ble Apex Court in the cases of ***Vijay Madanlal Choudhary Versus Union of India & Ors. and V.Senthil Balaji Versus State represented by Deputy Director and others*** and since the grounds of arrest had been conveyed to the petitioner and he had signed the documents, the arrest cannot be said to be illegal. Learned counsel repeatedly emphasized that the directions of the Hon'ble Apex Court with regard to furnishing of copy of written grounds of arrest to the arrested person would apply to subsequent arrests and would not apply in the present case.

14. We have considered the submissions made by learned counsel for the parties and have also perused the voluminous paper books as also the other documents placed on record.

15. Before adverting to the merits of the case, it would be apposite to refer to the statutory provisions.

Section 2 (1) (u) of the PMLA defines "proceeds of crime" as

under:-

> "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the county, then the property equivalent in value held within the country] [or abroad];
>
> [Explanation.- For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]

Section 2 (1) (y) defines "scheduled offences" as under:-

"scheduled offence" means-

(i) the offences specified under Part A of the Schedule; or
(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is (one crore rupees) or more; or
(iii) the offences specified under Part C of the Schedule;"

15(i) Part A of the Schedule relates to offence under the Indian Penal Code, NDPS, Explosive Substances Act, 1908, the unlawful activities (prevention) Act, 1967 and various other Acts. Part B deals with offences under the Customs Act, 1962 and Part C deals with an offence which is the offence of cross boarder implication and is specified in Part A or offences against property under Chapter XVII of the Indian Penal Code as also offences referred to in the Black Money (Undisclosed Foreign Income and

Assets) and Imposition of Tax Act, 2015.

Section 19 of the PMLA deals with the power to arrest and lays down as under:-

> **"Power to arrest.--** (1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
>
> (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.
>
> (3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a (Special Court or) Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:
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> Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the (Special Court or) Magistrate's Court."

Section 45 deals with bail and provides as under:-

> **45. Offences to be cognizable and non-bailable.**—
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> (1) 1[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an

offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

[(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in [29] [***] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Section 50 deals with the powers regarding summons,

production of documents and evidence and lays down as under:-

> **"Powers of authorities regarding summons, production of documents and to give evidence, etc.**—(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—
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> (a) discovery and inspection;
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> (b) enforcing the attendance of any person, including any officer of a 1 [reporting entity] and examining him on oath;
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> (c) compelling the production of records;
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> (d) receiving evidence on affidavits;
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> (e) issuing commissions for examination of witnesses and documents; and
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> (f) any other matter which may be prescribed.
>
> (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
>
> (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
>
> (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).
>
> (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may

impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director]."

Section 62 provides for punishment for vexatious search and lays down as under:-

"Any authority or officer exercising powers under this Act or any rules made thereunder, who without reasons recorded in writing,—

(a) searches or causes to be searched any building or place; or

(b) detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both."

Section 65 states about the applicability of the Code of Criminal Procedure, 1973 and states as under:-

"65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other

proceedings under this Act."

16. Once the statutory provisions have been noticed, it would be essential to refer to the law on the subject. The Hon'ble Apex Court examined the validity and interpretation of certain provisions of the PMLA and the procedure followed by the Enforcement Directorate while inquiring into/investigating offences under the PMLA in the case of ***Vijay Madanlal Choudhary Versus Union of India & Ors.*** (supra). Extensive arguments were addressed before the Three Judges Bench of the Hon'ble Apex Court. Apart from other arguments, it was urged before the Hon'ble Apex Court that the Enforcement Directorate was violating all statutory and constitutional directions by implicating accused by procuring signed statements under threat of legal penalty. It was argued that the non-supplying of the ECIR to the accused was in gross violation of Article 21 of the Constitution of India since the ECIR was equivalent to an FIR. The ECIR, it was submitted, contained the grounds of arrest, details of offences etc. and without the knowledge of the ingredients of such a document, the ability of the accused to defend himself at the stage of bail could not be fully realized. It was urged that the same may also hamper the ability to prepare for the trial at a later stage. The constitutionality of Sections 17 and 18 of the PMLA was also challenged. The vires of almost all provisions including proviso of Section 5 (1), Section 8 of the PMLA and other provisions were challenged.

17. On behalf of the Union of India, it was submitted that at that time, around 4700 cases were being investigated by ED which was a small

number as compared to the number of cases registered under the Money Laundering Act in other countries. It was also submitted that in the last five years, only 2086 cases had been taken up for investigation under the PMLA out of registration of approximately 33 lacs FIRs relating to predicate offences by the police and other Enforcement Agencies. It was submitted before the Hon'ble Apex Court that the validity of the PMLA would have to be judged in the background of international development and obligation of India to prevent money laundering. With regard to Section 19 of the PMLA, it was contended before the Apex Court that there were adequate safeguards under Section 19 of the PMLA which made the provision Constitution compliant**.** It was submitted that Section 19 of the PMLA was pari-materia to Section 35 of FERA and Section 103 of the Customs Act, 1962 and their validity had been upheld by the Hon'ble Apex Court. It was also submitted that the persons involved in the offence of money laundering are influential, intelligent and resourceful and the crime is committed with full pre-meditation, which ensures that the offence is not detected and even if it is detected, the agency cannot trace the evidence. It was submitted that the offence under the PMLA is committed with the help of advanced technology so as to conceal the transaction which makes the stringent bail conditions justified.

18. The Hon'ble Apex Court examined the matter in extenso. While deciding the issue, reference was made to the statements of objects and reasons accompanying the bill which became the PMLA. It was examined as to how the Act came into being and which other legislations

were already invoked prior to the coming into force of the PMLA. It was observed that notwithstanding the existing dispensation to deal with proceeds of crime, the Parliament enacted the PMLA as a result of international commitment to sternly deal with the menace of money laundering of proceeds of crime having transnational consequences on the financial systems of the countries. The Hon'ble Apex Court then examined the scheme of the Act. The Validity of the Act was upheld. With regard to arrest, it was held as under:-

> "322. Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money-laundering can be effected. Subsection (1) of Section 19 envisages that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to believe that any person has been guilty of an offence punishable under the 2002 Act, he may arrest such person. Besides the power being invested in high-ranking officials, Section 19 provides for inbuilt safeguards to be adhered to by the authorised officers, such as of recording reasons for the belief regarding the involvement of person in the offence of money-laundering. That has to be recorded in writing and while effecting arrest of the person, the grounds for such arrest are informed to that person. Further, the authorised officer has to forward a copy of the order, along with the material in his possession, in a sealed cover to the Adjudicating Authority, who in turn is obliged to preserve the same for the prescribed period as per the Rules. This safeguard is to ensure fairness, objectivity and accountability of the authorised officer in forming opinion as recorded in writing regarding the necessity to arrest the person being involved in offence of money-laundering. Not only that, it

is also the obligation of the authorised officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within twenty-four hours. This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section 19(3), it has to be complied by the authorised officer. Section 19, as amended from time to time, reads thus:

> "19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
>
> (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under subsection (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.
>
> (3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:
>
> Provided that the period of twenty-four hours shall

exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

323. In the context of this provision, the challenge is that in absence of any formal complaint being filed, arrest under Section 19 is being made by the authorised officers. Whereas, the purport of Section 167 of the 1973 Code would suggest that the person can be arrested by the jurisdictional police without warrant under Section 41 of the 1973 Code only upon registration of a complaint under Section 154 of the 1973 Code in connection with cognizable offence or pursuant to the order of the Court. Even, in case of arrest pursuant to the order of the Court, a formal complaint against such person accusing him of being involved in commission of an offence is essential. Moreover, the person produced before the Court would be at a loss to know the grounds for arrest unless a formal FIR or complaint is filed accusing him about his involvement in the commission of an offence. The provision if interpreted to permit the authorised officer to arrest someone being involved in the commission of offence of money-laundering without a formal complaint against him, would be ex facie manifestly arbitrary and unconstitutional.

324. This argument clearly overlooks the overall scheme of the 2002 Act. As noticed earlier, it is a comprehensive legislation, not limited to provide for prosecution of person involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering. It also provides for prosecuting the person involved in such activity constituting offence of money-laundering. In other words, this legislation is an amalgam of different facets including setting up of agencies and mechanisms for coordinating measures for combating money-laundering. Chapter III is a provision to effectuate these

purposes and objectives by attachment, adjudication and confiscation. The adjudication is done by the Adjudicating Authority to confirm the order of provisional attachment in respect of proceeds of crime involved in money-laundering. For accomplishing that objective, the authorities appointed under Chapter VIII have been authorised to make inquiry into all matters by way of survey, searches and seizures of records and property. These provisions in no way invest power in the Authorities referred to in Chapter VIII of the 2002 Act to maintain law and order or for that matter, purely investigating into a criminal offence. The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However, it is essentially an inquiry to collect evidence to facilitate the Adjudicating Authority to decide on the confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of Section 9 of the 2002 Act. In other words, the role of the Authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the 2002 Act before the Special Court, if the fact situation so warrant. It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money-laundering. It is also not unusual to provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal

activity. The respondent has rightly adverted to somewhat similar provisions in other legislations, such as Section 35 of FERA and Section 102 of Customs Act including the decisions of this Court upholding such power of arrest at the inquiry stage bestowed in the Authorities in the respective legislations. In Romesh Chandra Mehta , the Constitution Bench of this Court enunciated that Section 104 of the Customs Act confers power to arrest upon the Custom Officer if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 of that Act. Again, in the case of Padam Narain Aggarwal , while dealing with the provisions of the Customs Act, it noted that the term "arrest" has neither been defined in the 1973 Code nor in the Penal Code, 1860 nor in any other enactment dealing with offences. This word has been derived from the French word "arrater" meaning "to stop or stay". It signifies a restraint of a person. It is, thus, obliging the person to be obedient to law. Further, arrest may be defined as "the execution of the command of a court of law or of a duly authorised officer". Even, this decision recognises the power of the authorised officer to cause arrest during the inquiry to be conducted under the concerned legislations. While adverting to the safeguards provided under that legislation before effecting such arrest, the Court noted as follows:

> **"Safeguards against abuse of power**
>
> 36. From the above discussion, it is amply clear that power to arrest a person by a Customs Officer is statutory in character and cannot be interfered with. Such power of arrest can be exercised only in those cases where the Customs Officer has "reason to believe" that a person has been guilty of an offence punishable under Sections 132, 133, 135, 135-A or 136 of the Act. Thus, the power must

be exercised on objective facts of commission of an offence enumerated and the Customs Officer has reason to believe that a person sought to be arrested has been guilty of commission of such offence. The power to arrest thus is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer.

37. The section also obliges the Customs Officer to inform the person arrested of the grounds of arrest as soon as may be. The law requires such person to be produced before a Magistrate without unnecessary delay.

38. The law thus, on the one hand, allows a Customs Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. ….”

(emphasis supplied)

325. The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional

police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in Premium Granites , wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in Sukhwinder Pal Bipan Kumar , the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti , this Court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority. (Also see Manzoor Ali Khan).

326. Considering the above, we have no hesitation in upholding the validity of Section 19 of the 2002 Act. We reject the grounds pressed into service to declare Section 19 of the 2002 Act as unconstitutional. On the other hand, we hold that such a provision has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act of prevention of money-laundering and confiscation of proceeds of crime involved in money-laundering, including to prosecute persons involved in

> the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof."

18(i) A perusal of the aforesaid shows that the Hon'ble Apex Court upheld the validity of Section 19 of the PMLA. At the same time, it was held that the conditions laid down in Section 19 of the PMLA were stringent so as to prevent abuse.

18(ii) The Hon'ble Apex Court also examined the provisions with regard to bail wherein the grievance was with regard to the twin conditions specified in Section 45 of the PMLA. After examining the matter threadbare, the Hon'ble Apex Court concluded that the underlying principles and rigors of Section 45 of PMLA must come into play and without exception ought to be reckoned to uphold the objectives of PMLA which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering. It was also held that the supply of ECIR in every case to the person concerned would not be mandatory. It was observed that in some cases ED had furnished a copy of the ECIR to the person before filing of the complaint but that did not mean that in every case the same procedure was required to be followed. It was held that it was enough if the ED, at the time of arrest, discloses the grounds of such arrest to the person concerned. The relevant findings are as under:-

> **"459.** Viewed thus, supply of ECIR in every case to person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy

of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution. It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as unknown accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite that, the accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the concerned Court. On the same analogy, the argument of prejudice pressed into service by the petitioners for non-supply of ECIR deserves to be answered against the petitioners. For, the arrested person for offence of money-laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it is open to the Special Court to call upon the representative of ED to produce relevant record concerning the case of the accused before him and look into the same for answering the need for his continued

detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further."

18(iii). While finally deciding the matter, the Hon'ble Apex Court summarized its conclusion as under:-

"467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—

(i) The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of *Rojer Mathew* .

(ii) The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court. **(iii)** The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.

(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money -laundering on its own, being an independent process or activity. **(c)** The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of moneylaundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police

and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove. **(viii)** The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government may take necessary corrective steps to obviate confusion caused in that regard.

(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.**(xi)** Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

(xii)(a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.

(b) We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment. **(xiii)(a)** The reasons which weighed with this Court in *Nikesh Tarachand Shah* for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in *Nikesh Tarachand Shah* distinguishing the enunciation of the Constitution Bench decision in *Kartar Singh* ; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious

threat to the sovereignty and integrity of the country.

(c) The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

(d) As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

(xiv) The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.

(xv)(a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.

(xvi) Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.

(xvii) The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.

(xviii)(a) In view of special mechanism envisaged by the

2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

(xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously.

(xxi) The argument about proportionality of punishment

with reference to the nature of scheduled offence is wholly unfounded and stands rejected."

18(iv). The provisions of PMLA again came under the scanner of the Hon'ble Apex Court in ***V.Senthil Balaji Versus State represented by Deputy Director and others's case*** (supra). There was a difference of opinion by the Division Bench of the Madras High Court while dealing with a writ petition filed seeking a writ of habeas corpus in pursuance of an arrest made, followed by a remand to judicial custody and then to the authority concerned. A reference was made which was then answered by a Larger Bench of the Madras High Court. The majority view was then challenged before the Hon'ble Apex Court. The principal issue before the Hon'ble Apex Court was the remand in favour of the investigating agency. The appellant before the Hon'ble Apex Court was a Cabinet Minister of the State of Tamil Nadu. In pursuance of registration of an ECIR, he was arrested. After his arrest, his wife filed a habeas corpus petition whereas the ED filed an application for judicial custody. He was remanded to judicial custody after which an application for bail was filed which was dismissed. Subsequently, the ED sought his custody which was granted initially for a period of 08 days. Ultimately, the habeas corpus petition was dismissed and certain other directions were passed. The matter, therefore, reached the Hon'ble Apex Court. While examining the issue of arrest, the Hon'ble Apex Court observed that to effect an arrest, an officer authorized is to assess and evaluate the material in his possession and thereafter he is expected to form a reason to believe that a person is guilty of an offence punishable under the

PMLA. Thereafter, he would be at liberty to arrest while performing his mandatory duty of recording arrest and then informing the arrestee about the grounds of arrest. It was held that any non-compliance of the mandate in pursuance of Section 19 (1) of the PMLA would vitiate the very arrest itself. The findings are as under:-

> "Chapter V of the PMLA, 2002 deals with the power of an authority to conduct survey, search and seizure of both a place and a person followed by arrest, if so required. The provisions are step-in-aid in the conduct of inquiry/investigation.
>
> Section 19
>
> > "19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director, or any other officer authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
> >
> > (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under subsection (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the matter, as may be prescribed and such Adjudicating authority shall keep such order and material for such period, as may be prescribed.
> >
> > (3) Every person arrested under sub-section (1)

shall within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the

time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

39. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.

40. Thereafter, the arrestee has to be taken to the Special Court, or the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, having the jurisdiction within 24 hours of such arrest. While complying with this mandate the time spent on the journey to the Court shall stand excluded. Vijay Madanlal Choudhary (supra):

"89… The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer

before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1) (b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in Premium Granites v. State of T.N., (1994) 2 SCC 691, wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in Sukhwinder Pal Bipan Kumar v. State of Punjab, (1982) 1 SCC 31, the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005,

regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti v. State of Gujarat, (2005) 3 SCC 647, this Court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority. (Also see Manzoor Ali Khan v. Union of India, (2015) 2 SCC 33)."

(emphasis supplied)

41. The conclusion thus arrived is that the Legislature in its wisdom has consciously created the necessary safeguards for an arrestee, keeping in mind his liberty, and the need for an external approval and supervision. This provision is in compliance with Article 21 and 22(2) of the Constitution of India.

Section 62

"Law can never be enforced unless fear supports them."

- Sophocles

"**62. Punishment for vexatious search**.—Any authority or officer exercising powers under this Act or any rules made thereunder, who without reasons recorded in writing,—

(a) searches or causes to be searched any building or place; or

(b) detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both."

19. Reference was also made to the judgment in ***Vijay Madanlal Choudhary Versus Union of India & Ors's case (supra)*** and the findings recorded therein. It was further held that while authorizing the detention of an accused, the Magistrate has got a very wide discretion. It was held that such an act is a judicial function and, therefore, a reasoned order indicating application of mind is certainly warranted. It was held that a balancing act was expected to be undertaken by a Magistrate deciding the issue of remand.

20. Very recently, the matter has been examined again by the Hon'ble Apex Court in the case of ***Pankaj Bansal Versus Union of India and others (supra)***. It would be essential to reiterate that ***Pankaj Bansal Versus Union of India and others (supra)*** (supra) arose out of the second ECIR and the present case arises out of the First ECIR and that in both ECIRs there are allegations against the promoters of the IREO Group and the M3M Group. In ***Pankaj Bansal Versus Union of India and others's*** case (supra), the Hon'ble Apex Court, while noticing the judgments in the cases of ***Vijay Madanlal Choudhary Versus Union of India & Ors.*** and ***V.Senthil Balaji Versus State represented by Deputy Director and others*** observed that though in both judgments, it had been opined that the grounds of arrest had to be communicated to the accused, it was not specifically laid down as to how the same were to be communicated. It was held by the Hon'ble Apex Court as under:-

> 15. At this stage, it would be apposite to consider the case law that does have relevance to these appeals and the issues under consideration. In Vijay Madanlal Choudhary (supra), a 3-Judge

Bench of this Court observed that Section 65 of the Act of 2002 predicates that the provisions of the Criminal Procedure Code, 1973, shall apply insofar as they are not inconsistent with the provisions of the Act of 2002 in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings thereunder. It was noted that Section 19 of the Act of 2002 prescribes the manner in which the arrest of a person involved in money laundering can be effected. It was observed that such power was vested in high-ranking officials and that apart, Section 19 of the Act of 2002 provided inbuilt safeguards to be adhered to by the authorized officers, such as, of recording reasons for the belief regarding involvement of the person in the offence of money laundering and, further, such reasons have to be recorded in writing and while effecting arrest, the grounds of arrest are to be informed to that person. It was noted that the authorized officer has to forward a copy of the order, along with the material in his possession, to the Adjudicating Authority and this safeguard is to ensure fairness, objectivity and accountability of the authorized officer in forming an opinion, as recorded in writing, regarding the necessity to arrest the person involved in the offence of money laundering. The Bench also noted that it is the obligation of the authorized officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within 24 hours and such production is to comply with the requirement of Section 167 Cr. P.C. It was pointed out that there is nothing in Section 19 of the Act of 2002 which is contrary to the requirement of production under Section 167 Cr. P.C. and being an express statutory requirement under Section 19(3) of the Act of 2002, it has to be complied by the authorized officer. It was concluded that the safeguards provided in the Act of 2002 and the preconditions to

be fulfilled by the authorized officer before effecting arrest, as contained in Section 19 of the Act of 2002, are equally stringent and of higher standard when compared to the Customs Act, 1962, and such safeguards ensure that the authorized officers do not act arbitrarily, by making them accountable for their judgment about the necessity to arrest any person involved in the commission of the offence of money laundering, even before filing of the complaint before the Special Court. It was on this basis that the Bench upheld the validity of Section 19 of the Act of 2002. The Bench further held that once the person is informed of the grounds of arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution and it is not necessary that a copy of the ECIR be supplied in every case to the person concerned, as such a condition is not mandatory and it is enough if the ED discloses the grounds of arrest to the person concerned at the time of arrest. It was pointed out that when the arrested person is produced before the Court, it would be open to the Court to look into the relevant records presented by the authorized representative of the ED for answering the issue of need for continued detention in connection with the offence of money laundering. It was, in fact, such stringent safeguards provided under Section 19 of the Act of 2002 that prompted this Court to uphold the twin conditions contained in Section 45 thereof, making it difficult to secure bail.

16. This Court had occasion to again consider the provisions of the Act of 2002 in V. Senthil Balaji v. The State represented by Deputy Director , and more particularly, Section 19 thereof. It was noted that the authorized officer is at liberty to arrest the person concerned once he finds a reason to believe that he is guilty of an offence punishable under the Act of 2002, but he must also perform the mandatory duty of recording reasons. It

was pointed out that this exercise has to be followed by the information of the grounds of his arrest being served on the arrestee. It was affirmed that it is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested and it was observed that this safeguard is meant to facilitate an element of fairness and accountability. Dealing with the interplay between Section 19 of the Act of 2002 and Section 167 Cr. P.C., this Court observed that the Magistrate is expected to do a balancing act as the investigation is to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that Section 19 of the Act of 2002, supplemented by Section 167 Cr. P.C., provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the Act of 2002. It was held that the Magistrate is under a bounden duty to see to it that Section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that Section 167 Cr. P.C. is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of

Section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer.

17. In terms of Section 19(3) of the Act of 2002 and the law laid down in the above decisions, Section 167 Cr. P.C. would necessarily have to be complied with once an arrest is made under Section 19 of the Act of 2002. **The Court seized of the exercise under Section 167 Cr.P.C. of remanding the person arrested by the ED under Section 19(1) of the Act of 2002 has a duty to verify and ensure that the conditions in Section 19 are duly satisfied and that the arrest is valid and lawful. In the event the Court fails to discharge this duty in right earnest and with the proper perspective, as pointed out hereinbefore, the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination, validate an unlawful arrest made under Section 19 of the Act of 2002.**

18. In the matter of Madhu Limaye was a 3-Judge Bench decision of this Court wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of Article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.

19. Viewed in this context, the remand order dated 15.06.2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, reflects total failure on his part in discharging his duty as per the expected standard. The

learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reasons to believe that the appellants were guilty of an offence under the Act of 2002 and that there was proper compliance with the mandate of Section 19 of the Act of 2002. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of the ED! The sentence - 'It is further (sic) that all the necessary mandates of law have been complied with' follows - 'It is the case of the prosecution….' and appears to be a continuation thereof, as indicated by the word 'further', and is not a recording by the learned Judge of his own satisfaction to that effect.

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25. The way in which the ED recorded the second ECIR immediately after the appellants secured anticipatory bail in relation to the first ECIR, though the foundational FIR dated back to 17.04.2023, and then went about ummoning them on one pretext and arresting them on another, within a short span of 24 hours or so, manifests complete and utter lack of bonafides. Significantly, when the appellants were before the Delhi High Court seeking anticipatory bail in connection with the first ECIR, the ED did not even bring it to the notice of the High Court that there was another FIR in relation to which there was an ongoing investigation, wherein the appellants stood implicated. The second ECIR was recorded 4 days after the grant of bail and it is not possible that the ED would have been unaware of the existence of FIR No. 0006 dated 17.04.2023 at that time.

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27. Further, when the second ECIR was recorded on 13.06.2023 ‘after preliminary investigations’, as stated in the ED's replies, it is not clear as to when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours. This is a sine qua non in terms of Section 19(1) of the Act of 2002. Needless to state, authorities must act within the four corners of the statute, as pointed out by this Court in Devinder Singh v. State of Punjab , and a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof.

28. We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as ‘evasive’ and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an ‘evasive reply’. In Santosh S/o Dwarkadas Fafat v. State of Maharashtra , this Court noted that custodial interrogation is not for the purpose of ‘confession’ as the right against selfincrimination is provided by Article 20(3) of the

Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.

29. The more important issue presently is as to how the ED is required to 'inform' the arrested person of the grounds for his/her arrest. Prayer (iii) in the writ petitions filed by the appellants pertained to this. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest and this aspect has not been dealt with or delineated in Vijay Madanlal Choudhary (supra). Similarly, in V. Senthil Balaji (supra), this Court merely noted that the information of the grounds of arrest should be 'served' on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by the ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them.

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31. No doubt, in Vijay Madanlal Choudhary (supra), this Court held that non-supply of the ECIR in a given case cannot be found fault with, as the ECIR may contain details of the material in the ED's possession and revealing the same may have a deleterious impact on the final outcome of the investigation or inquiry. **Having held so, this Court affirmed that so long as the person is 'informed' of the grounds of his/her arrest, that would be sufficient compliance with the**

mandate of Article 22(1) of the Constitution.

32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. **To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002.** It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. **Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.**

33. We may also note that the language of Section 19 of the

Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

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36. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED

claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji (supra). **Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.**

37. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in V. Senthil Balaji (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be

utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. **The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.**

38. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. **In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of**

> **arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002.** Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.

20(i). A perusal of the aforesaid reveals that the Hon'ble Apex Court held that the Magistrate was required to pass a reasoned order at the stage of giving remand to the Investigating Agency. The conditions laid down under Section 19 of the PMLA were discussed threadbare and while relying upon the previous decisions in the cases of ***Vijay Madanlal Choudhary Versus Union of India & Ors. and V.Senthil Balaji Versus State represented by Deputy Director and others*** *(supra),* the Hon'ble Apex Court further clarified the position and held that the grounds of arrest would have to be furnished to the accused in writing and failure to do so would render the arrest illegal. Since in ***Pankaj Bansal Versus Union of India and others's*** case (supra), the grounds of arrest had not been supplied in writing, the arrest and consequential remand to custody was set aside.

21. Reverting to the facts of the present case, it is now to be

examined as to whether in the present case, the provisions of Section 19 of the PMLA were duly complied with in the light of the findings returned by the Hon'ble Apex Court in the judgments referred to above.

22. From the documents submitted by the respondents, during the course of arguments, it becomes clear that there was material in possession of the Assistant Director of the ED on the basis of which he had reason to believe that the petitioner should be arrested. The document dated 08.06.2023 which has duly been perused by us runs into 17 pages wherein the details of the investigation carried out and the material in possession of the Officer concerned has been referred to. All that had been revealed during the course of investigation was duly put in writing . Detailed reference was made to the material in possession. It was put in black and white that the Officer concerned had reason to believe that the petitioner was guilty of the offence of money laundering and that his custodial interrogation was necessary. The document was then put up before the higher authorities i.e. the Deputy Director and thereafter the Joint Director. Both officers perused the facts as given in the noting/document dated 08.06.2023 and concurred with the proposal submitted by the Assistant Director and approved the same. There was, therefore, sufficient compliance of the provisions of Section 19 of the PMLA with regard to the authorities having material in their possession giving them reason to believe (recorded in writing) that the petitioner was guilty of an offence punishable under the PMLA and that he was required to be arrested.

23. Still further, the grounds of arrest were recorded in writing

which is also clear from the second document furnished during the course of arguments and the same also runs into six pages. As per the own case of the respondent, these grounds of arrest were read by the petitioner. The same were also read over to him in the local language and thereafter he appended his signatures on the same. The grounds were also informed to two other persons who also appended their signatures on the grounds of arrest.

24. After the arrest, the petitioner was produced before the Vacation Judge/Additional Sessions Judge, Panchkula on 09.06.2023 and an application for remand (Annexure P-18) was moved. On the said application, order dated 09.06.2023 (Annexure P-19) was passed. The application for remand (Annexure P-18) is a detailed application wherein details as mentioned in other documents produced before this Court were mentioned and 14 days custody was sought. In the order dated 09.06.2023, the officer concerned i.e. the Vacation Judge/Addl. Sessions Judge, Panchkula observed that a perusal of the record revealed that all the necessary mandates had been complied with. It was held that the arguments advanced by the counsel for the accused were not found to be tenable and that the request of ED for seeking remand was justified. The Court, therefore, granted remand of 07 days and further directed to produce the petitioner before it on 16.06.2023. Further remand of 04 days was granted and ultimately on 20.06.2023, the petitioner was remanded to judicial custody. As already observed, there was sufficient material in possession of the Officer concerned which gave him reason to believe that the petitioner was guilty of an offence punishable under the PMLA. Further, grounds of

arrest were prepared in writing and were duly conveyed to the petitioner. The petitioner himself read out the same and appended his signatures also.

The argument of learned Senior Counsel that the arrest was only on account of the petitioner giving evasive answers is, therefore, devoid of merit because, as noticed above, there was material in possession of the Assistant Director of the ED on the basis of which he had reasons to believe that the petitioner should be arrested and further, the grounds of arrest were recorded in writing.

25. The question which would, therefore, arise would be as to whether this would be sufficient compliance of the provisions of Section 19 of the PMLA or not. In view of the ratio laid down by the Hon'ble Apex Court in the case of ***Pankaj Bansal Versus Union of India and others*** (supra), the answer would be in the negative. It has categorically been held in ***Pankaj Bansal Versus Union of India and others's case*** *(*supra) that the grounds of arrest would have to be conveyed in writing. The relevant part of the judgment wherein it has so been held reads as under:-

> **39. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating**

> **Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002.** Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.

26. To arrive at this conclusion, the Hon'ble Apex Court noted that the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. Reference was made to Section 45 of the PMLA which enables the arrested person to seek release on bail. It was noticed that Section 45 prescribes twin conditions which are required to be satisfied in the absence of which, the arrested person would not be entitled to bail. The Hon'ble Apex Court held that to meet the requirement of Section 45 of the PMLA, it would be essential for the arrested person to be aware of the grounds of arrest and the basis for the officer's 'reason to believe' that the arrested person was guilty of offence punishable under the PMLA. Only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the

Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. It was held that the communication of the grounds of arrest, as mandated by Article 22 (1) of the Constitution and Section 19 of the PMLA, is, therefore, meant to serve this higher purpose and must be given due importance. The Hon'ble Apex Court also held that the decision of the Delhi High Court in the case of **Moin Akhtar Qureshi Versus Union of India and others 2017 SCC Online Del 12108; WP (Crl.) No.2465 of 2017, decided on 01.12.2017** and that of the Bombay High Court in the case of **Chhagan Chandrakant Bhujbal vs. Union of India and others 2017 (1) AIR Bom R (Cri) 929** which took a contrary view do not lay down the correct law.

27. It would be essential to notice that in ***Pankaj Bansal Versus Union of India and others's case*** (supra) also, the grounds of arrest had been read over to him and as per the own case of the Enforcement Directorate, he had appended his signatures on the same. This fact duly finds mention in the judgment of the Hon'ble Apex Court itself and has also been admitted by learned counsel representing the parties during the course of arguments. It would, therefore, mean that the case of ***Pankaj Bansal Versus Union of India and others*** (supra) and the case of the present petitioner, in so far as the mode of conveying the grounds of arrest is concerned, are exactly the same. No doubt, in ***Basant Bansal's case*** (supra), Basant Bansal had not signed the grounds of arrest and as per the ED, he had refused to append his signatures though grounds of arrest had been read over to him and two witnesses had also appended their signatures.

However, as noticed above, in so far as Pankaj Bansal and the present petitioner are concerned, both had signed the grounds of arrest apart from two other witnesses but admittedly, the grounds of arrest had not been supplied to them in writing. This would, therefore, not be sufficient compliance of the provisions of Section 19 of the PMLA and Article 22 of the Constitution of India in view of the ratio laid down by the Hon'ble Apex Court in ***Pankaj Bansal Versus Union of India and others's case*** (supra), though apart from this, there was due compliance of the provisions of Section 19 of the PMLA as has been discussed in the preceding paragraphs.

28. The argument of the respondents that since the grounds of arrest would be required to be supplied henceforth, the arrest in the present case would not be affected, is devoid of merit. No doubt, the Hon'ble Apex Court held that the grounds of arrest would "henceforth" be furnished in writing to the accused but at the same time, it declared the arrest and the consequential remand of Pankaj Bansal and Basant Bansal to be illegal. Had the intention been to make the condition only prospective, the Hon'ble Apex Court would not have declared the arrest of Pankaj Bansal and Basant Bansal to be illegal.

29. In the case of ***Assistant Commissioner, Income Tax, Rajkot versus Saurashtra Kutch Stock Exchange Limited*** (supra), the Hon'ble Apex Court held that a judicial decision acts retrospectively. It was held that according to the Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. It was held that Judges do not make law, they only discover or find the correct law.

It was held that even where a subsequent decision alters the earlier one, the later decision does not make new law and it only discovers the correct principles of law which have to be applied retrospectively. The findings of the Hon'ble Apex Court were as under:-

> "35. In our judgment, it is also well settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court opened for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood."

30. It is, therefore, clear that the mandate that grounds of arrest would have to be conveyed in writing to the accused would not operate prospectively.

31. At the cost of repetition, it needs to be mentioned that had the intention of the Hon'ble Apex Court been to give effect to the condition only prospectively, the arrest of Pankaj Bansal and Basant Bansal would not have been held to be illegal. Since the case of the present petitioner is the same as that of Pankaj Bansal, in so far as the non-conveying of the grounds of arrest in writing and both having appended their signatures on the grounds of arrest are concerned, the only conclusion which this Court arrives at is that the

arrest of the present petitioner was also illegal and cannot be sustained.

32. In so far as the orders of remand are concerned, the same also do not clear the test laid down by the Hon'ble Apex Court and Section 19 of the PMLA. No doubt, the concerned Court did observe that all mandatory provisions had been complied with but as observed by the Hon'ble Apex Court, the orders especially the first order of remand dated 09.06.2023 (Annexure P-19) do not mention that the Court had perused the grounds of arrest to ascertain as to whether the ED had recorded reasons to believe that the petitioner was guilty of an offence under the PMLA and that there was proper compliance with the mandate of Section 19 of the PMLA.

33. In any case, once the arrest itself is held to be illegal, all other subsequent actions would be of no consequence and would have to fail.

34. We have perused the judgment of the Hon'ble Apex Court in the case of ***Ranjan Kumar Chadha Vs. State of Himachal Pradesh*** (supra) which has been relied upon by learned counsel for the respondents. The said judgment was given in a set of appeals filed against judgment and order of conviction dated 20.08.2010 and order of sentence dated 16.09.2010, passed by the High Court of Himachal Pradesh in an NDPS matter. The High Court of Himachal Pradesh had set aside the judgment of acquittal passed by the Special Court and convicted the accused under Section 20 of the NDPS Act. He was sentenced to undergo rigorous imprisonment for a period of 02 years and a fine of Rs.50,000/- was also imposed. The question which fell for consideration before the Hon'ble Apex Court was whether the High Court had erred in convicting the accused. In its findings, the scope of Section 50

of the NDPS Act was examined and it was also examined as to whether it would apply in all cases. This judgment, in the considered opinion of this Court, is not relevant for the purposes of the present case and does not, in any manner, come to the aid of the respondents.

35. In view of the aforementioned facts and circumstances, the arrest of the petitioner and the subsequent orders remanding the petitioner to the custody of the ED cannot be sustained. The present petition is, therefore, allowed. The arrest order dated 08.06.2023 (Annexure P-15), the remand orders dated 09.06.2023, 16.06.2023 and 20.06.2023 (Annexures P-19, P-21 and P-23 respectively) are accordingly set aside. It is directed that the petitioner be released forthwith unless his custody is required in connection with any other case.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

31.10.2023
mamta

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No