2025:CGHC:52079

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ORDER RESERVED ON 24.09.2025

ORDER DELIVERED ON 17.10.2025

CRMP No. 2506 of 2025

Chaitanya Baghel S/o Shri Bhupesh Baghel, Aged About 38 Years, R/o 1/7, Mansarovar Awasiya Parisar, Bhilai-3, Durg, Chhattisgarh (Currently Under Judicial Custody At Central Jail, Raipur (C.G.))

... Petitioner

versus

Directorate of Enforcement, GOI, Raipur Zonal Office Through Its Assistant Director, Mr. Sunil Kumar Singh, 2nd Floor, Netaji Subhash Stadium, Moti Bagh, Raipur, Chhattisgarh- 492001.

... Respondent

For Petitioner(s)	:	Mr. N.Hariharan, learned Sr. Counsel through VC assisted by Mr. Mayank Jain, Mr. Harshwardhan Parganiha, Mr. Madhur Jain, Mr. Arpit Goel, Mr. Deepak Jain, Mr. Aman Akhtar and Mr. Arjan Mandala, Advocates
For Respondent(s)	:	Mr. Zoheb Hossain, Advocate through VC and Dr. Sourabh Pande, Advocate (Special Public Prosecutor)

(Hon'ble Shri Justice Arvind Kumar Verma)

C A V Order

The present petition has been filed on behalf of the present petitioner under Section 528 of the *Bhatiya Nagarik Suraksha Sanhita*, 2023 seeking quashing of illegal arrest, "reasons to believe", grounds of arrest", remand orders, and all consequential proceedings, being arbitrary, illegal and unconstitutional. Therefore, he has sought for the following reliefs:

> *i) Quash the arrest dated 18.07.2025 of the petitioner by the respondent in ECIR/RPZO.04/2024, along with all proceedings emanating therefrom, being illegal and consequently, release the petitioner from custody.*
> *ii) Quash reasons to believe dated 18.07.2025 under Section 19(1) of the PMLA and grounds of arrest dated 18.07.2025 issued by the respondent.*
> *Iii) Quash the remand order dated 18.07.2025 and remand order dated 23.07.2025 passed by the Special Court (PMLA), Raipur in ECIR/RPZO/04/2024 along with all proceedings and orders emanating therefrom; and*
> *iv) Pass such other order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

2. Facts of the case in brief are that the petitioner was apprehended on 18.07.2025 by the respondent/ED purportedly in connection with an investigation under the Prevention of Money Laundering Act, 2002 (PMLA) allegedly linked to the Liquor Scam.

3. The investigation by the ED originated on the basis of various complaints and reports, *inter alia,* from the Income Tax Department, Anti

Corruption Bureau (ACB) and Economic Offences Wing (EOW), between 2022 and 2024, relating to alleged illicit financial transactions and proceeds of crime purportedly involving the petitioner. Despite the existence of these complaints and investigation spanning over three years, it is categorically submitted that the petitioner was never issued any summons under Section 50 of the PMLA at any stage for recoding statements or cooperating in the investigation. The petitioner remained entirely unaware of any proceedings initiated against him directly by the ED during the entire period.

4. Relevant records, including prosecution complaints of the Income Tax Department (dated 11.05.2022), prosecution complaints submitted by the ED itself (dated 30.08.2024) and charge sheets filed by EOW/ACB (dated 01.07.2024), along with all documents seized during searches conducted in the earlier stages of investigation had already been in the possession of the ED well before the arrest. Specifically, the ED acknowledged having received all material evidence by November 2022.

5. A detailed search was conducted by the ED under Section 17 of the PMLA on 10.03.2025 at the residence and other premises of the petitioner. After the search, based on the material collected, the ED recorded a reason to believe that the petitioner was guilty of offences under the PMLA, implicating him in money laundering activities. This finding was communicated via Original Application before the Adjudicating Authority. Even after the conclusion arrived at by the ED on 10.03.2025, no attempt was made to arrest the petitioner and on

18.07.2025, after an inordinate delay of over four months without disclosure of any new material or grounds justifying the delay the petitioner was arrested.

6. The arrest itself is alleged to have been precipitated purely on the basis of statements purportedly recorded in June and July 2025 from a co-accused absconder, Lakshmi Narayan Bansal, who faced an arrest warrant issued on 19.05.2025 by the Special Court and had remained at large. The petitioner is presently in illegal custody since arrest without valid grounds, causing severe disruption to personal liberty, reputation and ability to fairly defend the matter. The petitioner, therefore, seeks quashing of the arrest on the grounds of arbitrariness, non-compliance with statutory procedures, absence of necessity, malafide exercise of powers and violation of settled legal principles as laid down by the Apex Court and applicable statutes.

SUBMISSION ON BEHALF OF THE PETITIONER

7. Mr. Hariharan, learned Senior Counsel for the petitioner has sought indulgence of this Court for quashing of the arrest effected by the Enforcement Directorate (ED) on the grounds delineated below, argued on the following grounds:

ABSENCE OF "NEED AND NECESSITY TO ARREST"

It is submitted that the mandate of Section 528 of the BNSS confers this Court with ample powers to quash any criminal proceedings or orders, including arrests, where such action is vitiated by illegality arbitrariness, or abuse of process. It is submitted that the petitioner's arrest is manifestly illegal as there was neither need nor necessity for such a custodial action. The petitioner was never served with summons under Section 50 of the PMLA, nor afforded any opportunity to cooperate with the investigation over three years. In the matter of **Arvind Kejriwal Vs. ED (2025) 2 SCC 248**, the Apex Court has emphasized in para 74,76, 85 and 87 that failure to exhaust lesser intrusive remedies such as summons before resorting to arrest betrays arbitrariness and illegality. It reads as follows:

> "74. It has been strenuously urged on behalf of Arvind Kejriwal that the arrest would falter on the ground that the "reasons to believe" do not mention and record reasons for "necessity to arrest". The term "necessity to arrest" is not mentioned in Section 19(1) of the PML Act. However, this expression has been given judicial recognition in A*rnesh Kumar v. State of Bihar, (2014) 8 SCC 273*, which lays down that "necessity to arrest" must be considered by an officer before arresting a person. This Court observed that the officer must ask himself the questions – why arrest?; is it really necessary to arrest?; what purpose would it serve?; and what object would it achieve?
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> 76. In *Joginder Kumar v. State of Uttar Pradesh, (1994) 4 SCC 260,* the distinction between the power to arrest and the necessity and need to arrest, is explained in the following terms:
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> "20…No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person.
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> No arrest can be made in a routine manner on a

mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter. The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police officer issues notice to person to attend the Station House and not to leave the Station without permission would do.

85. On behalf of Arvind Kejriwal, it is submitted that there was no necessity to arrest on 21.03.2024. The RC/ECIR were registered in the month of August 2022. Further, most of the material relied upon in the “reasons to believe” are prior to July 2023. The statements under Section 50 of the PML Act and under Section 164 of the Code, or otherwise, of *Magunta Srinivasulu Reddy, Raghav Magunta, Siddharth Reddy,* etc., relate to the period prior to July 2023. Thus, it was not necessary to arrest Arvind Kejriwal on 21.03.2024 based on the said material. Lastly, in *Pankaj Bansal (supra)*, this Court observed:

“28. 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…”

87. We are conscious that the principle of parity or equality enshrined under Article 14 of the Constitution cannot be invoked for repeating

> or multiplying irregularity or illegality. If any advantage or benefit has been wrongly given, another person cannot claim the same advantage as a matter of right on account of the error or mistake. However, this principle may not apply where two or more courses are available to the authorities. The doctrine of need and necessity to arrest possibly accepts the said principle. Section 45 gives primacy to the opinion of the DoE when it comes to grant of bail. DoE should act uniformly, consistent in conduct, confirming one rule for all."

ALL MATERIALS ALREADY SECURED

8. It is contended that the alleged incriminatory material (documents, property, proceeds of crime) has already been seized and in exclusive possession of investigating authorities since 2022 pursuant to proceedings under the Income Tax Act and other agencies. The ED has failed to disclose any fresh material or development warranting arrest after this lapse, which nullifies any claim of necessity as enunciated in **Priyavrat Mandhana Vs. ED, 2024 SCC OnLine Bom 4233**, wherein the Bombay High Court guided by the Apex Court's holding in **Arvind Kejriwal** held that post-seizure arrests, unaccompanied by new material or necessity , are vitiated. It has been observed as under:

> "2. Without going into the merits of the case, a short point which needs to be looked into is, as to whether arrest of the petitioner by the respondents was in consonance with the ratio laid down by the Supreme Court in the case of *Arvind Kejriwal Vs. Directorate of Enforcement, 2024 SCC OnLine SC1703* in the sense, whether there was sufficient material with the authorized officer who had recorded his "reasons to believe" in writing and

whether there was a necessity to arrest the petitioner?

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5. Per contra, Mr. Venegavkar learned Special Public Prosecutor justified the arrest of the petitioner by contending *inter alia* that the grounds of arrest have been furnished to the petitioner in ECIR No. ECIR/MBZO-II/40/2023 as stated at page Nos. 299-300 of the petitioner on 29th July 2024 when he was arrested. Mr. Venegavkar would argue that since there existed “sufficient reasons to believe” on the basis of the grounds enunciated in the grounds of arrest, the petitioner came to be arrested on 29th July 2024. Mr. Venegavkar would argue that arrest of the petitioner was necessary, precisely for the following reasons:

(a) To prevent the destruction and tampering of evidence

(b) to confront the petitioner with various persons who are involved in these activities;

(c) To trace out the diverted funds which is the proceeds of crime;

(d) to prevent the petitioner from influencing the witnesses;

(e) to identify other persons involved in these activities.

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10. On 26th June 2024, respondents No. 1 & 2 conducted its first search at the petitioner's residence after investigating the impugned ECIR for nine months. Prior to the search and seizure, the petitioner was never summoned.

13. Admittedly, petitioner's father was released by the learned Special Judge under the PML Act on finding his arrest illegal on 25th July 2024. On 29th July 2024 under the pretext of second search, the ED conducted a fifteen hours interrogation of the petitioner and then arrested him on the basis of bank statements of MIL, Balaji Corporation and Mahan Synthetics and secondly, on the ground that the petitioner was giving "evasive replies" on being confronted with the said bank statements.

14. Mr. Kadam would argue that even prior to 29th July 2024 respondent Nos. 1 & 2 were well aware of all the transactions that took place in MIL, Balaji Corporation and Mahan Synthetics (from which funds were diverted in to the petitioner's accounts) as can be seen from the fact that investigation into the alleged offence was being conducted since 26thJune 2024 ie. for a period of nine months.

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16. Such information relating to the aforesaid three companies from which funds were received was always within the knowledge of the respondents, however, til the conduction of second search, they did not find it necessary to arrest the petitioner. It is only after petitioner's father was released by holding his arrest illegal, did the respondent Nos. 1 & 2 under the garb of second search at the same residence, interrogated the petitioner on the material that was already available with them only to create a spacious "reason to believe". Mr. Kadam would lastly argue that the "reason to believe" was entirely premised on the petitioner exercising his rights against self incrimination under Article 20(3) of the Constitution.

17. From the statements made by the respective counsel at bar, prima facie, it seems that respondent Nos. 1 and 2 already had sufficient material qua alleged proceeds of crime as enumerated in the grounds of arrest. If that being so, we find no reason to accept the argument of Mr. Venegavkar that in order to

prevent the destruction or tampering of the evidence, petitioner's arrest was necessary. The tracing out of diverted funds qua the proceeds of crime or to identify other persons alleged to be involved in the activities etc. *prima facie*, appears to be well within the knowledge of respondent No.1 & 2. The Supreme Court in case of Arvind Kejriwal (supra) elaborately discussed the scope of Section 19(1) of the PML Act in light of the ratio laid down by the Supreme Court in various pronouncements right from the ratio laid down way back in 1969 in the case of *Madhu Limaye Vs. Unknown (1969) 1 SCC 292*, *Pankaj Bansal (supra), V.Senthil Balaji (supra) and Vijay Madanlal Choudhary (supra)*.

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19. It has been observed that a higher threshold is required for making an arrest,necessitating a review of the material available to demonstrate the person's guilt. Production of the "reasons to believe" before the Special Court/magistrate, cannot be construed and is not the same as furnishing or providing the "reasons to believe" to the arrestee who has a right to challenge his arrest in violation of Section 19(1) of the PML Act.

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23. As already stated hereinabove, respondent No.1 & 2 seem to have already in possession of sufficient material qua the petitioner and his companies as well as alleged transactions during the arrest and interrogation of the petitioner's father, after whose release by the Special Court, the petitioner came to be arrested on 29th July 2024 during alleged second search within four days of release of petitioner's father. The material in possession of respondent No.1 & 2 prior to the

arrest of the petitioner as demonstrated by the respondents appears to be with it and,therefore, respondent No.1 & 2 could have arrested the petitioner at the time of alleged first search which was conducted on 26th June 2024 itself.

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25. These are *prima facie* observations without going into the merits and demerits of the case and, therefore, we deem it necessary to grant an interim relief of bail to the petitioner in light of the fact that the right to life and liberty is sacrosanct in view of the constitutional mandate."

DELAYED ARREST SMACKS OF MALAFIDES

9. It has been further contended that despite the ED having already formed an adverse opinion regarding the petitioner's involvement upon search under Section 17 of the PMLA on 10.03.2025, the arrest is belated by four months and thus arbitrary and legally unsustainable. Apex Court in the matter od **Joginder Kumar Vs. State of UP (1994) 4 SCC 260**, underscored that custodial arrest must be founded on real necessity, not as a mater or course. Absence of fresh incriminatory material between search and arrest, particularly when the authority had already recorded "reasons to believe" of guilt, nullifies any bonafide necessity.

ALLEGATIONS OF NON-COOPERATION ARE UNFOUNDED:

10. Learned Sr. Counsel further submits that the petitioner's arrest is illegal as there was neither need or necessity for such a custodial action:

a) it is an admitted position that the petitioner was neither served with summons under Section 50 of the PMLA nor required to appear in relation to the alleged offences. Allegations of the "non-cooperation" are thus rendered baseless. In the matter of **Pankaj Bansal Vs. UOI (2024) 7 SCC 576**, para 33, recognized that non-cooperation unless demonstrated by concrete material and after actual opportunities extended cannot ground arrest. It has been observed as under:

> "33. It is also necessary at this juncture to understand the facts in the case of Prabir Purkayastha (supra) 34. In the facts of the present case, this Court is of the opinion that the Petitioner herein has not been deprived of the information of the grounds of . In the said case, the Police Station Special Cell, Lodhi Colony, New Delhi had carried out extensive raids in connection with FIR No.224/2023 dated 17.08.2023, registered at Police Station Special Cell, Lodhi Colony, New Delhi for offences punishable under Sections 13, 16, 17, 18 and 22C of the UAPA, at the residential and official premises of the Appellant therein who was the Director of M/s PPK Newsclick Studio Pvt. Ltd. During the course of search proceedings, numerous documents and digital devices belonging to the Appellant therein, the company and the other employees of the company were seized and the Appellant therein was arrested in connection with the said FIR. The arrest memo in that case was in a computerized format and did not contain any column regarding the grounds of arrest of the Appellant therein. The Appellant therein was produced before the Ld. Additional Sessions Judge-02, Patiala House Court, New Delhi and a Remand Order was passed.

> In the said case a copy of the remand application had been sent over whatsapp to the learned Counsel for the Appellant therein which according to the learned ASG did provide a complete picture about the grounds of arrest of the Appellant therein.
> However, Paragraph No. 50 of the said Judgment, which has been quoted above, does show that the Apex Court was of the opinion that the copy of the remand application in the purported exercise of communication of the grounds of arrest in writing was not provided to the Appellant therein or his Counsel which is not in the present case.

b) Full Cooperation During Search: Petitioner answered all questions raised during the Section 17 PMLA search and promptly provided detailed explanations before the Adjudicating Authority. The submission of comprehensive replies by the petitioner at every stage further debunks the foundation of non-cooperation.

MECHANICAL AND TEMPLATED GROUNDS OF ARREST

11. The "Grounds of Arrest" are verbatim reproduction of generic templated statements, bereft of case-specific reasoning or individualized satisfaction, contrary to the requirements as mandated by Article 22 (1) of the Constitution and jurisprudence of the Apex Court. In **Prabir Purkayastha Vs. State (NCT of Delhi), (2024) 8 SCC 254** laid down by the Apex Court, in para 48, it has been held that mere reproduction of "reasons to believe" as "grounds of arrest" does not satisfy the constitutional mandate. The accused must be apprised of clear, distinct

and case specific grounds to enable meaningful challenge to the arrest.

Para 48 reads as under:

> 48. It may be reiterated at the cost of repetition that there is a significant difference in the phrase ‘reasons for arrest’ and ‘grounds of arrest’. The ‘reasons for arrest’ as indicated in the arrest memo are purely formal parameters, viz., to prevent the accused person from committing any further offence; for proper investigation of the offence; to prevent the accused person from causing the evidence of the offence to disappear or tempering with such evidence in any manner; to prevent the arrested person for making inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the Investigating Officer. These reasons would commonly apply to any person arrested on charge of a crime whereas the ‘grounds of arrest’ would be required to contain all such details in hand of the Investigating Officer which necessitated the arrest of the accused. Simultaneously, the grounds of arrest informed in writing must convey to the arrested accused all basic facts on which he was being arrested so as to provide him an opportunity of defending himself against custodial remand and to seek bail. Thus, the ‘grounds of arrest’ would invariably be personal to the accused and cannot be equated with the ‘reasons of arrest’ which are general in nature.”

NO JUDICIAL EMBARGO OR REVIEW OF ARREST

12. Review power remains intact : The ED’s reliance upon **Radhika Agarwal Vs. UOI, 2025 SCC OnLine SC 449,** is misplaced; both the majority and concurring opinions explicitly recognize the Court’s jurisdiction to set aside arrests which contravene statutory or constitutional safeguards (para 30, 31).

13. In **Arvind Kejriwal Vs. ED (2025) 2 SCC 248,** (para 23,31-34,44), the Apex Court expressly confirms that Courts may look behind the "reasons to believe" to assess whether the arrest is vitiated by arbitrariness, extraneous purpose or lack of necessity. It has been held that :

> "23. We do not agree and must reject this argument. We hold that the power of judicial review shall prevail, and the court/magistrate is required to examine that the exercise of the power to arrest meets the statutory conditions. The legislature, while imposing strict conditions as preconditions to arrest, was aware that the arrest may be before or prior to initiation of the criminal proceedings/prosecution complaint. The legislature, neither explicitly nor impliedly, excludes the court surveillance and examination of the preconditions of Section 19(1) of the PML Act being satisfied in a particular case. This flows Criminal Appeal No. 2493 of 2024 Page 14 of 64 from the mandate of Section 19(3) which requires that the arrestee must be produced within 24 hours and taken to the Special Court, or court of judicial/metropolitan magistrate having jurisdiction. The exercise of the power to arrest is not exempt from the scrutiny of courts. The power of judicial review remains both before and after the filing of criminal proceedings/prosecution complaint. It cannot be said that the courts would exceed their power, when they examine the validity of arrest under Section 19(1) of the PML Act, once the accused is produced in court in terms of Section 19(3) of the PML Act.
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> 31. Providing the written "grounds of arrest", though a must, does not in itself satisfy the compliance requirement. The authorized officer's genuine belief and reasoning based on the evidence that establishes the arrestee's guilt is also the legal necessity. As the "reasons to

believe" are accorded by the authorized officer, the onus to establish satisfaction of the said condition will be on the DoE and not on the arrestee.

32. On the necessity to satisfy the preconditions mentioned in Section 19(1) of the PML Act, we have quoted from the judgment of this Court in Padam Narain Aggarwal (supra) and also referred to and quoted from the Canadian judgment in Gifford (supra). Existence and validity of the "reasons to believe" goes to the root of the power to arrest. The subjective opinion of the arresting officer must be founded and based upon fair and objective consideration of the material, as available with them on the date of arrest. On the reading of the "reasons to believe" the court must form the 'secondary opinion' on the validity of the exercise undertaken for compliance of Section 19(1) of the PML Act when the arrest was made. The "reasons to believe" that the person is guilty of an offence under the PML Act should be founded on the material in the form of documents and oral statements.

33. Referring to the legal position, this Court in *Dr. Partap Singh and Another v. Director of Enforcement, Foreign Exchange Regulation Act and others,(1985) 3 SCC 72* has observed:

"9. When an officer of the Enforcement Department proposes to act under Section 37 undoubtedly, he must have reason to believe that the documents useful for investigation or proceeding under the Act are secreted. The material on which the belief is grounded may be secret, may be obtained through Intelligence or occasionally may be conveyed orally by informants. It is not obligatory upon the officer to disclose his material on the mere allegation that there was no material before him on which his reason to believe can be grounded. The expression "reason to believe" is to be found in various statutes. We may take note of one such. Section 34 of Income Tax Act, 1922 inter alia provides that the Income Tax Officer must have "reason to believe" that the incomes, profits or gains chargeable to income tax have been under assessed, then alone he can take action under Section 34. In S. Narayanappa v. CIT the assessee challenged the action taken under Section 34 and amongst others it was contended on his behalf that the reasons which induced the Income Tax Officer to initiate proceedings under Section 34 were justiciable, and therefore, these reasons should have been communicated by the Income Tax Officer to the assessee before the assessment can be reopened. It was also submitted that the reasons must be sufficient for a prudent man to come to the conclusion that the income escaped assessment and that the Court can examine the sufficiency or adequacy of the reasons on which the Income Tax Officer has acted. Negativing all the limbs of the contention, this Court held that “if there are in fact some reasonable grounds for the Income Tax Officer to believe that there had been any non-disclosure as regards any fact, which could have a material bearing on the question of under-assessment, that would be sufficient to give jurisdiction to the Income Tax Officer to issue notice under Section 34.”The Court in terms held that whether these grounds are adequate or not is not a matter for the court to investigate.

10. The expression subjective satisfaction of the Officer. The belief must be held in good faith; it cannot merely be a pretence. In the same case, it was held that it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent the action of the Income Tax Officer in starting proceedings under Section 34 is open to challenge in a court of law. (See Calcutta Discount Co. Ltd. v. ITO). In R.S. Seth Gopikrishan Agarwal v. R.N. Sen, Assistant Collector of Customs this Court repelled the challenge to the validity of the search of the premises of the appellant and the seizure of the documents found therein. The search was carried out under the authority of an

authorization issued under Rule 126(L)(2) of the Defence of India (Amendment) Rules, 1963 (Gold Control Rules) for search of the premises of the appellant. The validity of the authorization was challenged on the ground of mala fides as also on the ground that the authorization did not expressly employ the phrase 'reason to believe' occurring in Section 105 of the Customs Act. Negativing both the contentions, Subba Rao, C.J. speaking for the Court observed that the subject underlying Section 105 of the Customs Act which confers power for issuing authorization for search of the premises and seizure of incriminating articles was to search for goods liable to be confiscated or documents secreted in any place, which are relevant to any proceeding under the Act. The legislative policy reflected in the section is two categories mentioned in the section. The Court further observed that though under the section, the officer concerned need not give reasons if the existence of belief is questioned in any collateral proceedings he has to produce relevant evidence to sustain his belief. A shield against the abuse of power was found in the provision that the officer authorized to search has to send forthwith to the Collector of Customs a copy of any record made by him. Sub-section (2) of Section 37 of the Act takes care for this position inasmuch as that where an officer below the rank of the Director of Enforcement carried out the search, he must send a report to the Director of Enforcement. The last part of the submission does not commend to us because the file was produced before us and as stated earlier, the Officer issuing the search warrant had material which he rightly claimed to be adequate for forming the reasonable belief to issue the search warrant."

34. This decision relates to the power of authored officers to conduct search and seizure operations under Section 37 of the Foreign Exchange Regulation Act, 1973. The aforesaid observations would be equally relevant, though in the context of the power to arrest, a power

which is more drastic and intrusive. Thus, the nature of inquiry to be undertaken by the courts has to be in-depth and detailed.

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44. We now turn to the scope and ambit of judicial review to be exercised by the Court. Judicial review does not amount to a mini-trial or a merit review. The exercise is confined to ascertain whether the "reasons to believe" are based upon material which 'establish' that the arrestee is guilty of an offence under the PML Act. The exercise is to ensure that the DoE has acted in accordance with the law. The courts scrutinize the validity of the arrest in exercise of power of judicial review. If adequate and due care is taken by the DoE to ensure that the "reasons to believe" justify the arrest in terms of Section 19(1) of the PML Act, the exercise of power of judicial review would not be a cause of concern. Doubts will only arise when the reasons recorded by the authority are not clear and lucid, and therefore a deeper and in-depth scrutiny is required. Arrest, after all, cannot be made arbitrarily and on the whims and fancies of the authorities. It is to be made on the basis of the valid "reasons to believe", meeting the parameters prescribed by the law. In fact, not to undertake judicial scrutiny when justified and necessary, would be an abdication and failure of constitutional and statutory duty placed on the court to ensure that the fundamental right to life and liberty is not violated."

The four-part Doctrinal Test to examine the legality of arrest is as under:

Radhika Agarwal (supra) laid down a four-fold test:

i) "Reason to believe" must be on admissible, justiciable material not for collection of evidence. He has referred to paras 33 & 34 which reads as under:

33. Arvind Kejriwal (supra) also holds that the courts can judicially review the legality of arrest. This power of judicial review is inherent in

Section 19 as the legislature has prescribed safeguards to prevent misuse. After all, arrests cannot be made arbitrarily on the whims and fancies of the authorities. This judicial review is permissible both before and after criminal proceedings or prosecution complaints are filed.

34. On the nature of "material" examined by the DoE, Arvind Kejriwal (supra) states that such "material" must be admissible before a court of law. This is because the designated officer is required to arrive at a conclusion of guilt based on the "material" examined and such guilt can only be based on admissible evidence. The relevant portion reads:
"47. DoE has drawn our attention to the use of the expression 'material in possession' in Section 19(1) of the PML Act instead of 'evidence in possession'. Though etymologically correct, this argument overlooks the requirement that the designated officer should and must, based on the material, reach and form an opinion that the arrestee is guilty of the offence under the PML Act. Guilt can only be established on admissible evidence to be led before the court, and cannot be based on inadmissible evidence. While there is an element of hypothesis, as oral evidence has not been led and the documents are to be proven, the decision to arrest should be rational, fair and as per law. Power to arrest under Section 19(1) is not for the purpose of investigation. Arrest can and should wait, and the power in terms of Section 19(1) of the PML Act can be exercised only when the material with the designated officer enables them to form an opinion, by recording reasons in writing that the arrestee is guilty."

2. Arrest grounded on the whole material, including exculpatory;

Reference is made to para 31 and 35.

The investigating officer is also required to look at the whole material and cannot ignore material that exonerates the arrestee. A wrong application of law or arbitrary exercise of duty by the designated officer can lead to illegality in the process. The court can exercise judicial review to strike down such a decision. Referring to errors in the decision-making process, Arvind Kejriwal (supra) records how such errors can vitiate the judgment or decision of the statutory authority. The relevant portion reads:

"67. Error in decision making process can vitiate a judgment/decision of a statutory authority. In terms of Section 19(1) of the PML Act, a decision-making error can lead to the arrest and deprivation of liberty of the arrestee. Though not akin to preventive detention cases, but given the nature of the order entailing arrest - it requires careful scrutiny and consideration. Yet, at the same time, the courts should not go into the correctness of the opinion formed or sufficiency of the material on which it is based, albeit if a vital ground or fact is not considered or the ground or reason is found to be non-existent, the order of detention may fail.
68. In Centre for PIL v. Union of India, this Court observed that in judicial review, it is permissible to examine the question of illegality in the decision-making process. A decision which is vitiated by extraneous considerations can be set aside. Similarly, in *Uttamrao Shivdas Jankhar v. Ranjitsinh Vijaysinh Mohite Patil,* elaborating on the expression "decision making process", this Court held that judicial interference is warranted when there is no proper application of mind on the requirements of law. An error in the decision-making process crops up where the authority fails to consider a relevant factor and considers irrelevant factors to decide the issue."

ii) Review for proportionality an improper executive motive is essential;

36. On the extent of judicial review available with the court viz. "reasons to believe", it was held that judicial review cannot amount to a merits review. The exercise is confined to ascertain if, based upon "material" in possession of the DoE, the DoE had "reasons to believe" that the arrestee is guilty of an

offence under the PML Act. The relevant portion reads:

"44. We now turn to the scope and ambit of judicial review to be exercised by the court. Judicial review does not amount to a mini-trial or a merit review. The exercise is confined to ascertain whether the "reasons to believe" are based upon material which 'establish' that the arrestee is guilty of an offence under the PML Act. The exercise is to ensure that the DoE has acted in accordance with the law. The courts scrutinize the validity of the arrest in exercise of power of judicial review. If adequate and due care is taken by the DoE to ensure that the "reasons to believe" justify the arrest in terms of Section 19(1) of the PML Act, the exercise of power of judicial review would not be a cause of concern. Doubts will only arise when the reasons recorded by the authority are not clear and lucid, and therefore a deeper and in-depth scrutiny is required. Arrest, after all, cannot be made arbitrarily and on the whims and fancies of the authorities. It is to be made on the basis of the valid "reasons to believe", meeting the parameters prescribed by the law. In fact, not to undertake judicial scrutiny when justified and necessary, would be an abdication and failure of constitutional and statutory duty placed on the court to ensure that the fundamental right to life and liberty is not violated."

37. On the different facets of judicial review available with the Court while examining the legality of arrests, Arvind Kejriwal (supra) states:

"65. …We have already referred to the contours of judicial review expounded in Padam Narain Aggarwal (supra), and Dr. Pratap Singh (supra). We have also referred to the principles of Wednesbury reasonableness.

66. In Amarendra Kumar Pandey v. Union of India, this Court elaborated on the different facets of judicial review regarding subjective opinion or satisfaction. It was held that the courts should not inquire into correctness or otherwise of the facts found except where the facts found existing are not

supported by any evidence at all or the finding is so perverse that no reasonable man would say that the facts and circumstances exist. Secondly, it is permissible to inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In simple words, the conclusion has to logically flow from the facts. If it does not, then the courts can interfere, treating the lack of reasonable nexus as an error of law. Thirdly, jurisdictional review permits review of errors of law when constitutional or statutory terms, essential for the exercise of power, are misapplied or misconstrued. Fourthly, judicial review is permissible to check improper exercise of power. For instance, it is an improper exercise of power when the power is not exercised genuinely, but rather to avoid embarrassment or for wreaking personal vengeance.

Lastly, judicial review can be exercised when the authorities have not considered grounds which are relevant or has accounted for grounds which are not relevant."

iv) Proportionality doctrine must govern the exercise of arrest.

On all these indices, the impugned arrest collapses.

"39. In the present context, the power of arrest is provided in Section 104(1) of the Customs Act. For ease of reference, we have provided a tabular comparison between Section 19(1) of the PML Act, envisaging the DoE's power of arrest, and Section 104(1) of the Customs Act, envisaging the customs officer's power of arrest:

Section 19(1) of the PML Act Section 104(1) of the

Customs Act

19. Power to arrest.—(1) Power to arrest.—429[(1) If an Director, Deputy Director, Assistant officer of customs empowered in this Director or any other officer behalf by general or special order of authorized in this behalf by the the Principal Commissioner of Central Government by general or Customs or Commissioner of special order, has on the basis of Customs has reason to believe that material in his possession, reason to any person

> has committed an offence believe (the reason for such belief to punishable under Section 132 or 45 The doctrine of proportionality has been expounded by this Court in a line of decisions, including the recent judgment of Association of Democratic Reforms and Another v. Union of India and Others, 2024 INSC 113. It comprises four prongs - (i) legitimate aim/purpose - The first step is to examine whether the act/measure restricting the fundamental right has a legitimate aim and/or purpose; (ii) rational connection -The second step is to examine whether the restriction has rational connection with the aim;
> (iii) minimal impairment/necessity test - The third step is to examine whether there should have been a less restrictive alternate measure that is equally effective; and (iv) balancing stage - The last stage is to strike an appropriate balance between the fundamental right and the pursued public purpose. be recorded in writing) that any Section 133 or Section 135 or Section person has been guilty of an offence 135-A or Section 136, he may arrest punishable under this Act, he may such person and shall, as soon as arrest such person and shall, as soon may be, inform him of the grounds for as may be, inform him of the grounds such arrest."

MALAFIDE AND ARBITRARINESS

14. The peculiar timing of arrest - in absence of new material and following the recording of statements of co-accused absconder demonstrates clear malafides and arbitrariness, amounting to abuse of process and thus, falling squarely within the protective ambit of Section 528 BNSS and Article 21. The ED conducted a search at the petitioner's premises on 10.03.2025 under Section 17 of the PMLA, during which it allegedly concluded that the petitioner was guilty of money laundering. This finding was reflected in the ED's Original Application before the Adjudicating Authority. Despite having formed

such an opinion in March 2025 and no fresh material emerging thereafter, the ED arrested the petitioner only on 18.07.2025 after a lapse of four months.

15. The delayed arrest without demonstrating any fresh necessity or justification is arbitrary and mala fide, particularly, as it appears to have been made after **obtained coerced statements** from a co-accused absconder ie. Lakshmi Narayan Bansal, against whom arrest warrant was issued by the Special Court on 19.05.2025. Reliance is placed on the judgment of the Bombay High Court in Priyavrat Mandhana Vs. Enforcement Directorate, 2024 SCC OnLine Bom 4233 which held that when the ED fails to arrest during the initial search and offers no fresh ground for arrest thereafter, such an arrest lacks necessity and stands vitiated.

It is submitted that the ED has no authority to arrest the petitioner as the power to conduct further investigation can be exercised during trial and with prior permission of the Competent Court (*Vijay Madanlal Choudhary Vs. UOI (2023) 12 SCC 1, para 263*), ED has failed to argue the said aspect.

FURTHER INVESTIGATION WITHOUT PERMISSION.

16. It is submitted that the Directorate of Enforcement is conducting a piecemeal and continuous investigation in the present matter without obtaining prior permission from the competent Court. Such conduct of the further investigation, in absence of judicial sanction, is impermissible in law and renders the entire exercise of investigation, including any

consequential arrest, remand or filing of subsequent complaints, illegal and void *ab initio.*

17. The settled legal position mandates that once a complaint has been filed before the Special Court under the Prevention of Money Laundering Act, 2002 ("PMLA") any further investigation can be undertaken only after obtaining permission from the concerned Court. The continuation of investigation in fragments, without such leave, violates the safeguards envisaged under the Code of Criminal Procedure, 1973 (Cr.P.C.) and offends the principles of fair trial and due process.

LEGAL POSITION GOVERNING COMPLAINTS UNDER THE PMLA

18. The procedure prescribed for filing of complaints under Section 44 of the PMLA read with Section 200 to 204 of the Cr.P.C. is distinct from that of a police report under Section 173 of the Cr.P.C. The process under the PMLA unfolds as follows :

1. **Cognizance**: Upon completion of investigation, the Enforcement Directorate is required to file a complaint before the Special Court (PMLA) whereupon the Court may take cognizance under Section 200 Cr.P.C.

2. **Enquiry** : Thereafter an enquiry is conducted in terms of Sections 201 to 204 Cr.P.C.

3. **Exchange of Documents** : The stage of supply of documents arises under Sections 207 and 208 Cr.P.C.

4. **Framing of Charges** : The trial commences only after framing of charges, as held in *Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92, para 117.2*.

19. It is now authoritatively settled by the Apex Court in *Tarsem Lal Vs. Enforcement Directorate (2024) 7 SCC 61, paras 33.1 and 33.2,* that the procedure prescribed under Sections 200-204 Cr,.P.C. applies to proceedings under the PMLA, and not that contemplated under Section 173 Cr.P.C. for police reports.

20. Further as held in *Pramatha Nath Talukdar Vs. Saroj Ranjan Sarkar, 1961 SCC OnLine SC 155 (para 52),* a subsequent complaint in a criminal case can be filed only after obtaining satisfaction of the Magistrate that fresh evidence has emerged which could not, with reasonable diligence have been produced in the earlier complaint.

21. Thus, in the absence of such judicial satisfaction or leave,the filing of multiple complaints by the Enforcement Directorate each founded upon the same set of transactions,is impermissible and contrary to the settled principles of criminal jurisprudence.

ILLEGAL REMAND ORDERS

22. It is submitted that the learned Special Court erred in remanding the petitioner to custody despite the admitted position that the Enforcement Directorate had not carried out any lawful investigation in accordance with the provisions of law. The remand order thus suffers from serious legal infirmity.

23. Lastly, it is contended that the respondent's reliance upon **Vijay Madanlal Chaudhary, Senthil Balaji, P.Chidambaram Vs. ED and Others,** does not dilute the necessity for scrupulous compliance with statutory and constitutional protections, or the obligation to show demonstrable, pressing necessity.

24. It is therefore submitted by the learned Sr. Counsel for the petitioner that in view of the aforementioned and in the exercise of jurisdiction under Section 528 of the BNSS, 2023, may quash the petitioner's arrest as manifestly illegal and vitiated by arbitrariness.

SUBMISSION OF THE RESPONDENT/ED

25. Mr. Zoheb Hossain, learned Sr. counsel for the respondent/ED, in response to the captioned petitioner contended that the challenge raised by the petitioner is misconceived in law and on facts. The grievance of the petitioner is that (i) the material was available months prior to the arrest and hence he ought to have been arrested earlier and (ii) the material is itself inadequate to justify arrest. These submissions are mutually destructive and cannot co-exist.

26. It is contended that the petitioner seeks to challenge the legality of arrest effected under Section 19 of the Prevention of Money Laundering Act, 2002 (PMLA) by invoking the general supervisory jurisdiction of this Court. Such invocation, it is submitted, is misconceived in law, as the scope of interference under Section 528 BNSS is narrow, supervisory and confined only to the examination of legality and procedural propriety of the arrest-not to a re-appreciation or re-evaluation of the evidentiary material forming the basis thereof.

27. It is submitted that once the mandatory requirements of Section 19 of the PMLA are complied with-namely, the existence of material in possession of the authorized officer and the recording of the "reasons to believe" that the person is guilty of an offence under the Act-the arrest cannot be judicially interfered with at the instance of the accused.

LIMITED SCOPE OF JUDICIAL REVIEW:

28. It is submitted that the judicial review of arrest under the PMLA is not a merit based inquiry into the sufficiency or reliability of material but is limited to testing whether the arresting officer acted within the bounds of statutory authority and observed the procedural safeguards under the Act. In **Arvind Kejriwal Vs. Directorate of Enforcement (2024) SCC OnLine SC 1703**, it has been held that:

> "At the stage of arrest under Section 19 of the PMLA, the Court cannot test the sufficiency, correctness or admissibility of the material relied upon. The scope of review is confined to verifying the existence of material and the due recording of reasons to believe."

29. Similarly, in **Radhika Agarwal Vs. Union of India (2025) Scc OnLine SC 449,** the Apex Court reiterated that :

> "9. However, when the legality of such an arrest made under the Special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely to ascertain whether the officer was an

authorized officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorized officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.

10. It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and circumstances of each case. The criteria or parameters of judicial review over the subjective satisfaction applicable in Service related cases, cannot be made applicable to the cases of arrest made under the Special Acts. The scrutiny on the subjective opinion or satisfaction of the authorized officer to arrest the person could not be a matter of judicial review, in as much as when the arrest is made by the authorized officer on he having been satisfied bout the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act. Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorized officer, would not be a matter of scrutiny by the Courts at such a nascent stage of inquiry or investigation.

11. As held in Adri Dharan Das vs. State of W.B.4, ordinarily arrest is a part of the process

of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the society etc. For these or such other reasons, arrest may become an inevitable part of the process of investigation.

12. It is pertinent to note that the Special Acts are enacted to achieve specific purposes and objectives. The power of judicial review in cases of arrest under such Special Acts should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the Special Acts may frustrate the very purpose and objective of the Acts. It hardly needs to be stated that the offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. Frequent or casual interference of the courts in the functioning of the authorized officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases W.P.(Crl.) No.336 of 2018 & Connected Matters would be the society at

> large and the nation itself. With the advancement in Technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorized officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts. Such offences are against the society and against the nation at large, and cannot be compared with the ordinary offences committed against an individual, nor the accused in such cases be compared with the accused of ordinary crimes."

30. Judicial scrutiny in a challenge to arrest must remain within the confines of legality and procedural compliance. The adequacy or sufficiency of the material is beyond the pale of judicial review at this stage and can only be canvassed before the competent court while seeking bail. Therefore, it is submitted that the petitioner's attempt into a re-examination of the merits and sufficiency of the material forming the basis of arrest is impermissible and contrary to the binding precedents of the Apex Court.

COMPLIANCE WITH SECTION 19 OF THE PMLA

31. It is further submitted that all the statutory requirements under Section 19 of the PMLA has been scrupulously complied with in the present case. The authorized officer of the Directorate being duly empowered under the Act, was in possession of substantial and credible material including :

a) statements of key witnesses recorded under Section 50 of the PMLA, namely Lakshminarayan Bansal and Chaitanya Baghel.

b) documentary evidence recovered during searches conducted on 10.03.2025 and 04.04.2025 revealing infusion of unaccounted funds into the petitioner's real estate ventures, and

c) financial trail analyses corroborating the nexus between the petitioner and the proceeds of crime.

Upon examination of the above material, the authorized officer duly recorded “reasons to believe” in writing on 18.07.2025 that the petitioner was guilty of an ofence under Section 3 of the PMLA. The said reasons were furnished to the petitioner at the time of arrest, in strict compliance with the mandate of Section 19(1) of the Act.

The arrest, therefore, stands squarely within the four corners of law and is not vitiated on any ground of illegality or procedural irregularity.

DISCRETION TO ARREST-NOT SUBJECT TO JUDICIAL SUBSTITUTION.

32. The next contention of the learned counsel for the respondent is that Section 19 of the PMLA confers discretionary power on the authorized officer to arrest, as is evidence from the use of the expression “may arrest” . The decision as to whether and when to arrest a person is a matter of subjective satisfaction of the authorized officer based on the material available at the time of investigation.

33. It is a settled principle that the Court cannot substitute its own opinion for that of the authorized officer on the question of sufficiency or

necessity of arrest. The Apex Court in **Vijay Madanlal Choudhary Vs. Union of India (2022) 10 SCC 494** held that :

> "The formation of belief and exercise of power to arrest under Section 19 of the PMLA are matters within the domain of the authorized officer. The Court cannot sit in appeal over such satisfaction unless there is clear mala fide or complete absence of material."

There being no allegation, much less proof, of mala fide, arbitrariness, or breach of statutory safeguards, the arrest of the petitioner is immune from judicial interference.

CONSISTENT VIEW OF THE COURTS

34. It is further relied on the consistent judicial pronouncements affirming the limited scope of interference in such matters:

i) **Arvind Kejriwal Vs. Directorate of Enforcement (2024) SCC OnLine SC 1703-** Arrest under Section 19 PMLA cannot be quashed unless there is patent illegality or violation of safeguards.

ii) **Radhika Agarwal Vs. Union of India (2025) SCC OnLine SC 449-** Adequacy or sufficiency of material cannot be gone into at the stage of challenge to arrest.

Iii) **Arvind Dham Vs. Union of India, 2024 SCC OnLine Del 8490 SLP (Crl.) No. 17357/2024** (withdrawn on 24.09.2024) -High Court held that challenge to arrest cannot be entertained where statutory requirements are met, SLP withdrawn with liberty to seek bail, thereby affirming the principle.

iv) **Vijay Madanlal Choudhary (supra)-** Formation of "reasons to believe" under Section 19 is not subject to judicial re-evaluation. These authorities, conclusively establish that the scope of interference is highly circumscribed and the petitioner has failed to demonstrate any infraction that warrants judicial intervention.

35. The contention of the counsel for the respondent/ED is that once the Magistrate or Special Judge upon perusal of the remand application and accompanying material, authorizes custody, the arrest merges into the judicial process, and any challenge to the arrest *per se* becomes legally infructuous and unsustainable.

36. The Apex Court in the matter of **Pragyna Singh Thakur Vs. State of Maharashtra (2011) 10 SCC 445**, has held that even if there was any procedural irregularity or alleged violation at the stage of arrest the same stands cured upon judicial remand, as the custody thereafter is by virtue of the order of a competent court. The Court observed that :

> "60…... Even if it is assumed for the sake of argument that there was any violation by the police by not producing the appellant within 24 hours of arrest, the appellant could seek her liberty only so long as she was in the custody of the police and after she is produced before the Magistrate and remanded to custody by the learned Magistrate, the appellant, cannot seek to be at liberty on the ground that there had been non-compliance with Article 22(2) or Section 167(2) Cr.P.C. by the police."

37. Likewise, in **Pranab Chatterjjee Vs.State of Bihar (1970) 3 SCC 926,** the Apex Court has held that in a challenge to detention the legality of custody is to be tested with reference to the subsisting remand orders and not the initial arrest. The Court categorically held that :

> "9.… The arrest of the petitioner, in the

> circumstances mentioned in the report of the Sub Divisional Officer, cannot in our opinion be considered to be illegal. It has been held by this Court to Habeas Corpus proceedings the Court is to have regard to the legality or otherwise of the detention of a person at the time of the return and not with reference to the institution of the proceedings (See Ram Narain Singh Vs. State of Delhi (1953) 1 SCC 389: AIR 1953 SC 277: (1953) SCR 652:1953 SCJ 326). It is clear that on the date when the return was filed by the second respondent the cases against the petitioner have already been filed and as we will presently show, proper remand orders have also been passed by the Magistrate."

38. Thus, where successive and valid remand orders have been passed after due application of judicial mind, the petitioner cannot, under the guise of Section 528 BNSS seek to invalidate the arrest retrospectively.

THE REMAND ORDER IS REASONED AND PASSED AFTER DUE CONSIDERATION

39. A perusal of the remand order dated 18.07.2025 reveals that the learned Special Judge applied judicial mind and recorded satisfaction on the legality of the arrest and the necessity of custodial interrogation. Hence, once there is a valid and reasoned remand order passed by the learned Special Judge reflecting due application of mind after perusal of the record, the arrest cannot be said to be vitiated. The only exception to the said principle is laid down by the Apex Court in the case of **Pankaj Bansal Vs. Union of India 2023 SCC Online SC 1244** wherein it was held that when the superior court finds that there has been a breach of a fundamental right and the remand order is totally cryptic which is not even the petitioner's case in the present matter:

> “18. In the matter of *Madhu Limaye and others, (1969) 1 SCC 292,* 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.”

40. It is next contended that the learned Special Court was not required to conduct a detailed or roving inquiry at the stage of remand and was only required to see whether material existed to justify remand. Reliance in this regard in placed on the decision of the Delhi High Court

in the case of **Directorate of Enforcement Vs. Sunil Godhwani, 2019 SCC OnLine Del 11386** wherein while setting aside the order refusing ED custody, it was held as under:

> "21. The Magistrate authorizing remand under Section 167 of the Cr.p.C. can only examine the record to see whether there exists some material to justify the remand however, the Magistrate cannot conduct a roving enquiry to test the sufficiency of material at this stage for the obvious reason that investigation would be at a nascent stage and the police are yet to file a report either under Section 169 or Section 170 of the Cr.P.C."

41. The Apex Court in **V. Senthil Balaji Vs. State, 2023 SCC OnLine SC 934** has clarified that a writ of *habeas corpus* or a writ petition cannot be maintained to challenge an arrest validated by judicial remand, unless the order of remand is completely devoid of reasoning or suffers from total non-application of mind. It has held that generally no other court is expected to act as a supervisory authority over the discretion of the Magistrate while authorizing detention of an accused.

> 29. A writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer,"culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other"statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for" entertaining a writ of Habeas Corpus and that too by way of a challenge.
>
> 30. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic

order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand"can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India, 1950. There is a difference" between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a" challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the" extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the Court as" mandated under sub-section (3), since it becomes a judicial custody thereafter and the concerned Court would be in a better position to consider due compliance."

31. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate.

56. While authorizing the detention of an accused, the Magistrate has got a very wide discretion. Such an act is a judicial function and therefore, a reasoned order indicating application of mind is certainly warranted. He may or may not authorize the detention while exercising his judicial discretion. Investigation is a process which might require an accused/s custody from time to time as authorized by the competent court. Generally, no other Court is expected to act as a supervisory authority in that process. An act of authorization pre-

supposes the need for custody.

42. A perusal of the remand order dated 18.07.2025 makes it clear that the remand order is a well reasoned order which further disentitle the applicant to challenge his arrest.

> "A perusal of the case file shows that the Enforcement Directorate Regional Office, Raipur on the basis of Crime No. 04/2024 registered by EOW/ACB, Raipur CG under Sections 420,467,468,471,120-B IPC and Sections 7 and 13(2) of the Prevention of the Corruption Act, prima facie found that the crime relation to Section 3 & 4 of the Prevention of Money Laundering Act arrested the accused and commenced investigation/inquiry against him…..
> Hence the objection raised by the accused regarding the illegality of arrest is rejected after consideration.

43. The grounds of objection raised by the defence regarding cancellation of custodial remand in the case have not been found to be satisfactory, *prima facie*, hence the objection raised by the accused is liable to be rejected.

ARREST IS AN INTEGRAL PART OF INVESTIGATION

44. The contention that an arrest cannot be effected for the purposes of investigation is contrary to the settled law laid down by the Apex Court in **Vijay Madanlal Choudhary Vs. Union of India 2022, SCC OnLine SC 929** wherein it has held that:

> "324………….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 Mehta532, 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 Aggarwal533, 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 Indian 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 authorized officer”. Even, this decision recognizes the power of the authorized officer to cause arrest during the inquiry to be conducted under the concerned legislations.”

45. It has been held by the Apex Court in **V.Senthil Balaji** (supra) that the power of arrest under Section 19 of the PMLA is meant for investigation alone.

“48. The power of arrest under Section 19 of the PMLA, 2002 is meant for investigation alone. A clear position which is taken note of in Vijay Madanlal Choudhary (supra) :

89. 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 authorized 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 Mehta532, 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 Aggarwal533, 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 Indian 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 authorized officer”. Even, this decision recognizes the power of the authorised officer to cause arrest during the inquiry to be conducted under the concerned legislations……

49. Otherwise, an arrest will be termed as a punishment which power can never be under Section 19 of the PMLA, 2002. This position being as clear as daylight, the proviso to Section 44(1)(b) of the PMLA, 2002 throws further insight into it.

50. Therefore, the power under Section 19(1) of the PMLA 2002 can only be exercised during investigation and it is well open to the authority to

> file a closure report before the Special Court after conclusion, if it finds that there are no sufficient materials to proceed further."

46. It is not unusual to provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity…. The term "arrest" signifies restraint and the execution of lawful authority. It is thus an integral part of the process of inquiry and investigation.

47. Similarly in **P.Chidambaram Vs. Directorate of Enforcement (2019) 9 SCC 24,** Apex court has held in para 68 that arrest is part of the investigation.

> "69. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes."

Thus, the power of arrest under Section 19 of the PMLA is an investigative power, not punitive in nature.

48. The recent decision of **V. Senthil Balaji (supra)** reaffirmed this principle by holding that the power of arrest under Section 19 of the PMLA is meant for investigation alone. The Court observed that:

> "The power under Section 19(1) of the PMLA can only be exercised during investigation…. And it is open to the authority to file a closure report if, upon conclusion, no sufficient material is found."

NO MANDATORY REQUIREMENT TO ISSUE SUMMONS UNDER SECTION 50 PMLA PRIOR TO ARREST.

49. It is settled law that issuance of summons under Section 50 of the PMLA is not a pre-condition for arrest under Section 19. These are two distinct and independent powers. The High Court of Delhi in the matter of **Ashish Mittal Vs. Directorate of Enforcement, 2024 SCC OnLine Del 3627** held:

> 27. The power under Section 50 of the PMLA to issue summons to a person and to require the production of documents and record statements which is akin to the powers of a civil court, is different and distinct from the power under Section 19 to arrest a person. These are two separate and distinct provisions. The exercise of the powers under one, cannot be restrained on the apprehension that it could lead to the exercise of powers under the other….."

Therefore the petitioner's contention that non-issuance of summons vitiates the arrest is untenable.

RIGHT OF FURTHER INVESTIGATION UNDER THE PMLA

50. The contention that the ED cannot conduct further investigation is devoid of merit. Section 44 of the PMLA read with its Explanation (I) explicitly provides for the filing of a "subsequent complaint" based on further investigation:

> "The complaint shall be deemed to include an subsequent complaint in respect of further investigation… whether against the same or additional accused."

This statutory provision authorizes continued investigation and filing of supplementary complaints.

51. It is a well settled proposition that further investigation is a statutory right vested in the investigating agency, and no prior permission from the Magistrate or the Special Court is required before carrying out such investigation. In **State of A.P. Vs. A.S.Peter (2008) 2 SCC 383**, the Apex Court held that no prior permission from the Court is required from conducting further investigation.

> "9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."

52. The distinction drawn between further investigation and reinvestigation had been consistently upheld. The PMLA being a self contained code, incorporates its own mechanism under Section 44(1)(d) permitting filing of supplementary complaints as and when fresh material emerges. This legislative scheme inherently contemplates continuing investigation even after filing of the initial complaint.

53. The argument of the petitioner that the ED cannot conduct further investigation as contemplated under Section 173(8) of the Cr.P.C is erroneous. The PMLA itself expressly permits further investigation and this issue is no longer *res integra* in light of the law settled in **Vijay**

Madanlal Choudhary (supra) at para 368. If the contention of the petitioner is to be accepted,it would absurdly imply that once the ED arrests a person, the life cycle of that investigation would come to a halt after 60 days as upon filing the initial prosecution complaint, the ED would be precluded from filing any supplementary prosecution complaint. The reliance on Section 173(8) Cr.P.C. is misplaced. The PMLA is a self contained code and the power of further investigation is inherent under Section 44 and recognized in **Vijay Madanlal Choudhary (supra).**

THE TRIAL COMMENCES ONLY AFTER FRAMING OF CHARGES

54. The petitioner's plea that once the cognizance is taken by the Court, no further investigation is permissible is legally unsound. The Apex Court in the matter of **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92**, at para 38 has held that :

> "38. In view of the above, the law can be summarized to the effect that as trial means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the trial commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."

55. Accordingly, since the trial in the present case has not commenced, the ED retains full authority to conduct further investigation and file supplementary prosecution complaints.

NON-COOPERATION AS A PART OF GROUNDS FOR ARREST

56. The contention of the petitioner that non-cooperation cannot be a ground for arrest under Section 19 of the PMLA is wholly misplaced and contrary to the settled legal postilion. The arrest in the present case was not founded solely on non-cooperation but on the subjective satisfaction of the Investigating Officer based on tangible material revealing the necessity for arrest as contemplated under Section 19(1) of the PMLA.

57. In **Pankaj Bansal Vs. Union of India (supra),** the Apex Court has held as under:

> "28. Mere non-cooperation or failure to answer questions satisfactorily would not by itslef justify arrest under Section 19. However, non-cooperation can form part of the grounds of arrest along with other incriminating material and circumstances."

58. The Delhi High Court, while interpreting **Pankaj Bansal** in **Manideep Mago Vs. Union of India, 2025 SCC OnLine Del 3390,** has observed as under:

> "41. A perusal of the grounds of arrest in respect of both petitioners would show however, that certain allegations specific to the petitioners have been set-out in them, which sufficiently convey the essential case against them which has made it necessary to arrest them; and non-cooperation with the investigating agency is only one of those grounds and not the sole reason for their arrest. It may be noted that what the Supreme Court has said in Pankaj Bansal 62 is that mere non-cooperation or failure to respond to a question put by the ED is not in itself sufficient to arrest a person; but that cannot be construed to mean that if there are other grounds to arrest a person, those should be ignored. In view thereof, the argument that the petitioners were

arrested merely for non-cooperation in investigation, is misconceived and must be rejected."

59. Similarly, in **Arvind Dham Vs. Union of India, 2024 SCC OnLine Del 8490, (para 44),** the Delhi High Court has reiterated that :

> "44. The 'right against self-incrimination' is a constitutional principle crystallized in Article 20(3) of the Constitution of India. In Pankaj Bansal (supra) the Apex Court held that 'mere non-cooperation' could not be enough to arrest a person under Section 19, PMLA. However, it has also been observed by the Supreme Court in CBI Vs. Anil Sharma (12997) 7 SCC 187:AIR 1997 SC 3806 that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is ensconced with a favourable order under Section 438 Cr.P.C."

60. The said principle draws support from **CBI Vs. Anil Sharma (1997) SCC 187** (para 6), where the Apex Court held:

> "Custodial interrogation is qualitatively more elicitation oriented than questioning a suspect protected by an order under Section 438 Cr.P.C."

61. Further in **P. Chidambaram Vs. Directorate of Enforcement (2019) 9 SCC 24**, the Apex Court emphasized that :

> "60. Interrogation of the accused and the answers elicited from the accused and the opinion whether the answers given by the accused are"satisfactory" or "evasive", is purely within the domain of the investigating agency and the court cannot substitute its views by conducting mini trial at various stage of investigation."

62. It is further submitted that the necessity to arrest under the scheme of PMLA is distinct from the formation of “reasons to believe” under Section 19(1). The statute contemplates that once the authorized officer, on the basis of material in possession has reasons to believe that a person is guilty of the offence of money laundering, such reasons having been duly recording in writing, the subjective satisfaction of the authorized officer cannot be substituted or second guessed by this Court in exercise of its limited jurisdiction under Section 528 of the BNSS, 2023 or Article 226 of the Constitution of India.

NEED AND NECESSITY TO ARREST THE ACCUSED -GUIDED BY SECTION 41 CR.P.C.

63. The Apex Court in **Arvind Kejriwal Vs. Directorate of Enforcement, 2024, SCC OnLine SC 312,**at para 74 held that the necessity and justification to arrest under Section 19 PMLA must be discerned from principles analogous to those under Section 41(1)(ii) Cr.P.C. including:

(a) preventing the accused from committing further offences;

(b) ensuring proper investigation;

(c) prevention disappearance or tampering with evidence;

(d) prevention inducement or threat to witnesses; and

(e) ensuring presence of the accused in Court whenever required.

The present case satisfies each of these considerations. The arrest was necessitated to,

(i) Prevent destruction of evidence and influencing of witnesses.

(ii) Trace proceeds of crime in possession of the petitioner and his associates;

(iii) Identify other members of the criminal syndicate; and

(iv) Ensure unhindered investigation of the large scale liquor scam unearthed in Chhattisgarh.

STATEMENTS UNDER SECTION 50 PMLA ARE ADMISSIBLE AND HAVE FULL EVIDENTIARY VALUE.:

64. The argument that statements recorded under Section 50 PMLA are inadmissible or **coerced merely** because NBWs were issued against certain individuals in the predicate case, is baseless and contrary to statutory provisions and judicial precedent. Section 50 PMLA empowers ED officers with powers of a civil court to summon and record statements under oath which are admissible as evidence. The statements made by Shri Laxminarayan Bansal are self inculpatory and voluntarily made, carrying inherent evidentiary value. The Apex Court in **Laxmipat Shoraria Vs. State of Maharshtra, 1967 SCC OnLine SC 30,** held that :

> "7. Now there can be no doubt that Ethyl Wong was a competent witness. Under S. 118 of the Indian Evidence Act all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them for reasons indicated in that section. Under S. 132 a witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any criminal proceeding (among others) upon the ground that the answer to such question will incriminate or may tend directly or indirectly to expose him to a penalty or forfeiture of any kind. The safeguard to this compulsion is that no such answer which the witness is compelled

to give exposes him to any arrest or prosecution or can it be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. In other words, if the customs authorities treated Ethyl Wong as a witness and produced her in court, Ethyl Wong was bound to answer all questions and could not be prosecuted for her answers. Mr. Jethmalani's argument that the Magistrate should have promptly put her in the dock because of her incriminating answers overlooks s. 132 (proviso). In India the privilege of refusing to answer has been removed so that temptation to tell a lie may be avoided but it was necessary to give this protection. The protection is further fortified by Art. 20(3) which says 'that no person accused of any offence shall be compelled to be a witness against himself. This article protects a person who is accused of an offence and not those questioned as witnesses. A person who voluntarily answer questions from the witness box waives the privilege which is against being compelled to be a witness against himself, because he is then not a witness against himself but against others. Section 132 of the Indian Evidence Act sufficiently protects him since his testimony does not go against himself. In this respect the witness is in no worse position than the accused who volunteers to give evidence on his own behalf or on behalf of a co-accused. There too the accused waives the privilege conferred on him by the article since he is subjected to cross-examination and may be asked questions incriminating him. The evidence of Ethyl Wong cannot, therefore, be ruled out as that of an incompetent witness. Since Ethyl Wong was a self-confessed criminal, in conspiracy with others who were being tried, her evidence was accomplice evidence. The word accomplice is ordinarily used in connection with the law of evidence and rarely under the substantive law of crimes. Accomplice evidence denotes evidence of a participant in crime with others.

> Section 133 of the Evidence Act makes the accomplice a competent witness against an accused person. Therefore, Ethyl Wong's testimony was again that of a competent witness. It has been subjected to scrutiny and the usual checks for corroboration and was, therefore, received with due caution. The short question that remains is whether she could be administered an oath in view of the prohibition in s. 5 of the Indian Oaths Act.
> The position that emerges is this : No pardon could be ten- dered to Ethyl Wong because the pertinent provisions did not apply. Nor could she be prevented from making a disclosure, if she was so minded. The prosecution was not bound to prosecute her, if they thought that her evidence was necessary to break a smugglers' ring."

65. The petitioner's attempt to rely on an earlier Income Tax statement of Laxminaryan Bansal dated 27.01.2021 is futile as it predates the PMLA investigation and was made under a completely different factual matrix during a period when the petitioner and others exercised significant influence over the state machinery.

PROCEEDNGS UNDER PMLA ARE INDEPENDENT OF THE PREDICATE OFFENCE

66. The proceedings under the PMLA are entirely independent and autonomous from those in the predicate offence. Section 44(1) Explanation 1 of the PMLA explicitly clarifies that proceedings under this Act are not dependent on the outcome of proceedings relating to the scheduled offence. Therefore issuance of any warrant in the predicate case, or the course adopted by the predicate agency, has no bearing on the arrest or investigation carried out under the PMLA.

PRIOR CHALLENGE TO THE ECIR HAVE BEEN REJECTED :

67. It is a matter of record that the prayer for quashing of the present ECIR was rejected by the Division Bench of this Court in **Anil Tuteja Vs. Union of India, 2024 SCC OnLine Chh 7549** and the challenge to the order was dismissed by the Apex Court in **SLP (Crl.No. 11790 of 2024** thereby affirming the legality of the investigation.

68. In the light of the foregoing submission, it is submitted that

- the arrest of the petitioner was carried out in strict compliance with Section 19(1) of the PMLA:
- There is no violation of any constitutional or statutory right;
- the investigation is ongoing and substantiated by cogent material and corroborative evidence.

69. The petitioner's attempt to assail timing of arrest is in effect, a challenge to the subjective discretion of the investigating officer. It is settled law, as reiterated in **Radhika Agarwal Vs. Directorate of Enforcement and Arvind Kejriwal Vs. Directorate of Enforcement** that the Court exercising powers of judicial review does not ordinarily examine the adequacy or timing of investigative steps, unless it is shown to be actuated by malice or patently without jurisdiction and no such case is made out here. It is further submitted that the arrest dated 18.07.2025 was carried out strictly in accordance with law, after due satisfaction based on fresh developments and analysis of material collected post search, including statements recorded under Section 50 of the PMLA. The arrest was duly preceded by the recording of reasons to believe, which were furnished to the petitioner and produced before the learned Special Court at the time of remand.

70. The scope of interference by this Court under Section 528 BNSS is narrow and circumscribed. Unlike a bail proceeding under Chapter XXXIV of the BNSS where the Court may consider the sufficiency of evidence or necessity of custody, in a petition invoking inherent or constitutional jurisdiction,the Court's review is limited to testing the legality of the process- ie. Whether statutory requirements were complied with and whether the action was vitiated by malafides or lack of jurisdiction.

71. In the present case, as all procedural safeguards under Section 19 of the PMLA were scrupulously followed and the reasons to believe were duly recorded and furnished, there is no illegality or procedural infirmity in the arrest. The petitioner ought to be relegated to the remedy of seeking regular bail in accordance with Section 45 of the PMLA, which requires satisfaction of the twin condition's prescribed therein.

72. **After hearing the learned counsel for the parties and perusing the record, following question arises:**

Whether there was sufficient material with the authorized officer who had recorded his "reasons to believe" in writing and whether there was a necessity to arrest the Petitioner*?*

For a lawful arrest under Section 19(1) of the PMLA, the authorized officer (Director, Deputy Director, Assistant Director or authorized officer) must independently record a "reason to believe" that the person has been guilty of an offence punishable under the Act.

73. Section 19(1) of the Prevention of Money Laundering Act (PMLA) grants officers of the Directorate of Enforcement (ED) the authority to

arrest an individual they believe is guilty of a money laundering offence. This power is subject to specific conditions and safeguards intended to prevent arbitrary arrests.

Authorized officers: Only high-ranking officials—the Director, Deputy Director, Assistant Director, or other specially authorized officers—are empowered to make an arrest.

- **Reason to believe**: The arresting officer must have a "reason to believe," based on material in their possession, that the person is guilty of a money laundering offense. This reason must be recorded in writing. The "reasons to believe" must be founded on a fair and objective consideration of the material and cannot be based on the officer's whims.
- **Written grounds of arrest**: The person being arrested must be informed of the grounds for their arrest "as soon as may be". To ensure transparency and due process, the Supreme Court has ruled that a copy of the written grounds of arrest must be furnished to the arrested person without exception.
- **Judicial oversight**: Following the arrest, the person must be produced before a Special Court, Judicial Magistrate, or Metropolitan Magistrate within 24 hours. The magistrate must be satisfied that the arresting officer has complied with all mandatory conditions under Section 19.

"GROUNDS OF ARREST" UNDER SECTION 19 OF THE PMLA

74. Once the authorized officer forms reason to believe, the next step is to record and communicate the "grounds of arrest" to the person being arrested. These tests are designed to safeguard the constitutional rights of individuals against arbitrary use of power by the Enforcement Directorate (ED).

Legal tests for arrest under PMLA Section 19(1)

1. **Possession of "material":** The authorized officer must have material in their possession to form a belief that the accused is

guilty of a money laundering offense. This material must be objective and fair, not merely subjective or based on whims.

2. **Recorded "reasons to believe":** The officer must record in writing their reasons for believing the person is guilty. This is a mandatory safeguard to prevent arbitrary action and must be based on a fair and objective consideration of the material at hand. The Supreme Court has clarified that "reason to believe" requires a higher standard of satisfaction than mere suspicion.
3. **Written grounds of arrest:** The accused must be informed of the grounds for their arrest in writing, as soon as possible, and without avoidable delay. In *Pankaj Bansal v. Union of India*, the Supreme Court mandated that a copy of the written grounds of arrest must be furnished to the arrested person as a matter of course and without exception.
4. **Necessity to arrest:** The power to arrest cannot be exercised arbitrarily. The officer must also have a demonstrated "necessity to arrest". This test requires considering factors such as the nature of the offense, the risk of the accused absconding, tampering with evidence, or repeating the offense. In *Arvind Kejriwal v. Directorate of Enforcement*, the Supreme Court referred the question of "necessity to arrest" to a larger bench for authoritative interpretation.
5. **No selective use of material:** The officer cannot selectively choose only the material that implicates the person. They must also consider any material that might absolve or exculpate the individual. The decision to arrest must be based on an overall objective assessment of all relevant material.

75. On perusal of the records, following facts emerge:

NON-ISSUANCE OF NOTICE UNDER SECTION 50 OF THE PMLA

It is contended that at no stage of the proceedings was the petitioner served with a notice under Section 50 of the PMLA for the purpose of recording his statement and the said omission strikes at the very root of the procedural safeguards envisaged under the Act and therefore renders the subsequent proceedings,including the arrest and investigation, vulnerable to challenge on the ground of non-compliance with mandatory statutory requirements.

76. Section 50 of the PMLA vests in the Director, Additional Director, Joint Director, Deputy Director or Assistant Director, the power to summon any person whose attendance may be necessary from giving evidence or for producing records during the course of investigation. The statement recorded under this provision carries significant evidentiary value, being deemed to have the same sanctity as that of evidence recorded before a civil court. It is therefore not a mere procedural formality but a substantive safeguard intended to ensure transparency, fairness and accountability in the process of investigation.

77. The object of issuing a notice under Section 50 of the PMLA is two fold-firstly, to inform the person concerned of the nature and scope of the inquiry being conducted and secondly, to afford him an opportunity to place his version of facts or produce relevant material before the competent authority. Failure to issue such notice deprives the person of a valuable right to be heard and to clarify his position prior to the initiation of any coercive action.

78. Even where the statute does not expressly make the issuance of notice mandatory in every case, the principles of fairness and natural justice would require the authority to record reasons if such an opportunity is denied. The Apex Court has repeatedly emphasized that discretionary power, when conferred upon an investigating authority, carries with it a duty to act judiciously and in manner consistent with the legislative intent.

79. It is pertinent to mention here that Section 19 and Section 50 of the PMLA are distinct provisions and operate in distinct and well defined domains. The power under Section 50 of the PMLA is not a pre condition for arrest under Section 19 of the PMLA. These are two separate and distinct conditions under the PMLA itself. Non-issuance of notice under Section 50 of the PMLA cannot be restrained to the Investigating Officer for arrest of accused under Section 19 of the PMLA. Therefore, non-issuance of notice under Section 50 of the PMLA to the petitioner is a procedural lapse which does not amount to illegality.

GROUND OF ARREST-NON-COOPERATION BY THE ACCUSED :

80. It has been urged on behalf of the petitioner that the custodial action taken against him is illegal, inasmuch as there was neither necessity nor exigency warranting such coercive action. It is pertinent to mention here that the petitioner was neither served with summons under Section 50 of the PMLA nor required to appear in relation to the alleged offence before the ED, therefore, the allegations of non-cooperation are incorrect mentioned in the document of ground of arrest but the arrest in the present case was not founded solely on the ground of non-cooperation but in the ground of arrest there are other grounds which justifies the custodial action, therefore, only on the basis of wrong mention in the ground of arrest i.e. the non-cooperation of the accused in investigation would not by itself amount to illegality because the arrest of the present petitioner was not founded solely on ground of non-cooperation but on the subjective satisfaction of the Investigating Officer

based on material which was available with the ED. Therefore, this procedural lapse also does not amount to illegality whereas it amounts to irregularity. The Apex Court has held that mere non-cooperation to summons under Section 50 PMLA is not sufficient to constitute a ground for arrest under Section 19 of the PMLA. In *Pankaj Bansal (supra),* the court emphasized that the ED must show tangible material and the decision to arrest must confirm to the safeguards and strictures of Section 19 of the Act.

FURTHER THE INVESTIGATION HAS BEEN CONDUCTED WITHOUT PRIOR PERMISSION

81. The contention of learned Senior Counsel of the petitioner that the ED has conducted further investigation in respect of the petitioner without prior permission of the competent Court which is manifestly irregular and raises issues regarding the legality and propriety of such investigative action. Notwithstanding this, the custodial arrest was effected only after a lapse of four months, without any fresh material being collected. In the circumstances if the alleged guilt of the petitioner has already been concluded on 10.03.2025, the subsequent arrest delayed and unexplained is wholly impermissible.

82. In this regard the procedure prescribed under Sections 200-204 Cr.P.C. applies to the proceedings under the PMLA and not to the procedure contemplated under Section 173 Cr.P.C which relates to the police reports. However, the delay in effecting the arrest and the absence of prior judicial sanction for further investigation call for close scrutiny in accordance with procedural and substantive safeguards

mandated under the PMLA and relevant Apex Court rulings in the matter of *Pankaj Bansal Vs. Union of India (2023), Vijay Madanlal Choudhary Vs. Unionof India (2022) and Tarsem lal Vs. Directorate of Enforcement (2024).*

83. In this regard, learned counsel for the ED contends that even after filing the prosecution complaint, it retains the statutory authority to conduct further investigation under the PMLA. However, the Apex Court has consistently held that such power is not unfettered and must be exercised subject to judicial oversight and the statutory safeguards prescribed under the Act. In ***Vijay Madanlal Choudhary Vs. Union of India (2023),*** the court emphasized that investigative powers, including those exercised post filing of a charge sheet must be exercised on the basis of tangible material and within the bounds of law. It has been held as under:

> "263. Clause (i) of the Explanation enunciates that the jurisdiction of the Special Court while dealing with the offence being tried under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same Court shall not be construed as joint trials. This, in fact, is reiteration of the earlier part of the same section, which envisages that even though both the trials may proceed before the same Special Court, it must be tried separately as per the provisions of the 1973 Code. Insofar as Clause (ii) of the Explanation, at the first glance, it does give an impression that the same is unconnected with the earlier part of the section. However, on closer scrutiny of this provision, it is noted that the same is only an enabling provision permitting to take

> on record material regarding further investigation against any accused person involved in respect of offence of money-laundering for which complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money- laundering must go unpunished. It is always open to the Authority authorised to seek permission of the Court during the trial of the complaint in respect of which cognizance has already been taken by the Court to bring on record further evidence which request can be dealt with by the Special Court in accordance with law keeping in mind the provisions of the 1973 Code as well. It is also open to the Authority authorised to file a fresh complaint against the person who has not been named as accused in the complaint already filed in respect of same offence of money-laundering, including to request the Court to proceed against such other person appearing to be guilty of offence under Section 319 of the 1973 Code, which otherwise would apply to such a trial."

It has been empahsized that the primary objective of any further investigation is to uncover the truth and ensure justice is served. In the context of the PMLA, the Apex Court has held that the ED retains the statutory authority to conduct further investigation even after filing of the prosecution complaint. This authority is subject to the safeguards enshrined in the statute and must be exercised in accordance with the principles of fairness and reasonableness.

84. Similarly, in *Pankaj Bansal Vs.Union of India (2023),* it was held that further investigation cannot be conducted in a manner that infringes

the statutory rights of the accused or circumvents procedural safeguards including the requirement of prior permission where mandated.

It is pertinent to mention that the ED has authority to conduct further investigation even after filing of the prosecution complaint under the PMLA. This posistion is supported by recent rulings of the Apex Court which clarify the scope and limitations of such authority.

85. In this regard, it is pertinent to mention here that the present matter is a complaint case. No doubt Section 44 (1) (d) permitting filing of supplementary complaints when fresh materials are available to the ED in relation with money laundering but the procedure prescribed for filing of complaint under Section 44 of the PMLA read with Chapter XV of the Cr.P.C. with Section 200 to 204 of the Cr.P.C. and is distinct from that of a police report under Section 173 of the Cr.P.C. Section 200 provides for a Magistrate taking cognizance of an offence on complaint. Thereafter, an enquiry is conducted by the competent Magistrate in terms of Section 201 to 204 Cr.P.C. and the Section 207 & 208 of the Cr.P.C. provides supply of documents, statements and other material to the accused. The Hon'ble Supreme Court in the matter of ***Bhupesh Kumar Baghel Versus Union of India & Ors. {Writ Petition (s) (Criminal) No(s) 301/2025, decided on 11/08/2025}*** has held thus:-

> 2. It is a matter of record that, with respect to the interpretation of Section 44(1) of the Prevention of Money-Laundering Act, 2002, a three-Judge Bench of this Court in Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., (2023) 12 SCC 1in paragraph 263 has held as follows:
>
> > "263. Clause (i) of the Explanation enunciates that the jurisdiction of the Special Court while dealing with the offence being tried under this

Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trials. This, in fact, is reiteration of the earlier part of the same section, which envisages that even though both the trials may proceed before the same Special Court, it must be tried separately as per the provisions of the 1973 Code. Insofar as clause (ii) of the Explanation, at the first glance, it does give an impression that the same is unconnected with the earlier part of the section. However, on closer scrutiny of this provision, it is noted that the same is only an enabling provision permitting to take on record material regarding further investigation against any accused person involved in respect of offence of money laundering for which complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money laundering must go unpunished. It is always open to the authority authorised to seek permission of the court during the trial of the complaint in respect of which cognizance has already been taken by the court to bring on record further evidence which request can be dealt with by the Special Court in accordance with law keeping in mind the provisions of the 1973 Code as well. It is also open to the authority authorised to file a fresh complaint against the person who has not been named as accused in the complaint already filed in respect of same offence of money laundering, including to request the court to proceed against such other person appearing to be guilty of offence under Section 319 of the 1973 Code, which otherwise would apply to such a trial."

3. To sum up the contention of the petitioner, this Court has held that: (I) The authorities of the Enforcement Directorate can bring on record further evidence during the trial; (ii) the further evidence can be brought on record with the prior permissionof the

> Court; and (iii) the Enforcement Directorate can either file a fresh complaint or the Court can proceed against such other person under Section 319 Cr.P.C. (now substituted by a new provision under the Bharatiya Nagarik Suraksha Sanhita, 2023).

86. Therefore, it is the duty of the Investigating agency that once a complaint filed before the Magistrate and Magistrate has taken cognizance thereafter the further investigation should be with the permission of the Magistrate. In the matter of ***Hardeep Singh (supra***), the Hon'ble Supreme Court has held that the trial commences only on charges being framed. However, if the respondent has conducted the investigation without obtaining prior permission of the competent court, it may not strictly conform to the procedural framework governing complaint cases and the investigation before the adjudicating authority. Illegality means a fundamental breach of law which cannot be fix, whereas an irregularity is a procedural deviation that can often be corrected or regularized. Notwithstanding this, such deviation, while irregular, would not vitiate the proceedings or amount to illegality.

87. It is pertinent to mention that the Special Judge, Raipur in EOW, Raipur, in Sessions Case has issued a permanent warrant of arrest against one Mr. Lakshmi Narayan Bansal, who is also named as an accused in the ECIR, is absconding. Despite the existence of this permanent warrant of arrest, the investigating Officer/ Enforcement Directorate has not taken an steps to effect his arrest.

88. On record, learned counsel for the petitioner specifically informed that during the course of remand, in presence of ED, an open ended warrant of arrest/permanent warrant of arrest had been issued against

Mr. Lakshmi Narayan Bansal. Astonishingly, on being asked about this fact, learned counsel for the respondent contended that to the best of his knowledge, the ED appeared unaware of this fact. This admission underscores a glaring lapse in the investigation and demonstrates that a pick and choose policy has been adopted by the respondent authority/investigating agency.

89. Upon consideration of the rival contentions of the parties and the material placed on record, this Court is of the view that the allegations of illegality in further investigation are not substantiated by any cogent material. The scheme of the PMLA permits the Investigating Agency to collect further evidence after filing of a complaint subject to the prior permission of the Special Court.

90. As regards the non-cooperation and mechanical arrest, this Court finds that the issue involves disputed factual questions that cannot be conclusively determined in exercise of writ jurisdiction. The Grounds of Arrest, though brief, refer to the necessity of preventing destruction of evidence, influencing of witnesses and tracing of proceeds of crime. Whether such reasons are adequate or not, is a matter of assessment by the trial court.

91. With respect of Mr. Lakshmi Narayan Bansal, while the record does not indicate warrant of arrest remains unexecuted, the mere non-arrest of a co-accused does not, by itself, establish mala fides or illegality in the proceedings against the petitioner. At best, it may constitute an irregularity, but such irregularity does not vitiate the entire process.

92. Learned counsel for the respondent/Enforcement Directorate contended that under Section 19(1) of the PMLA, 2002, which specifies that “he may arrest such person” confers a discretion upon the Investigating Officer. According to the counsel for the respondent, if the officer has reason to believe, on the basis of material in his possession that a person is guilty of an offence punishable under the Act, he may choose whether or not to arrest that person.

93. This contention correctly reflects the discretionary language of Section 19(1) has to be borne in mind that such discretion is circumscribed by other legal obligations, particularly, where a competent court has issued a permanent/open ended warrant of arrest against the co-accused in EOW/Liquor Scam Case. In such circumstances, the Investigating Officer cannot exercise personal discretion, he is legally bound to comply with the directions of the competent court and effect the arrest in accordance with the warrant.

94. Further under Section 70 of the Cr.P.C and Section 72 of the BNSS 2023, the law prescribes the form of warrant and duration of arrest, leaving no scope for selective or discretionary non-compliance when a judicial warrant has been issued. Section 72 (2) of the BNSS provides as under:

> “every such warrant shall remain in force until it is either canceled by the court that issued it or it is executed, meaning the person is arrested. This provision ensures a warrant is valid indefinitely until one of these two events occurs.”

95. It emerges from the record that the competent Special court in E.O.W./liquor scam case has declared Mr.Lakshmi Narayan Bansal as absconding and, accordingly, issued a permanent warrant of arrest on 19.05.2025 which remains neither executed or cancelled.

96. Counsel for the petitioner drew the attention of the court to the fact that an open ended warrant of arrest has been issued against Mr. Bansal in connection with FIR No. 04/2024. Shockingly, the respondent/Investigating Agency did not verify this critical fact from the concerned EOW, Raipur.

97. Even though Chapter IV of the Cr.P.C. Section 39 (1) (VIII) deals with the Public to give information of certain offences in which punishment under Section 409 IPC is also included. Section 39 (1) (VIII) Cr.P.C. reads as under:-

> 39. Public to give information of certain offences. – (1) Every person, aware of the commission of, or of the intention of any other person to commit, any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:-
> (i) xxx xxx xxx
> xxx xxx xxx
> xxx xxx xxx
> (viii) Section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);
> xxx xxx xxx

98. It is also pertinent to mention here that Section 43 of the Cr.P.C. provides arrest by private person and procedure on such arrest. Section 43 Cr.P.C. contemplates that any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any **proclaimed offender,** and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police

officer, any private take such person or cause him to be taken in custody to the nearest police station.

99. Further despite full knowledge of the issuance of permanent warrant of arrest as informed by the learned counsel for the accused in remand proceeding before the Special Judge, the respondent recorded the statement of Mr. Bansal on two occasions ie. 26.07.2025 and 10.09.2025 under Section 50 of the PMLA yet failed to arrest him. It is well settled that an Investigating Agency cannot exercise discretion to override a judicial mandate, the presence of a permanent warrant of arrest leave no room for selective action. During the course of arguments, the ED candidly admitted that Mr. Bansal was not arrested notwithstanding the statements recorded and was allowed to go unimpeded.

100. *Prima facie* the conduct of the prosecution reveals a manifestly inconsistent and selective approach being both hot and cold in its approach and has acted in a pick and choose manner in investigation. While procedural lapses are apparent, it is clarified that such irregularities, though regrettable do not amount to illegality *per se,* and a distinction between irregularity and illegality.

101. Learned counsel for the petitioner further contended that earlier on 27.01.2021, the Income Tax Department recorded the statement of Mr. Bansal, wherein he denied any involvement of the petitioner. Intriguingly, in subsequent statements recorded many times under Section 50 of the PMLA, purportedly implicated the petitioner. It is pertinent to mention here that on 11/04/2024 respondent has registered

ECIR/RPZO/04/2024 relying on the EOW FIR without naming the petitioner.

102. In this regard Mr. Bansal has not filed any application alleging coercion, nor has he tampered or destroyed evidence. Under Section 528 of the BNSS, 2023 this Court does not exercise jurisdiction to adjudicate the admissibility or evidentiary value of Mr. Bansal's statements. These issues are to be determined by the trial court on its own merits.

103. The ground raised by the petitioner in this petition are procedural lapses/irregularities which does not amount to illegality. Learned counsel for the respondent in para 70 of his written submission has stated that the petitioner deserves to be relegated to the remedy of a regular bail which requires the petitioner to satisfy the mandatory twin conditions of bail under Section 45 of PMLA to seek release from custody. I agree with the contention raised by the learned counsel for the respondent that the grounds raised in this petition are procedural lapses /irregularities not amounting to illegality and these are the grounds of bail. In light of the foregoing discussion, this Court finds no ground to interfere with the investigation or the arrest effected by the Investigating Agency. Accordingly the petition stands dismissed.

104. However, the petitioner would be at liberty to file an appropriate application for bail before the learned trial court and raise the ground raised in this petition.

SD/-
(Arvind Kumar Verma)
Judge

suguna/ashu