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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21.12.2023
Pronounced on: 08.01.2024

\+ **BAIL APPLN. 2356/2023, CRL.M.(BAIL) 996/2023, CRL.M.A. 18543/2023 & CRL.M.A. 18544/2023**

NEERAJ SINGAL ..... Petitioner

Through: Mr. Kapil Sibal, Sr. Advocate, Dr. Abhishek Menu Singhvi, Sr. Advocate, Mr. Vikas Pahwa, Sr. Advocate with Ms. Ranjana Roy Gawai, Mr. Ujjwal Jain, Ms. Shambhavi Kashyap, Mr. Adit Pujari, Mr. Avishkar Singhvi, Mr. Garnil Singh and Mr. V. Wadhwa, Advs.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel with Mr. Vivek Gurnani, Mr. Baibhav, Ms. Manisha Dubey, Ms. Pranjal Tripathi, Advocates, Mr. Anuj Kumar, AD-ED and Mr. Sanket Sinha, AEO-ED.

\+ **CRL.M.C. 4376/2023, CRL.M.A. 16658/2023 & CRL.M.A. 16660/2023**

NEERAJ SINGAL ..... Petitioner

Through: Mr. Kapil Sibal, Sr. Advocate, Dr. Abhishek Menu Singhvi, Sr. Advocate, Mr. Vikas Pahwa, Sr. Advocate with Ms. Ranjana Roy Gawai, Mr. Ujjwal Jain, Ms. Shambhavi Kashyap, Mr. Adit Pujari,

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Mr. Avishkar Singhvi, Mr. Garnil Singh and Mr. V. Wadhwa, Advs.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Zoheb Hossain, Spl. Counsel with Mr. Vivek Gurnani, Mr. Baibhav, Ms. Manisha Dubey, Ms. Pranjal Tripathi, Advocates, Mr. Anuj Kumar, AD-ED and Mr. Sanket Sinha, AEO-ED.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The issue involved in the above two cases is inextricably intertwined, therefore, they are being disposed of by a common judgment.

2. CRL.M.C. 4376/2023 has been filed by the petitioner seeking the following relief:

> *"(i) Declare the arrest of the Petitioner being in gross violation of the settled tenets of law in Section 41A(3) Cr.PC;*
>
> *(ii) Declare all consequential actions including the remand order(s) dated 10.06.2023 & 20.06.2023 passed by Ld. Duty judge/ Special CBI Judge as null and void;*
>
> *(iii) That pending the hearing and final disposal of the present Petition, this Hon'ble Court be pleased to stay the Impugned Order(S) dated 10.06.2023 & 20.06.2023;*
>
> *(iv) That pending the hearing and final disposal of the present. Petition, this Hon'ble Court be pleased to*

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release the Petitioner from the abjectly illegal custody and incarceration;

(v) That pending the hearing and final disposal, further investigation in ECIR No. DLZO-II/06/2019 dated 29.08.2019 against the Petitioner be stayed;

(vi) For such other and further interim/ad-interim reliefs as the nature and circumstances of the case may require."

3. BAIL APPLN 2356/2023 has been filed on behalf of the petitioner seeking grant of regular bail in ECIR/DLZO-II/06/2019 registered by the Directorate of Enforcement.

4. The brief facts which are relevant for disposing of the aforesaid two cases are as under:

i. The petitioner is a businessman and was the ex-promoter, Vice Chairman and Managing Director of M/s Bhushan Steel Ltd. (hereinafter referred to as 'BSL'). However, pursuant to proceedings initiated under the Insolvency and Bankruptcy Code, 2016, BSL was acquired by Tata Steel in terms of the order dated 15.05.2018 passed by the National Company Law Tribunal.

ii. Before BSL was taken over by Tata Steel, the Ministry of Corporate Affairs in exercise of its powers under Section 212(1)(c) of the Companies Act, 2013 *vide* order dated 03.05.2016 ordered investigation into the affairs of BSL by the Serious Fraud Investigation Officer (hereinafter referred to as "SFIO"). The SFIO filed a complaint case under various provisions of the Companies Act, 2013 including Section 447 and under Sections 409/467/468/471 and 120B of the Indian Penal Code, 1860.

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iii. Thereafter, the Directorate of Enforcement registered the subject ECIR under the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PMLA") alleging that the petitioner is involved in one of the biggest banking frauds coupled with the offence of money laundering. It is alleged that the petitioner has caused loss to the public to the tune of more than Rs. 46,000 Crores. It is the case of the respondent that the petitioner in connivance with other accused persons / business entities knowingly resorted to illegitimate acquisition of loan funds in the name of BSL & other group companies and indulged in laundering of proceeds of crime through a complex web of more than 150 companies having a common core i.e. ownership and control of Mr. Neeraj Singal (the petitioner herein) and Mr. Bharat Bhushan Singal.

iv. It is the case of the petitioner that he has co-operated with the investigation of the respondent, in as much as, he has appeared before the Directorate of Enforcement about 14 times and has supplied documents which are running into approximately 7500 pages comprising of bank statements and balance sheets of all 148 companies for the period 2009-2017.

v. Later on, the petitioner received summons dated 03.06.2023 from the respondent directing him to appear on 09.06.2023. On 09.06.2023, the petitioner failed to appear before the respondent due to his alleged illness and requested his appearance to be postponed to some other date or that he may be allowed to appear

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through video conferencing. The petitioner on the said date also sent his authorized representative to appear before the respondent.

vi. It is the case of the petitioner that on the same day, at about 04:50 pm the officials of the respondent entered and searched the residential premises of the petitioner and thereafter, the petitioner was arrested by the respondent at 10:25 pm.

vii. The petitioner was produced before the Ld. Special Judge (CBI), Rouse Avenue Court on 10.06.2023, when the Ld. Judge granted remand for 10 days which was further extended *vide* order dated 20.06.2023.

5. Initially, when the matter was argued, submissions on behalf of the petitioner were made by Mr Kapil Sibal, learned Senior Advocate; Mr Abhishek Manu Singhvi, learned Senior Advocate and Mr Vikas Pahwa, learned Senior Advocate. The thrust of the submissions advanced by the learned senior counsel appearing on behalf of the petitioner was that – (i) the arrest of the petitioner is contrary to Section 41 and 41A of the Code of Criminal Procedure; (ii) the arrest of the petitioner is in violation of Section 19(1) of the PMLA as grounds of arrest were not informed to the petitioner. Elaborating on this argument, it was submitted that the process of informing in terms of the said provision would entail providing a copy of the grounds of arrest as the accused cannot be expected to recollect from his memory a document running into numerous pages; (iii) The arrest of petitioner is also in violation of Section 19(2) of the PMLA as the copy of the arrest order along with material in possession of the Arresting Officer in terms thereof was not forwarded to the Adjudicating Authority immediately. Expanding on this argument, it was submitted that the arrest of the petitioner was made

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on 09.06.2023 whereas intimation to the Adjudicating Authority was given on 12.06.2023, as is borne out from the arrest intimation letter (Annexure R-4).

6. The controversy raised in the present cases revolves around the non-compliance of the mandate of Section 19 of the PMLA, therefore, the said provision is extracted below for ready reference:

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

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7. During pendency of the present petition, the law on the interpretation of Section 19(1) of the PMLA has evolved through various judicial pronouncements of the Supreme Court. In ***V. Senthil Balaji vs. State***,[1] the Supreme Court held that an authorized officer under the PMLA Act, 2002 is not duty bound to follow the rigors of Section 41A of the CrPC, in as much as, there is already an exhaustive procedure contemplated under the PMLA containing sufficient safeguards in favour of the person arrested.

It was further held that the arrest of the arrestee is bound to be followed by an information being '*served*' on the arrestee of the grounds of arrest and any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. The relevant part of the decision in ***V. Senthil Balaji*** (supra) reads thus:

> *"35. In light of the aforesaid discussion, an Authorized Officer under the PMLA, 2002 is not duty bound to follow the rigor of Section 41A of the CrPC, 1973 as against the binding conditions under Section 19 of the PMLA, 2002. The above discussion would lead to the conclusion that inasmuch as there is already an exhaustive procedure contemplated under the PMLA, 2002 containing sufficient safeguards in favour of the person arrested, Section 41A of the CrPC, 1973 has no application at all.*
>
> *xxxx xxxx xxxx xxxx*
>
> *39. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the*

[1]2023 SCC OnLine SC 934

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> *reasons. The said exercise has to be followed by way of an information being **served** on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception."*
>
> (emphasis supplied)

8. In view of the above position, the parties made their respective submissions in respect of the interpretation of the word 'served' as used by the Supreme Court in context of compliance of Section 19(1) of the PMLA and the applicability of the said judgment to the facts of the present case. However, those issues paled into insignificance after the position was settled by the pronouncement of the Hon'ble Supreme Court in ***Pankaj Bansal vs. Union of India.***[2]

9. In ***Pankaj Bansal*** (supra), it was, *inter-alia,* held that the grounds of arrest shall be furnished to the accused / arrested person without exception. Further, the Supreme Court observed that informing the arrested person of the grounds of arrest in writing would be necessary '*henceforth*'. The relevant paragraphs of the decision in ***Pankaj Bansal*** (supra) reads as under:

> *"36.* ***That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception.*** *There are two primary reasons as to why this would be the*

[2]2023 SCC OnLine SC 1244

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advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.

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

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

xxxx xxxx xxxx xxxx

39. ***On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.*** *The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained."*

(emphasis supplied)

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10. After the pronouncement of judgment in ***Pankaj Bansal*** (supra), on an oral mentioning by the parties, the matter was listed again and the parties were heard on the limited aspect as to whether the said decision is prospective in its application.

11. It was argued on behalf of the respondent that the decision in ***Pankaj Bansal*** (supra) is prospective in its application because the Supreme Court has expressly held that the obligation of furnishing the grounds of arrest shall become effective '*henceforth*'. On the contrary, it was argued on behalf of the petitioner that the Supreme Court has only clarified the position of the existing law that is, Section 19 of the PMLA and has not formulated any new law, therefore, the said judgment is retrospective in its application.

12. The question whether the directions passed in ***Pankaj Bansal*** (supra)will apply prospectively or not, came up for consideration before the Supreme Court in ***Ram Kishor Arora vs. Directorate of Enforcement.***[3] The Court held that the use of expression '*henceforth*' in ***Pankaj Bansal*** (supra) implied that the requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of pronouncement of the said judgment and accordingly, non-furnishing of grounds of arrest in writing till the said date could neither be held to be illegal nor the action of the concerned officer in not furnishing the same in writing could be faulted with. The relevant part of the decision reads thus:

> *"23.* ***As discernible from the judgment in Pankaj Bansal Case also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 of PMLA,***

[3]2023 SCC OnLine SC 1682[Date of Decision 15th December, 2023]

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directed to furnish the grounds of arrest in writing as a matter of course, "henceforth", meaning thereby from the date of the pronouncement of the judgment. *The very use of the word "henceforth" implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not the mandatory or obligatory till the date of the said judgment.* ***The submission of the learned Senior Counsel Mr. Singhvi for the Appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary "henceforth" that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Hence non furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal case could neither be held to be illegal nor the action of the concerned officer in not furnishing the same in writing could be faulted with.*** *As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 of PMLA as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal (supra)."*

(emphasis supplied)

13. In ***Ram Kishor Arora*** (supra) the Supreme Court also noted that the expression '*as soon as may be'* as occurring in Section 19 of PMLA has not been specifically explained in ***Vijay Madanlal Choudhary vs. Union of India***[4] nor the said expression has been interpreted in either ***V. Senthil Balaji*** (supra) or in ***Pankaj Bansal*** (supra). Accordingly, the Court observed that the interpretation of the expression '*as soon as may be*' assumes significance. Referring to the judgment of a Constitution Bench in case of ***Abdul Jabar Butt and Another vs. State of Jammu & Kashmir***[5] and a

[4]2022 SCC OnLine SC 929
[5] AIR 1957 SC 281

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three-judge bench decision in ***Durga Pada Ghosh vs. State of West Bengal,***[6] the Court held that the expression '*as soon as may be*' contained in Section 19 of PMLA is required to be construed as – '*as early as possible without avoidable delay*' or '*within reasonable convenient*' or '*reasonably requisite*' period of time. The Court also observed that the '*reasonably convenient*' or '*reasonably requisite*' time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.

14. Elaborating further, the Court observed that it would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India, if the person arrested is informed or made aware about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e. '*as early as possible without avoidable delay*' and within '*reasonably convenient*' and '*reasonably requisite'* period of time, which would be twenty-four hours of the arrest. The relevant part of the decision reads as under:

> *"21.* ***In view of the above, the expression "as soon as may be" contained in Section 19 of PMLA is required to be construed as- "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time****. Since by way of safeguard a duty is cast upon the concerned officer to forward a copy of the order along with the material in his possession to the Adjudicating Authority immediately after the arrest of the person, and to take the person arrested to the concerned court within 24 hours of the arrest,* ***in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest****.*

[6] (1972) 2 SCC 656

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> *22. In Vijay Madanlal Choudhary (supra), it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance of mandate of Article 22(1) of the Constitution. It is also observed that the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering.* ***Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India****."*
>
> (emphasis supplied)

15. After the pronouncement of decision in ***Ram Kishor Arora*** (supra) both the parties orally mentioned the present case on 19.12.2023 and requested for listing the matter to enable the parties to make their respective submissions as to the applicability of the said decision to the facts of the present case. Accordingly, the matter was listed for hearing on 20.12.2023 and 21.12.2023.

16. For the sake of completeness, it may noticed that during the initial stage of hearing the document 'ground of arrest' forming part of the case dairy was also shown to the Court. However, it is only on 21.12.2023 that the learned special counsel for the respondent / ED handed over the 'ground of arrest' to the court and a copy thereof was supplied to the petitioner's counsel. Subsequently, the said document was filed on 22.12.2023, which now forms part of the court record.

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17. Mr. Vikas Pahwa, learned Senior Counsel for the petitioner submits that the case of the petitioner is squarely covered by the decision of ***Ram Kishor Arora*** (*supra*). Elaborating on his argument, he submits that in the said case the appellant therein was undisputedly informed about the grounds of arrest and he had also put his signatures as an acknowledgement of having been informed the grounds of arrest, but in the present case the petitioner has disputed the very existence of 'ground of arrest' and 'arrest order' / 'reasons to believe' at the time of his arrest right from the very beginning as is evident from the remand order dated 10.06.2023.

18. He submits that the 'Arrest Memo' is the only document which was supplied to the petitioner as the same finds reference in the *panchnama* since the arrest was made during the search proceedings. There is no reference to the 'Arrest Order' and the 'ground of arrest' in the *panchnama*. According to Mr. Pahwa, had the 'Arrest Order' and 'ground of arrest' been shown or provided to the petitioner at the time of his arrest, it would have been so indicated in the *Panchnama* dated 09.06.2023.

19. He further submits that the 'Arrest Order' was executed at Pravartan Bhawan, Dr. A.P.J Abdul Kalam Marg, New Delhi and not at the place of arrest. He submits that the very fact that the said document states that the petitioner was arrested at Pravartan Bhawan shows that the said document was not in existence at the time when the search was carried out at the residence of the petitioner. He submits that though the Arrest Order bears the signature of the petitioner as an acknowledgement of having received the Arrest Memo but there is no acknowledgement of the petitioner that he has also been informed of the grounds of his arrest.

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20. He submits that even the *panchanama* does not record that the '*Arrest Order*' and '*ground of arrest*' were printed at the residence of the petitioner as pleaded by respondent/ED in its additional affidavit dated 07.08.2023.

21. Referring to Rule 2(h) of the *Prevention of Money-Laundering (The Forms and the Manner of Forwarding A copy of Order of Arrest of a person along with the material to the adjudicating authority and its period of Retention) Rules, 2005* (hereinafter referred to as the 'Rules'), he submits that order means 'Arrest Order' and includes the ground of arrest but the same were neither 'shown' nor 'supplied' to the petitioner. He contends that the 'ground of arrest' have been supplied by the respondent/ED at the fag end of the hearing after about two hundred days from the date of arrest.

22. To sum up, Mr. Pahwa submits that the conjoint reading of the Arrest Memo, the Arrest Order, *Panchanama*, Remand Applications dated 10.06.2023 and 20.06.2023 and the respective order(s) passed therein by the learned Special Judge (PMLA) leads to an irresistible conclusion that the 'ground of arrest' and 'Arrest Order' were neither shown to the petitioner nor provided, therefore, the arrest of the petitioner on 09.06.2023 is in violation of Section 19 of PMLA rendering the same to be illegal.

23. *Per contra,* Mr. Zoheb Hossain, learned special counsel for the respondent/ED submits that the case of the petitioner from the very inception is that the petitioner was shown the 'ground of arrest' but was not provided with the ground of arrest. In support of his contention, he referred to the grounds (D) and (E) of the petition; remand application dated 10.06.2023; the remand order dated 10.06.2023 and the application filed by the petitioner seeking rectification of remand order dated 10.06.2023.

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24. Inviting the attention of the Court to para 7 of the remand order dated 10.06.2023, he submits that the learned Special Judge had perused the case diary before recording his findings, therefore, the findings recorded in the said order are premised on material available in the case dairy, which includes the 'ground of arrest', therefore, the said findings cannot be faulted with. The relevant part of the order dated 10.06.2023 reads as under:

> *"7.I have considered the submissions advanced by both the sides as well as gone through the case diary produced by the ED."*
>
> "8. ……. *The contention of the Ld. Counsel for the accused that accused was not informed about the grounds of his arrest is contrary to the records. Accused has been provided with the grounds of his arrest and same is duly signed by him and countersigned by two independent witnesses."*

25. He submits that the petitioner sought rectification of the order dated 10.06.2023 and thereby prayed to replace the word "provided" with word "shown" but no rectification was sought of any other finding which establishes that the 'ground of arrest' were shown to the petitioner and he duly signed the same as a token thereof.

26. Inviting the attention of the Court to the 'ground of arrest', Mr. Hossain, submits that the 'ground of arrest' clearly bear the signatures of the petitioner at two points and the petitioner has also appended a date on the same. Besides that, it also bears the time when information of his arrest was given to his wife, which falsifies the petitioner's contention that the grounds of arrest have not been informed to him.

27. According to Mr. Hossain, yet another aspect that is evident from the 'ground of arrest' is that the petitioner in his own handwriting has also put

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his wife's name as the person who has been informed of his arrest. He submits that the endorsement on the 'ground of arrest' that the petitioner has informed about his arrest 'physically' to his wife, shows that the arrest had taken place at the petitioner's residence in the presence of his wife. He submits that had the arrest taken place at Pravartan Bhawan, then the word 'telephonically' would have made sense instead of 'physically'. He further submits that the ground of arrest is also signed by two independent witnesses.

28. Inviting the attention of the Court to the Arrest Memo, Mr. Hossain submits that this document is part of the petition and specifically mentions the place of arrest as W-29, Greater Kailash, Part-II, Delhi but neither in the petition nor in the bail application, there is a whisper that the place of arrest is not the residence of the petitioner in Greater Kailash, Part-II, Delhi.

29. Referring to the *panchnama,* Mr. Hossain submits that it has specifically been recorded in the *panchnama* that the petitioner was informed of the grounds of arrest and as a token of receiving such information, the petitioner had put his signatures and date on the Arrest Memo. He submits that no specific challenge has been laid to the *panchnama* or to the factual aspects recorded therein.

30. He submits that all the documents viz., arrest memo, arrest order, *panchnama,* grounds of arrest etc. are official documents, therefore, they carry a presumption of correctness under Section 114(e) of the Evidence Act.

31. He contends that the law as regard furnishing of grounds of arrest as laid down in ***Pankaj Bansal*** (supra) has been made applicable prospectively as held by the Supreme Court in ***Ram Kishore Arora*** (supra), therefore, it

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was the decision of this Court in ***Moin Akhtar Qureshi vs. Union of India (DB)***[7] which was holding the field when the petitioner was arrested on 09.06.2023. He submits that in terms of ***Moin Akhtar Qureshi*** (supra), oral communication of 'ground of arrest' was proper compliance of the mandate of Section 19(1) of the PMLA.

32. He submits that the contents of 'ground of arrest' are the same as mentioned in the remand application moved by the respondent before the learned Special Judge on 10.06.2023, therefore, the respondent had disclosed the grounds of arrest to petitioner at the earliest. Accordingly, there was no violation of Section 19(1) of the PMLA. Reliance in this regard has been placed on the judgment of ***Moin Akhtar Qureshi*** (supra) and a coordinate bench of this Court in ***Ram Kishore Arora vs. Directorate of Enforcement.***[8]

33. In rejoinder, Mr. Pahwa submits that a Division Bench of this Court in ***Rajbhushan Omprakash Dixitvs.Union of India***[9] had doubted the correctness of the judgment in ***Moin Akhtar Qureshi*** (supra) and the issue *apropos* the requirement of furnishing a copy of the grounds of arrest was referred to the larger Bench of this Court, therefore, the law laid down in ***Moin Akhtar Qureshi*** *(*supra*)* was never a good law.

34. Inviting attention of the Court to the 'ground of arrest', Mr. Pahwa, submits that it is only the last page which has been signed by the petitioner, which raises a serious doubt about the very execution of the document. According to Mr. Pahwa, the signature on the 'ground of arrest' is only for

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[7]2017 SCC OnLine Del 12108
[8]W.P. (Crl) 2048/2023
[9](2018) SCC Online Del 7281

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the purpose of informing the rights of the arrestee, in terms of the judgment of the Supreme Court passed in ***State of West Bengal vs. D.K. Basu***,[10] and cannot be construed to be an acknowledgment of being informed of the 'ground of arrest'.

35. I have heard the learned Senior Counsel for the petitioner, as well as, the learned Special Counsel for the respondent/ED and have perused the record.

36. It is an admitted case of the parties that the petitioner was not furnished/supplied a copy of the grounds of arrest in writing at the time of his arrest. As laid down by the Supreme Court in ***Ram Kishor Arora*** (supra) the requirement of furnishing grounds of arrest to the accused/arrested person in writing was not mandatory or obligatory till the date of directions passed in ***Pankaj Bansal*** (supra) on 3rd October, 2023, therefore, non-furnishing of grounds of arrest to the petitioner in writing, who was arrested on 09.06.2023, could not be held illegal.

37. However, the controversy which remains unresolved is whether the grounds of arrest were shown to the petitioner and in case the answer to the question is in affirmative, whether it is sufficient compliance of the mandate of Section 19(1) of PMLA. This calls for examining the legal position prevailing prior to the date of pronouncement of judgment in ***Pankaj Bansal*** (supra) *apropos* the manner in which the grounds of arrest were to be informed in terms of Section 19(1) of the PMLA.

38. As noted above, the contention of Mr. Hossain is that prior to the decision in ***Pankaj Bansal*** (supra), it was the decision of Division Bench this Court in ***Moin Akhtar Qureshi*** (supra), which was holding the field.

[10](1997) 1 SCC 416

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On the other hand, Mr. Pahwa contends that the correctness of the law laid down in ***Moin Akhtar Qureshi*** (supra) was doubted by another Division Bench of this Court in ***Rajbhushan Omprakash Dixit*** (supra), therefore, the law that was prevailing at the time of petitioner's arrest was the law laid down in ***Rajbhushan Omprakash Dixit*** (supra).

39. Before proceeding further, apt it would be to refer to the law laid down by this Court in ***Moin Akhtar Qureshi*** (supra), wherein it was observed as under:

> *"65. On consideration of the aforesaid decision relied upon by learned counsels, the position, in law, which emerges is as follows:*
>
> > *i. The procedural safeguards in clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of Article 22 provides the material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may, without delay, apply its mind to his case. See Madhu Limaye (Supra).*
> >
> > ***ii. Neither Section 19(1) of PMLA nor the definition of the expression 'order' as given in Sub-Clause (h) of Rule 2, of the PMLA Arrest Rules provide that the grounds for such arrest are mandatorily required to be provided in writing to the person arrested at the time of his arrest. Oral communication of the grounds of***

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arrest is not only a substantial, but proper compliance of the provision. *Section 19(1) also does not state that the grounds of arrest are to be informed to the person arrested, immediately.* ***The use of the word in Section 19(1) "as soon as may be" makes it clear that grounds of arrest may not be supplied at the time of arrest itself or immediately on arrest, but as soon as may be. See Chhagan Chandrakant Bhujbal (Supra).***

xxxx xxxx xxxx xxxx

73. Pertinently, Section 19 of the PMLA also uses the expression "informed of the grounds of such arrest" - as used in Article 22(1), and does not use the expression "communicate the grounds of such arrest". The Legislature has consciously used the expression "informed", which is also used in Article 22(1), since Section 19 deals with the power of arrest. The Scheme of Section 19 engrafts an additional safeguard against misuse of the power of arrest by the Competent Authority, by stipulating in sub-Section (2) thereof, that the Competent Authority shall "immediately after arrest of such person under sub-Section (1) … … …" forward a copy of the order of arrest, along with the material in his possession - on the basis of which the reasonable belief is formed that the person is guilty of an offence punishable under the Act, in a sealed envelope to the Adjudicating Authority, which the Adjudicating Authority is obliged to keep under his custody.

74. ***We may also observe that the obligation cast on the Competent Authority under Section 19(1) is to inform the arrestee, "as soon as may be" of the grounds of such arrest. Section 19(1) does not oblige the Competent Authority to inform/serve the order of arrest, or the grounds for such arrest to the arrestee simultaneously with his arrest****. In the present case, the petitioner was informed of the grounds of his arrest at the time of his arrest itself.*

75. In the facts of the present case, the petitioner, in any event, came to be informed of the reasons for his arrest when

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a detailed application was moved before the learned Special Judge on 26.08.2017, i.e. the day following his arrest, setting out the materials which also virtually contain the grounds of his arrest. The said application was, admittedly, served upon the petitioner on 26.08.2017……

76. Thus, the petitioner, in any event, became aware of the grounds of his arrest when he and his legal practitioner were provided with a copy of the application under Section 167 Cr.P.C. read with Section 65 PMLA dated 26.08.2017 to seek his ED custody remand……..”

(emphasis supplied)

40. Since, in ***Moin Akhtar Qureshi*** (supra), a specific reference was made to the decision of the Division Bench of the Bombay High Court in ***Chhagan Chandrakant Bhujbal vs. UOI,***[11] therefore, it is apposite to refer to the relevant paragraph from the said decision also, which reads as under:-

“190. ***The provision of Section 19(1) also does not state that the grounds of arrest are to be informed to the person arrested, immediately. The use of the word in the said provision “as soon as may be”, makes it clear that grounds of arrest are not to be to be supplied at the time of arrest itself or immediately on arrest, but as soon as may be.*** *If it was the intention of the Legislature that in the Arrest Order itself the grounds of arrest should be stated, that too in writing, the Legislature would have made strict provision to that effect by using the word ‘immediately’ or ‘at the time of arrest’.* ***The fact that Legislature has not done so but used the words ‘as soon as may be’, thereby indicating that there is no statutory requirement of grounds of arrest to be communicated in writing and that too at the time of arrest or immediately after the arrest. The use of the***

[11]2016 SCC Online Bombay 9338

words 'as soon as may be' implies that such grounds of arrest should be communicated at the earliest."

(emphasis supplied)

41. Clearly, ***Moin Akhtar Qureshi*** (*supra*) lays down that – (i) oral communication of the grounds of arrest is not only a substantial, but proper compliance of the provision; (ii)Section 19(1) of the PMLA does not oblige the Competent Authority to inform/serve the order of arrest, or the grounds for such arrest to the arrestee simultaneously with his arrest, but as soon as may be and (iii) when the arrestee, or his counsel is provided with a copy of the application filed by the ED under Section 167 Cr.P.C. read with Section 65 PMLA seeking custody remand, he will stand informed in terms of Section 19(1) of the PMLA if the said application sets out the materials which also virtually contain the grounds of his arrest.

42. The correctness of the law laid down in ***Moin Akhtar Qureshi*** (*supra*) was, however, doubted by another Division Bench of this Court in ***Rajbhushan Omprakash Dixit*** (*supra*) and the matter was referred to a Larger Bench for consideration. The relevant extract from ***Rajbhushan Omprakash Dixit*** (*supra*) reads thus:

> *"**56.** Consistent with judicial discipline, since this Bench is of the view that the decisions of the coordinate Bench of this Court in Moin Akhtar Qureshi v. Union of India (supra) and Vakamulla Chandrashekhar v. Enforcement Directorate (supra) require reconsideration, it refers to a larger Bench, the following questions for consideration:*
>
> *(i) xxxx*
>
> *(ii) xxxx*
>
> *(iii) Under Section 19 of PMLA read with Rules 2(h) and 2(g) of the PML Arrest Rules read with Rule 6*

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> *and Form III thereof, does a person arrested under Section 19(1) of the PMLA have to be furnished a copy of the grounds of arrest? If so, should they be furnished soon enough to enable the person arrested to apply for bail or to oppose the application for remand? What are the consequences of the failure to do so?"…*

For the sake of completeness it may be mentioned here that the aforesaid question now stands settled by the decision of Supreme Court in ***Pankaj Bansal*** (supra) but the directions contained therein making it mandatory for the arresting officer to communicate the grounds of arrest to the arrestee in writing, are prospective in nature.

43. The issue whether the law laid down in ***Moin Akhtar Qureshi*** (supra) or in ***Rajbhushan Omprakash Dixit*** (supra) would be applicable, need not detain this Court any longer, in as much as, it is trite law that pendency of a reference to a larger bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision is rendered in the reference. Till the time, the decisions cited at the bar are not modified or altered in any way, they continue to hold the field.[12]

44. This position has also been reiterated by the Hon'ble Supreme Court in its recent decision in ***Union Territory of Ladakh & Ors. vs. Jammu and Kashmir National Conference & Anr.***[13] The relevant para of the said judgment reads as under:

> *"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending.*

[12] Ashok Sadarangani vs. Union of India:(2012) 11 SCC 321
[13] 2023 SCC OnLine SC 1140

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> ***We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts****, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680*[5]*. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."*

45. Keeping the aforesaid law in perspective, there is absolutely no doubt that at the time of arrest of the petitioner i.e., on 09.06.2023, the law laid down in ***Moin Akhtar Qureshi*** (supra) was holding the field, which position continued till the pronouncement of decision in ***Pankaj Bansal*** (supra) whereby ***Moin Akhtar Qureshi*** (supra) and ***Chhagan Chandrakant Bhujbal*** (supra) were specifically overruled. Meaning thereby that at the time of petitioner's arrest, oral communication of the grounds of arrest was proper compliance of the provisions of Section 19(1) of the PMLA.

46. The above position is also fortified by the observation of the Supreme Court in ***Ram Kishor Arora*** (supra) wherein the Court held that non furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal case could neither be held to be illegal nor the action of the concerned officer in not furnishing the same in writing could be faulted with.

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47. Now reverting to the factual conundrum which still looms large in the present case and needs to be decided is whether the petitioner was orally communicated, or in other words shown, the grounds of arrest at the time of his arrest and for this purpose reference to 'ground of arrest' and other contemporaneous documents is imperative.

48. Clearly, the document 'ground of arrest' bears the signatures of the petitioner at two points. One, immediately after the conclusion of narration of grounds of arrest. Secondly, below the endorsement made in terms of the judgment of the Supreme Court in ***D.K. Basu*** *(*supra*)* to the effect that the petitioner has been intimated about his rights as an arrestee and his wife has been informed about his arrest "*physically"* at *"22.28"* on 09.06.2023. Therefore, there is no substance in Mr. Pahwa's contention that the signature of the petitioner on the 'ground of arrest' is only a token of acknowledgement of the compliance of mandate of ***D.K. Basu*** (supra).

49. To be noted that Mr. Pahwa did not deny the signatures of the petitioner on the 'ground of arrest'. However, his submission was that since each page of the 'ground of arrest' does not contain the signature of the petitioner, it raises a doubt about its authenticity. A perusal of the 'ground of arrest' reveals that it runs into three pages and there appears to be continuity of matter and flow of the typed contents from one page to another. Besides that, the document is also signed by two independent witnesses which lends credence to the same. No provision of law has been pointed out and there seems to be none which requires that each page of 'ground of arrest' is to be signed by the petitioner. That apart, it has to be borne in mind that in the present case, the petitioner was arrested prior to the decision of ***Pankaj Bansal*** (supra) when oral communication of the grounds

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of arrest was proper compliance of the provisions of Section 19(1) of the PMLA.

50. Therefore, merely because each page of the 'ground of arrest' is not signed by the petitioner cannot be a reason to disbelieve the existence of the said document, or to negate the fact that the grounds of arrest were shown and informed to the petitioner.

51. Yet another striking feature that is evident from the 'ground of arrest' is that the petitioner has made corrections in his own handwriting in the endorsement in terms of the decision of ***D.K. Basu*** (supra) so as to insert that his wife has been informed about his arrest *"physically"* at "*22:28"* on 09.06.2023, which goes to show that the arrest had taken place at petitioner's residence at W-29, Greater Kailash, Part-II, New Delhi where his wife was undisputedly present.

52. The *panchnama* which was prepared contemporaneously also records that the Arresting Officer had presented the 'Arrest Memo' to the petitioner and informed him the grounds of arrest and that the petitioner signed the Arrest Memo as token of him being informed the grounds of his arrest. The *panchnama* is also signed by the wife of the petitioner. It is not in dispute that a copy of the *panchnama* was supplied by the respondent to the petitioner / his wife and the same has also been annexed with the petition. Just because the *panchnama* does not specifically mentions that the petitioner signed the 'ground of arrest' as a token of acknowledgement of having been informed the grounds of his arrest, cannot be reason to discard what is recorded in the *panchnama* when the same has not been disputed at any stage.

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53. The contention of the petitioner that the 'Arrest Order' dated 09.06.2023 records that the petitioner was arrested at Parvartan Bhawan shows that the said document was not in existence at the time, the search was carried out at the residence of the petitioner, does not hold water. A perusal of the 'Arrest Order' shows that the petitioner apart from affixing his signature has also appended the date *"9/6/23"*, and the time *"22:28"* at which his wife was informed about his arrest, in his own handwriting, therefore, the said document cannot be said to be *ante-dated* or *ante-timed*. In so far as the place of arrest is concerned, it is evident from the 'Arrest Memo' that the place of arrest of the petitioner is shown as his residence viz., W-29, Greater Kailash-II, New Delhi and this document was available with the petitioner from the date of arrest itself but there is no whisper either in the petition or in the bail application that place of arrest is wrongly recorded nor any such objection seems to have been taken before the learned Special Judge. The search *panchnama* also reveals that the arrest was affected at the residence of the petitioner in the presence of two independent witnesses. The wife of the petitioner has also signed the *panchnama*. Merely because there is some typographical error in the 'Arrest Order' with regard to the place of arrest, the same will not enure to the benefit of the petitioner and vitiate his arrest.

54. Furthermore, the source of 'ground of arrest' and other contemporaneous documents viz., Arrest Memo, *Panchnama and* Arrest Order is official i.e., the Enforcement Directorate, therefore, they would carry presumption of correctness under Section 114(e) of the Evidence Act, 1872 that official acts have been regularly performed. Reference in this

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regard may be had to the decision of the Supreme Court in ***Devender Pal Singh v. State (NCT of Delhi)***[14] wherein it was held as under:

> *"37. .....There is a statutory presumption under Section 114 of the Evidence Act that judicial and official acts have been regularly performed. The accepted meaning of Section 114(e) is that when an official act is proved to have been done, it will be presumed to have been regularly done. The presumption that a person acts honestly applies as much in favour of a police officer as of other persons, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration. (See Aher Raja Khima v. State of Saurashtra [AIR 1956 SC 217 : 1956 Cri LJ 421].*

55. Apart from the aforesaid presumption to be drawn under Section 114(e) of the Evidence Act, there is otherwise ample material on record in the form of following pleadings and findings in the remand order which suggests that the 'ground of arrest' was shown and thus, informed to the petitioner as a matter of fact:

(i) The ED filed an application under Section 167 Cr.P.C. on 10.06.2023, seeking remand of the petitioner. In para 13 of the said application, it was specifically alleged that the petitioner was shown the 'ground of arrest' and 'arrest order' to which the petitioner appended his signature after having gone through it. The relevant extract of para 13 reads as under:

> *13. ..... He was shown the ground of arrest, arrest order to which after having gone through it, he*

[14](2002) 5 SCC 234

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appended his signature. He was arrested vide arrest memo dated 09.06.2023."

(ii) On 10.06.2023, before the learned Special Judge, the learned counsel for the petitioner appears to have argued that the petitioner was not informed the grounds of his arrest but the learned Special Judge, after perusing the case diary rejected the said argument. The relevant part of the order dated 10.06.2023 reads as under:

> *"7.I have considered the submissions advanced by both the sides as well as* ***gone through the case diary produced by the ED****."*
>
> "8. ……. ***The contention of the Ld. Counsel for the accused that accused was not informed about the grounds of his arrest is contrary to the records****. Accused has been* ***provided with*** *the grounds of his arrest and* ***same is duly signed by him and countersigned by two independent witnesses****."*
>
> *(emphasis supplied)*

(iii) Subsequently, an application seeking modification/rectification of the order dated 10.06.2023 was filed by the petitioner alleging that in paragraph 8 of the said order inadvertently the words 'provided with' have occurred, instead of the word 'shown', as correctly recorded in the last sentence of paragraph 13 of the remand application. Accordingly, a prayer for replacing the word 'provided with' with word 'shown' was made. The relevant paragraph and prayer clause of the rectification application read as under:

> *"2. In the last sentence of Paragraph 8 of the aforesaid Order dated 10.06.2023,* ***inadvertently the words 'provided with' have occurred, instead of the word***

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'shown',<u>as correctly recorded</u> in the last sentence of Paragraph 13 of the Remand Application…

xxxx *xxxx* *xxxx* *xxxx*

<u>Prayer</u>

Accordingly, it is humble prayer to carry out necessary rectification of the inadvertent error which has crept in the last sentence of Paragraph 8 of the aforesaid Order dated 10.06.2023 by replacing the words 'provided with' with the word 'shown'."

(emphasis supplied)

(iv) The learned Special Judge *vide* order dated 20.06.2023 allowed the said application considering the averments made in paragraph 13 of the ED's remand application. The relevant para of the order dated 20.06.2023 reads as under:

*"16. Considering the averment contained in paragraph no.13 of the ED application under Section 167 Cr.P.C. moved on 10.06.2023, I am inclined to make the corrections as sought in the application and accordingly, the work '**provided**' in the last line of paragraph no.8 of the said order is replaced by the word '**shown**'."*

56. The narration in the foregoing paragraph leads this Court to sum up, the findings which have been recorded in the remand order dated 10.06.2023, as corrected by order dated 20.06.2023, as follows – (i) the contention of the Ld. Counsel for the accused that the petitioner/accused was not informed about the grounds of his arrest, is contrary to the records, (ii) the petitioner/accused has been 'shown' the grounds of his arrest, and (iii) the grounds of arrest have been duly signed by the petitioner and countersigned by two independent witnesses. Needless to add, that such

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findings were recorded by the learned Special Judge after having gone through the case diary.

57. The petitioner though sought limited correction of order dated 10.06.2023 seeking to replace the word *'provided with'* with the word '*shown'* but conspicuously no rectification was sought *apropos* the other findings recorded in the order dated 10.06.2023, which gives rise to an inference that the petitioner is not aggrieved with the said findings. Even in the present petition the said findings have not been challenged. Therefore, the finding that the petitioner was shown the 'ground of arrest' and the same is duly signed by him and countersigned by two independent witnesses, has remained unassailed.

58. Even in the present petition no definite case has been pleaded that the petitioner was not shown the grounds of arrest. The stand taken is that the petitioner was forced to sign some alleged documents purportedly the grounds of arrest but the same were never supplied. Paragraph 8 of the petition reads as under:

> *"8. Therefore, it is the specific case of the Petitioner that no grounds of arrest has been communicated or were explained nor any explanation given for his arrest. Moreover,* ***Petitioner was forced to signsome alleged documents purportedly the grounds of arrestand same was never supplied with the grounds of arrest****."*
>
> *(emphasis supplied)*

Evidently, there is no categorical denial of the fact that the petitioner had signed the grounds of arrest, rather the stand taken by the petitioner goes to show that he had signed the grounds of arrest but a physical copy of the same was never supplied to him. This stand justifies the findings recorded

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in the remand order dated 10.06.2023 which were not questioned by the petitioner, and rightly so because the petitioner never had a doubt that he had signed the 'ground of arrest'. Therefore, the contention now sought to be raised that the petitioner was never shown the 'ground of arrest' is contrary to the record.

59. The issue deserves to be considered from yet another angle. The respondent/ED had moved an application Section 167 Cr.P.C. seeking remand of the petitioner and a copy of same was undisputedly served upon the learned counsel for the petitioner before the learned Special Judge on 10.06.2023. The remand application when juxtaposed with the 'ground of arrest' reveals that the remand application virtually contains the grounds of arrest, therefore, in view of the law laid down in ***Moin Akhtar Qureshi*** (supra) the petitioner stood informed of the grounds of arrest in terms of Section 19(1) of the PMLA when he was produced before the learned Special Judge within twenty-four hours of his arrest by the ED for seeking his remand.

60. In so far as the petitioner's contention that the concerned officer did not forward a copy of the arrest order along with the material in his possession immediately to the Adjudicating Authority in terms of the mandate of sub-section (2) of Section 19 of the PMLA is concerned, the same is also devoid of merit. The petitioner was arrested on 09.06.2023 at 10:25 pm, which happened to be a Friday night. There is substance in the contention of Mr. Hossain that on Saturday i.e. 10.06.2023 and Sunday i.e. 11.06.2023 the office of the Adjudicating Authority remained closed, therefore, copy of arrest order along with other relevant material was immediately forwarded on 12.06.2023. It is trite law that where a period is

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prescribed for the performance of an act in a Court or office, and that period expired on a holiday, then according to Section 10 of the General Clauses Act, 1897, the act should be considered to have been done within that period, if it is done on the next day on which the Court or office is open.[15]

61. The obligation flowing from the expression 'immediately' occurring in Section 19(2) of the PMLA has to be given meaning depending upon the context and the manner in which arrest order along with other material is to be forwarded to the Adjudicating Authority in accordance with the rules. Rule 3(5) & (6) of the Rules provides the manner of placing a sealed envelope in an outer envelope along with an acknowledgement slip in Form II appended to the said Rules. The outer envelope is then to be sealed and the complete address of the Adjudicating Authority has to be mentioned on the sealed outer envelope. In terms of Rule 4 of the said Rules, an acknowledgement of the Adjudicating Authority, or in his absence, of the designated officer is required on the slip in Form II, which is possible only on a working day. Further, it is well settled that when the statute provides something to be done in a particular manner it can be done in that manner alone.[16] Therefore, there is no delay in forwarding a copy of the Order of Arrest along with the material to the Adjudicating Authority.

62. In light of the aforesaid discussion, it cannot be said that the arrest of the petitioner is illegal. Under the circumstances, I am of the view that the CRLMC 4376/2023 as well as BAIL APPLN 2356/2023, deserve to be dismissed and, are accordingly dismissed.

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[15]Harinder Singh v. Karnail Singh, AIR 1957 SC 271

[16]Chief Information Commissioner v. State of Manipur, (2011) 15 SCC 1

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Signing Date:08.01.2024
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63. It is made clear that the merits of the case have not been considered as the same were not urged either in the petition or in the bail application.

64. The present petition and the bail application, along with pending applications, if any, stand disposed of.

65. Order *dasti* under the signatures of the Court Master.

66. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J.

JANUARY 08, 2024
dss /N.S.ASWAL/MK

Signature Not Verified
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By:NARENDRA SINGH
ASWAL
Signing Date:08.01.2024
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