

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3931 OF 2016

Chhagan Chandrakant Bhujbal	]	
Age - 69 Years, Male,	]	
R/at 5 th Floor, Militia Apartments,	]	
M.P. Road, Mazgaon, Mumbai.	]	
<i>[Presently in Bombay Hospital in</i>	]	
<i>custody / directed to be lodged at</i>	]	
<i>Mumbai Central Prison at Mumbai]</i>	]	 Petitioner
<i>Versus</i>		
1. Union of India,	]	
Central Government Advocates,	]	
Income Tax Building Annexe,	]	
New Marine Lines, Mumbai.	]	
	]	
2. Sanjay V. Kinjawadekar	]	
<i>[The then Assistant Director,</i>	]	
<i>Directorate of Enforcement],</i>	]	
Earlier having office at :	]	
Enforcement Directorate,	]	
4 th Floor, Kaiser-I-Hind Building,	]	
Currimbhoy Road, Ballard Estate,	]	
Mumbai - 400 001.	]	
	]	
3. Directorate of Enforcement,	]	
4 th Floor, Kaiser-I-Hind Building,	]	
Currimbhoy Road, Ballard Estate,	]	
Mumbai - 400 001.	]	
	]	
4. State of Maharashtra	]	 Respondents

WITH
CRIMINAL APPLICATION NO. 463 OF 2016
IN
CRIMINAL WRIT PETITION NO.3931 OF 2016

Ms.Anjali Damaniya	]	
Occupation : Profession,	]	

Address : 5th floor, Vijayshree Durga,]
6th Road, Santacruz East,] ... Applicant /
Mumbai – 400 055] Intervener

In the matter of :-

Chhagan Chandrakant Bhujbal] Petitioner

Versus

Union of India & Others] Respondents

Appearances :-

Mr. Vikram Chaudhary, Senior Counsel, a/w. Mr. Sujay Kantawala,
Mr.Sajal Yadav i/b. Mr. Shalabh Krishnan Saxena for the Petitioner.

Mr.Neeraj Kishan Kaul, Additional Solicitor General a/w. Mr.Anil C.
Singh, Additional Solicitor General, a/w. Ms.Purnima Kantharia,
Mr.H.S. Venegaonkar, Mr.Samar Kachwala, Mr.Sanyat Lodha,
Ms.Chanan Parwani, Ms.Indrayani Deshmukh and Mr.Yash Momaya
for Respondent Nos.1 to 3 (Enforcement Directorate).

Mr.Satya Prakash Singh, Assistant Legal Adviser, Enforcement
Directorate, Mumbai.

Mr. S.K. Shinde, P.P., a/w. Mr. J.P. Yagnik, A.P.P., for Respondent
No.4-State.

Mr.Yeshwant Shenoy i/b. Mr.G.L. Thonge for the Applicant in APPW
No.463 of 2016.

**CORAM: RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

RESERVED ON : 5th December, 2016.

PRONOUNCED ON : 14th December, 2016.

JUDGMENT : [Per Dr. Shalini Phansalkar-Joshi, J.]

1. Rule.
2. Rule made returnable forthwith.
3. With consent of learned Counsel for the parties, heard finally at the stage of admission itself.
4. By this Petition, filed under Articles 226 and 227 of the Constitution of India, (*for short, "the Constitution"*), the Petitioner is seeking issuance of Writ of Habeas Corpus or such other appropriate writ, order or direction for his forthwith release from the custody by setting aside impugned arrest order dated 14th March 2016 and the consequent remand orders, on the count that they are manifestly improper, illegal, without jurisdiction, null and void *ab initio* on the touch-stone of Articles 14, 21 and 22 of the Constitution of India.
5. This relief is claimed by the Petitioner in the conspectus of the following facts :-

The Petitioner is a citizen of India and the then PWD Minister in the State of Maharashtra. In a Public Interest Litigation No.23 of 2014 filed by the *Aam Aadmi Party* and its office bearers, who is intervener in this petition, the grant of contract for construction of

“New Maharashtra Sadan” at Delhi was questioned, *inter alia*, alleging irregularities, lack of transparency and apprehending transfer of funds indirectly to the Petitioner. In the said Public Interest Litigation, on 18th December 2014, the Division Bench of this Court directed constitution of a Special Investigation Team, (*for short, “SIT”*), comprising of Director General, Anti-Corruption Bureau, and Director, Enforcement Directorate, to look into the allegations made against the Petitioner and his relatives. Accordingly, the SIT was constituted and on the receipt of the reports of the SIT from time to time, this Court, vide its order dated 29th April 2015, was pleased to clarify that the Director, Anti-Corruption Bureau, and the Director, Enforcement Directorate, need not wait for any orders of the Court before lodging First Information Report, (*for short, “FIR”*), if, according to the concerned Agencies, a case is made out for lodging of FIR against any of the Respondents (*present Petitioner was Respondent No.6 therein*), or, any other person. This Court also made it clear that law on this subject is quite clear, as has been laid down by the Hon'ble Supreme Court in the case of *Lalita Kumari Vs. Government of Uttar Pradesh and Ors.*, (2014) 2 SCC 1.

6. Accordingly, FIR No.32 of 2015 dated 8th June 2015 was registered by the A.C.B., Mumbai, invoking Sections 13(1)(c), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988, (*for short*, "*PC Act*"), and Sections 109, 406, 409, 420, 465, 468, 471 and 474 r/w. Sections 34 and 120B of the Indian Penal Code, (*for short*, "*IPC*"). The Petitioner was arraigned, amongst various other accused, as accused in the said FIR. The investigation in the said FIR was culminated with issuance of Charge-Sheet No.16 of 2016 filed before the Special A.C.B. Court at Mumbai. The Petitioner is on bail in the said case, which was granted at post-cognizance stage.

7. Another FIR No.35 of 2015 dated 11th June 2015 was also registered by the Anti-Corruption Bureau, Mumbai, (*for short*, "*ACB*"), against the Petitioner, invoking Sections 13(1)(c), 13(1)(d) and 13(2) of PC Act and Sections 109, 406, 409, 420, 465, 468, 474, 474 and 477A r/w. Sections 34 and 120B of IPC. Petitioner was arraigned, against amongst various other accused, as accused in the said FIR also. The investigation into the said FIR was also culminated with issuance of Charge-Sheet No.10 of 2016 filed before the Special ACB Court at Mumbai. The Petitioner is on bail even in the said case, which was granted at post-cognizance stage.

8. It is further case of the Petitioner that, thereafter, on 17th June 2015, an Enforcement Case Information Report, bearing No.ECIR/MBZO/07/ 2015, was registered in the office of Respondent No.2 in Mumbai. However, Sections 154 to 157 of the Code of Criminal Procedure, 1973, (*for short, "the Code"*), were not complied with. The copy of the said ECIR was supplied to the Petitioner along with the complaint. Another Enforcement Case Information Report, bearing No.ECIR/MBZO/08/2015, was also registered in respect of separate FIR No.69 of 2015 dated 13th June 2015, concerning Taloja Police Station, New Bombay. The Petitioner is, however, not arraigned as accused in the said FIR.

9. The grievance of the Petitioner is that, in respect of these Enforcement Case Information Reports, (*for short, "ECIR"*), he was summoned, for the first time, on 14th March 2016 and, accordingly, he appeared before Respondent No.2 in his office on the same day, at about 10:30 hours, to co-operate him in the investigation. However, the Petitioner had been restrained from moving out of the office, even for taking lunch, and was, thus, illegally taken in custody by restraining his movements. It is his further contention that to show that his arrest was in consonance with Articles 14, 21 and 22 of the Constitution, in the impugned arrest order dated 14th March 2016, it

was stated that the arrest of the Petitioner was made at 22:05 hours. However, no authorization issued by the Central Government in the name of Respondent No.2 for effecting the arrest of the Petitioner was shown, nor the written communication of the grounds of arrest was made available to him.

10. On 15th March 2016, Petitioner was produced before the Special Court for Prevention of Money-Laundering at Mumbai at about 16:30 hours i.e. beyond the period of twenty-four hours. The Special Court, vide its order, was pleased to remand the Petitioner to the custody of Enforcement Directorate for two days without satisfying itself by asking the authorization issued by the Central Government in the name of Respondent No.2 to exercise power of arrest, nor such authorization was produced before the Special Court. The Special Court also did not call for the grounds of arrest. It was not even ascertained as to whether the offence under PML Act was cognizable or non-cognizable. According to the Petitioner, Respondent No.2 was erroneously proceeding on the basis that the alleged offence under PML Act is cognizable. Respondent No.2 also did not produce any Case Diary, required to be maintained under Section 172 of the Code and which was required to be produced in terms of Section 167 of the Code before the Special Court at the time

of seeking remand. The Special Court also did not ask for the same. The Special Court granted the custody of the Petitioner upto 17th March 2016 to the Enforcement Directorate, as sought by Respondent No.2, for custodial interrogation of the Petitioner.

11. On 17th March 2016, the Petitioner was remanded to Judicial Custody till 31st March 2016 and thereafter, from time to time, his Judicial Custody was extended on the remand applications filed by Respondent No.2. As a result, at present also, Petitioner is in judicial custody and taking treatment on medical grounds at Bombay Hospital, as ordered by the Special Court.

12. Meanwhile, on 30th March 2016, a detail Criminal Complaint No.2 of 2016 was filed against the Petitioner, and fifty-two other accused, before the Special Court at Mumbai, alleging commission of offence punishable under Section 3 r/w. Section 4 of PML Act with a specific allegation that the Petitioner and his family members had generated huge illicit funds, which were money laundered during the period from 2006 to till date. The specific allegations against him, as disclosed in the Criminal Complaint No.2 of 2016 dated 30th March, 2016, filed against him, by the Assistant Director, Directorate of Enforcement, Mumbai are to the effect that M/s.K.S. Chamankar

Enterprises secured R.T.O. development project from the Maharashtra Government by misrepresentation and fraud and in connivance with the Petitioner and other public servants. The established norms were bypassed and the project of Maharashtra Sadan was given to M/s.K.S. Chamankar on a platter in defiance of rules and regulations prevalent in the matter. The project was amounting to Rs.4,700 Crores (at the price, then, prevailing in the year 2006). It was awarded to a contractor having hardly any experience of undertaking such a huge project, or having any resources to execute the same. The proceeds derived out of this criminality were to be shared between the conspirators including M/s.K.S. Chamankar Enterprises, their partners and their associates, M/s. Prime Builders and Developers, their partners and associates, namely, the Petitioner. It was also alleged that by resorting to misrepresentation of facts and forgery and by accepting the bribes and other pecuniary benefits, the Petitioner has misused his official position as the PWD Minister. As a result, the State Government of Maharashtra, has suffered loss to the tune of Rs.840.16 Crores. Whereas, M/s.K.S. Chamankar Enterprises, its partners, its partners, the Chamankar Family, M/s.Prime Builders and Developers, its partners, Shailesh Mehta and Dhanpat Seth

have reaped an undue gain of Rs.840.16 Crores.

13. It was also alleged that the property worth Rs.17,35,80,400/- is attached on 28/08/2015, property of Rs.71,70,60,050/- is attached on 13/11/2015, property of Rs.24,96,46,213/- is attached by order dated 22/12/2015 and property of Rs.17,82,55,010/- is attached as per order dated 21/03/2016. These properties are attached by the competent authority under the provisions of Section 5(1) of the Prevention of Money Laundering Act, 2002.

14. As per further allegations in the complaint, the proceeds of the crime were then transferred to the accounts of the Petitioner/entities from Mumbai against fraudulent and sham transactions. It was also alleged that the Petitioner being the Ex-PWD Minister in the State of Maharashtra, was the chief master-mind of the entire scam. He had devised the entire methodology and scheme of things to defraud the State Government by conceptualizing and implementing a scheme, wherein, the Maharashtra Sadan/R.T.O. project was awarded to M/s. K.S. Chamankar Enterprises by misusing his official position. For that purpose he accepted the bribe in the form of cash and laundered the

same into the purported business activities of his group. He was thus, the chief conspirator, for generation of the proceeds of crime. He has thus, directly and intentionally indulged himself in the money laundering activities and thus, responsible for the generation for proceeds of crime and its laundering and thereby committed the offence punishable under Section 4 read with section 3 of the Prevention of Money Laundering Act, 2002 (for short, “PML Act”).

15. The Special Court, vide its order dated 27th April 2016, took cognizance of PML Complaint No.2 of 2016 by passing detail order containing various reasons.

16. According to the Petitioner, as, during this period, his health deteriorated, he moved Bail Application dated 3rd May 2016 before the Special Court, which came to be rejected by the order dated 13th May 2016. Petitioner, therefore, preferred Criminal Bail Application No.1050 of 2016 in the said case on medical grounds before this Court. The said Bail Application also came to be rejected by the learned Single Judge of this Court vide his order dated 16th June 2016. As a result, the Petitioner is still in the custody.

17. The Petitioner thereafter preferred Criminal Writ Petition No.2744 of 2016 before this Court, seeking a Writ of Habeas Corpus, amongst other Writs, while challenging the vires of Sections 45 and 49 of PML Act, or, for reading them down and seeking Writ of quo-*Warranto* qua the Respondent No.2. In the said Writ Petition, on 27th September 2016, Respondent Nos.1 and 2 sought time to file reply and the matter was adjourned to 27th September 2016. Meanwhile, Petitioner came to know about the Judgment of Punjab and Haryana High Court in the case of *Gorav Kathuria Vs. Union of India and Ors.*, [Dated 11th May 2016 in Criminal Writ Petition No.595 of 2016], wherein Section 45 of PML Act has been read down by the Division Bench of Punjab and Haryana High Court and the Criminal Appeal No.737 of 2016 preferred against the said order came to be dismissed by the Hon'ble Supreme Court on 12th August 2016. Petitioner, in such circumstances, sought to withdraw the earlier Writ Petition, seeking liberty to file the instant Petition, restricting his relief only to the extent of Writ of Habeas Corpus.

18. This relief is sought by the Petitioner, firstly, on the ground that the requisite procedure for arrest of the Petitioner is not followed in the case. It is submitted by learned Senior Counsel for

the Petitioner that in view of the amendment effected to Section 45 of PML Act by the Amendment Act of 2005, all the offences under the PML Act are made non-cognizable. It is urged that in a case where the offences are non-cognizable, the procedure required under Section 155(2) of the Code needs to be followed. Unless the cognizance of the offence is taken by the Magistrate or the Special Court, the arrest of the Petitioner could not have been effected. It is urged that, in the instant case, the Petitioner is arrested on 14th March 2016 on the basis of some Enforcement Case Information Report, which was an internal document and not an FIR. The complaint in the present case is filed on 30th March 2016 in the Special Court and then, only on 27th April 2016, the Special Court took cognizance of the offence. However, as much before that, the Petitioner was arrested and that too in respect of a non-cognizable offence, the very arrest of the Petitioner has become illegal and void *ab initio*.

19. To substantiate the submission that offences under PML Act are non-cognizable, learned Senior Counsel for the Petitioner has relied upon the debates that took place in the Parliament when the Amendment Act of 2005 was brought into force. It is urged that, though the heading of Section 45 of PML Act still says that the

offences are “cognizable and non-bailable”, the heading of the Section cannot be the guiding criteria for interpretation of the Section; because, as per the settled position of law, at times, the headings can be misleading also. Here in the case, it is urged that, in the backdrop of the debates that took place in the Parliament while bringing the Amendment Act of 2005, it was specifically stated that in order to make the offences under PML Act non-cognizable, the amendment was introduced. It is, thus, submitted that when the offence is non-cognizable, there is an embargo on the Special Court also for taking cognizance of the offence, except upon a complaint in writing made by the authorized officer. Here in the case, it is urged that, as the complaint was filed much after the Petitioner was arrested and produced for remand before the Special Court, his arrest is illegal, being against the procedure established by law.

20. It is submitted by learned Senior Counsel for the Petitioner that when the offence is non-cognizable, then, not only the procedure required under Section 155(1) of the Code needs to be followed, but the remaining provisions of the Code also come into play. Here in the case, the provisions, which are required to be followed by the concerned authorized officer while effecting the arrest, as laid down in Chapter XII of the Code from Sections 154 to

173, are not at all complied with. It is submitted that these are the mandatory procedural safeguards, which were required to be followed by the Investigating Agency; whether the Investigating Agency is the Enforcement Directorate or the Police Officer; especially, when it pertains to the personal liberty of the Petitioner, which is guaranteed under the various provisions of the Constitution. It is urged that Section 65 of PML Act clearly mandates application of provisions of the Code, in so far as they are not inconsistent with the provisions of PML Act relating to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings.

21. In this respect, learned Senior Counsel for the Petitioner has placed reliance on the Judgment of the Three-Judge Bench of the Hon'ble Apex Court in the case of *Om Prakash Vs. Union of India, (2011) 14 SCC 1*, to submit that the provisions of the Code; especially Sections 154 to 173 of the Code, are applicable even in a case where the power of arrest is exercised by the Excise Officer or Customs Officer. It is urged that, in this Judgment, the Hon'ble Apex Court has clearly held that, in respect of non-cognizable offence, a Police Officer and in the said case, an Excise Officer will have no authority to make an arrest without obtaining a warrant for the said purpose.

It is urged that Review Petition No.97-98 of 2013 filed by the Union of India against the said decision, raising the question whether an Excise Officer can arrest a person suspected of commission of evading excise duty, without a warrant from the Magistrate, also came to be rejected by the Hon'ble Supreme Court, vide order dated 13th August 2016, thereby clearly laying down that in case of non-cognizable offence, even the other statutory authorities under the Excise Act or Customs Act were also bound to follow the procedure laid down in Section 155 of the Code. It is submitted that the law laid down in this authority is squarely applicable to the Enforcement Authorities under PML Act also and as such the mandatory procedure not being followed in this case, the arrest of the Petitioner becomes illegal.

22. Secondly, it is submitted that even if the offence u/s. 4 of the PML Act, for which Petitioner is arrested, is held to be cognizable, in that case also, further mandatory procedural safeguards provided in the Code are not followed, which expect the Arresting Officer to give the copy of the FIR to the arrested person, maintain and produce the Case Diary of the investigation made so far, before the Court at the time of seeking remand, so as to give sufficient opportunity to the arrested person to challenge those grounds of arrest. It is submitted

that none of these safeguards were followed in the instant case, as the FIR itself was not registered before arrest of the Petitioner. According to learned Senior Counsel for the Petitioner, though there was a specific direction in the Public Interest Litigation that after lodging of the FIR, as per the procedure laid down by the Hon'ble Supreme Court in the case of *Lalita Kumari (supra)*, the Enforcement Directorate and the Director, Anti-Corruption Bureau, may proceed with investigation, no such direction was followed. It is urged that as per the law laid down by the Apex Court in the case of *Lalita Kumari (supra)*, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the 'procedure established by law' and, thus, is in conformity with Article 21 of the Constitution. It is submitted that as no such FIR was lodged in the instant case before arrest of the Petitioner, that Constitutional safeguard for the protection of the citizen is violated in the instant case, thereby making the Petitioner's arrest illegal.

23. Next, it is submitted by learned Senior Counsel for the Petitioner that no such Case Diary, as was required to be maintained under Section 172 of the Code, noting down the day-to-day progress in the investigation, was maintained or produced before the Special

Court at the time of seeking remand of the Petitioner. By placing reliance on the Judgment of the Division Bench of the Gujarat High Court in the case of *Rakesh Manekchand Kothari Vs. Union of India & Ors., in Special Criminal Application (Habeas Corpus) No.4247 of 2015 dated 3rd August, 2015*, it is submitted that in the said case also, prima facie, it was held that, the offences under PML Act are not cognizable and even if they are cognizable, the procedure prescribed under Chapter XII of the Code is bound to be followed, otherwise Article 21 of the Constitution would be violated. Accordingly, in that case, the Petitioner was held entitled for enlargement on bail under Section 45 of the PML Act. It is submitted that the said order was challenged by the State before the Hon'ble Supreme Court, but the Special Leave Petition (Crl.) No.9727 of 2015 was 'dismissed' by the Hon'ble Supreme Court, vide its order dated 23rd November 2015.

24. The further ground on which the arrest is called as 'illegal' pertains to non-following of the procedure, as laid down in PML Act also, while effecting the arrest of the Petitioner. It is urged that Section 19(1) of PML Act also contemplates giving 'grounds of arrest' to the accused immediately and also to cite those 'grounds of

arrest' in the Arrest Warrant. However, in this case, the 'grounds of arrest' are neither given to the Petitioner immediately, nor they are mentioned in the Arrest Warrant. Thus, it is submitted that even the provisions of PML Act, which are mandatory in nature, as affecting and having bearing on the personal liberty of the citizen, also being not followed in the instant case, the arrest of the Petitioner is illegal and void. Reliance is also placed on the landmark decision of the Hon'ble Supreme Court in the case of *D.K. Basu Vs. State of West Bengal, 1997 (1) SCC 416*, to submit that various safeguards laid down in the said decision, before effecting the arrest, are also not followed in the instant case. Hence, as per the law laid down by the Honble Supreme Court in the case of *Madhu Limaye Vs. State of Maharashtra, AIR 1969 SC 1014*, it is submitted that the Writ of Habeas Corpus is, definitely, maintainable, the arrest of the Petitioner in the instant case being against the procedure established by law.

25. The next thrust of the Petitioner, in the instant case, for challenging his arrest as illegal and unauthorized, then pertains to the competence and authority of Respondent No.2 to arrest him. It is submitted that Section 19 of the PML Act contemplates that only an

officer authorized by the Central Government has power of arrest. Here in the case, it is submitted that no notification is produced on record to show that Respondent No.2 was authorized by the Central Government to exercise the power of arrest. It is urged that as per the Notification No. GSR 441(E) dated 1st July 2005, which has not been rescinded till the date, the power of arrest has been conferred by the Central Government exclusively upon the Director of Enforcement holding office under the Foreign Exchange Management Act, 1999. No such power under Section 19 of PML Act is conferred on any other Director. Admittedly, Respondent No.2 is not the Director but an Assistant Director and in the absence of any notification, produced on record to show that he has been authorized by the Central Government to exercise the power of arrest, the very arrest of the Petitioner, effected by Respondent No.2, is ex-facie illegal, void and unauthorized and hence liable to be set aside.

26. According to learned Senior Counsel for the Petitioner, therefore, it is a fit case where the Writ of Habeas Corpus needs to be issued for release of the Petitioner forthwith from such illegal and unauthorized arrest.

27. The Petitioner has, in this context, in view of these alleged manifest illegalities while effecting his arrest and granting remand, sought an urgent ad-interim relief of his release on bail. It is submitted that this relief is urgently necessary as the Petitioner is suffering from coronary artery disease with sick sinus syndrome, needing urgent medical attention. It is also urged that he is suffering from severe arthritis and, therefore, swelling of large and small joints, which has resulted into problem in defecation and not being able to bend his hand for the purpose of eating. He is also suffering from episodes of bradycardia and ischemia and has been hospitalized many times since his arrest. He has asthma since long time and is suffering from skin conditions. He needs close monitoring and, therefore, it is submitted that he is entitled for the urgent relief of ad-interim nature by issuance of Writ of Habeas Corpus for his release from the custody. Hence, by way of prayer clause 10(b), at this ad-interim stage, the release of the Petitioner is sought on bail, on such terms and conditions, as this Court may deem fit.

28. This Petition came to be resisted strongly by Respondent Nos.1 to 3, vide affidavit-in-reply of Respondent No.2 Shri. Umesh Kumar, Assistant Director of Enforcement Directorate, Mumbai,

challenging, *inter alia*, the maintainability of the Petition itself. It is submitted that, as the Petitioner is in Judicial Custody for committing an offence punishable under Section 4 of the PML Act and as the custody of the Petitioner has been duly authorized and granted by the competent Special Court established under the PML Act and from time to time, his remand being extended, his detention in the judicial custody cannot, in any way, be called as illegal, unauthorized or void *ab initio*, so as to challenge the same under Article 226 of the Constitution and further to seek relief of habeas corpus. It is urged that an alternate efficacious remedy is available to the Petitioner to challenge his remand to the custody by filing Criminal Revision Application or a Writ Petition under Article 227 of the Constitution.

29. It is specifically denied by the Respondents that the offence under Section 4 r/w. Section 3 of PML Act, for which the Petitioner is arrested, is non-cognizable. The attention of the Court is invited to the head-note of Section 45 of the PML Act, which reads as “*offences are cognizable and non-bailable*”. It is urged that this head-note clearly suggests that the offences are cognizable and non-bailable. It is submitted by learned Additional Solicitor General Shri Neeraj

Kaul that, in several of its Judgments, the Hon'ble Supreme Court has been pleased to hold that the head-notes are to be read as part of the Section and they cannot be segregated or separated from the provisions. By pointing out to the contents of Section 45(1) of the PML Act, it is submitted that the said section also clarifies that this provision overrides the provisions of the Code and further de-bars Police Officers from investigating into the offences under PML Act.

30. It is urged that the amendment carried out to Section 45 of PML Act in the year 2005, was only for the purpose of clearing the conflict as to exercise of the power of arrest for the offences under the PML Act, between the Police Officers and Enforcement Directorate Authorities. It has no effect of making the offences under PML Act as non-cognizable. It is submitted that, even having regard to the punishment prescribed for the offence punishable under Section 4 of the PML Act, which may extend upto seven years of imprisonment, in view of the provisions of the Code also, the said offence becomes cognizable and, therefore, the contention raised by the Petitioner that this offence being non-cognizable, the Court could not have taken cognizance without the complaint or FIR and the Petitioner could not have been arrested without warrant is not at all

tenable.

31. It is further urged that the contention raised by the Petitioner, in respect of non-compliance of provisions of Chapter XII of the Code, is absolutely misconstrued. According to learned Additional Solicitor General, PML Act is a complete Code in itself. Section 46 thereof makes it clear that intention of the Legislature was to make provisions of the Code applicable, only for the procedure to be followed before the Special Court. PML Act nowhere states that the provisions of the Code will apply in its entirety to the provisions of PML Act. According to learned Additional Solicitor General, Section 65 of the PML Act spells out clear intention of the Legislature to maintain the independency of the Special Statute, thereby clarifying that the provisions of the Code shall apply, only if they are not inconsistent with the provisions of PML Act.

32. Here in the case, it is submitted that the provisions of the PML Act lay down a complete procedure to be followed for the purpose of effecting arrest. Section 19 of the PML Act gives certain powers to the authorized officers to effect the arrest, when such officer has reason to believe, on the basis of the material in its possession, that any person has been guilty of an offence punishable under the said

Act. This Section does not contemplate lodging of FIR, before effecting the arrest. It is submitted that, in view of Section 71 of PML Act, Section 19 will have overriding effect on the provisions of Chapter XII of the Code.

33. Further, it is submitted that Chapter XII of the Code, which consists of Sections 154 to 176, relating to arrest and investigation of the offences, apply only to the Police Officers and the said provisions are not applicable to the persons and authorities effecting arrest under the other Acts. Respondent No.2, the Assistant Director, is an officer under the Enforcement Directorate, appointed as an authority, under Sections 48 and 19 of the PML Act, to effect the arrest on the basis of the provisions contained in the PML Act; especially Section 19 of the Act, and, therefore, having regard to Section 71 of the PML Act, giving overriding effect to these provisions, all the contentions raised by the Petitioner to challenge his custody as illegal and unauthorized fell on the ground.

34. As to the ground raised by the Petitioner that Respondent No.2, who was the then Assistant Director of Enforcement, Directorate Department, was not authorized to effect the arrest, it is

submitted that, as Respondent No.2 was one of the authorities appointed for the purpose of PML Act, it is clear that in view of Sections 48 and 49 r/w. Section 19 of PML Act that he was the 'officer' appointed to exercise the power of arrest and, therefore, he was competent and authorized to arrest the Petitioner. Therefore, the challenge to Petitioner's arrest on this ground also fails.

35. Lastly, it is submitted that the arrest of the Petitioner is effected, after following all the procedural safeguards and in accordance with the provisions of PML Act. There is no violation of any of the procedural safeguard. His arrest and custody is also validated by the order of the competent Special Court and in such situation, the Writ of Habeas Corpus cannot lie for his release. It is also submitted that the Petitioner has made every attempt to get himself released on bail, even on the medical grounds. However, as all his attempts failed, he has sought this ingenious way of seeking his release on Writ of Habeas Corpus, which also cannot be maintainable.

36. As regards the ad-interim relief of bail sought by the Petitioner on medical ground, it is submitted that the application for bail filed

by the Petitioner on the same ground is rejected, not only by the Special Court, but also by this Court. Moreover, as per the order passed by the Special Court, the Petitioner is being given treatment not only at the J.J. Hospital of Government, but also, presently, he is in private Bombay Hospital on his request. Therefore, there should not be any grievance on that score. Moreover, it is submitted that, such a plea cannot be considered in this Writ Petition when it is already rejected on merits, after having regard to all the medical papers produced and on their proper consideration by the Special Court and this Court. In sum and substance, submission of learned Additional Solicitor General is that this Petition is devoid of merits and hence liable to be dismissed in *limine*, with costs, as it is amounting to abuse of the process of law.

37. This petition is strongly resisted by the intervener also, at whose instance the P.I.L. No.23 of 2014 was filed against the Petitioner alleging multi-crore fraud. According to learned Counsel for the intervener, this petition is clearly an abuse of the process of law, as the Petitioner has resorted to it, having been unsuccessful in his attempts to get bail, even on medical grounds. It is submitted by him that this Court should exercise judicial restraint and not grant

such extra-ordinary relief of Habeas Corpus, which is sought to circumvent the provisions of bail.

38. Having heard learned Senior Counsel for the Petitioner Shri Choudhary, learned Additional Solicitor General Shri Neeraj Kaul for Respondent Nos.1 to 3, and Shri Shinde, learned Public Prosecutor for Respondent No.4-State and learned Counsel for intervener Shri Shenoy at length, we are of the considered opinion that for appreciating these rival submissions, one has to take recourse not only to the various Judgments cited at Bar by both the parties, but also to the provisions of PML Act, in detail, including the objects and reasons, for the purpose of which this PML Act was brought on the Statute Book.

39. However, before advertng to the provisions of PML Act, it would be necessary to deal, firstly, with the maintainability of this Petition, as challenged by learned Additional Solicitor General for the Respondents.

Maintainability of Petition for Habeas Corpus

40. In this case, the Petitioner is seeking the relief of habeas corpus on the ground that his arrest by Respondent No.2 and his

subsequent detention in the custody, as per the remand granted by the Special Court, is illegal and void *ab initio*. Hence he is entitled for his release; whereas, according to Respondents, the Petitioner was arrested and taken into custody for committing an offence under Section 4 r/w. Section 3 of PML Act and his custody has been duly authorized and granted by the competent Special Court, established under the PML Act. Therefore, he is under custody in consequence of judicial orders of remands passed by the Special Court. As such, his Writ of Habeas Corpus cannot be maintainable for the release; especially when he can avail an alternate remedy of Revision Application or a Writ Petition under Section 227 of the Constitution.

41. To substantiate this submission, learned Additional Solicitor General has relied upon the Judgment of the Hon'ble Apex Court in the case of *Kanu Sanyal Vs. District Magistrate, Darjeeling & Ors.*, (1974) 4 SCC 141, wherein, the Writ Petition was filed under Article 32 of the Constitution by the Petitioner Kanu Sanyal, challenging the legality of his detention in the Central Jail and praying for a Writ of Habeas Corpus for setting him at liberty forthwith. The grounds raised for challenging his arrest were three fold; namely, his detention was in violation of Clause (1) of Article 22 of the

Constitution, as he was not informed of the grounds for his arrest. Secondly, the Sub-Divisional Magistrate, Darjeeling, has no jurisdiction to try the cases filed against him. Therefore, he could not authorize detention of the Petitioner under Article 167 of the Code for a term exceeding fifteen days in the whole. It was only the Sub-Divisional Magistrate, Siliguri, who has jurisdiction to try the cases and hence he alone can remand the Petitioner to custody after the expiration of the initial period of fifteen days. Thirdly, it was submitted that the officer-in-charge of the District Jail, Darjeeling was bound to abstain from complying with the warrant for production issued by the Special Judge, Vizakhapatnam, by reasons of Section 6 of the Prisoners (Attendance in Courts) Act, 1955 and the production of the Petitioner before the Special Judge, Vizakhapatnam, pursuant to such warrant for production and his detention in the Central Jail, Vizakhapatnam, were consequently without the authority of law.

42. While considering these grounds, it was held by the Hon'ble Apex Court that, so far as the first two grounds were concerned, as they relate exclusively to the legality of the initial alleged detention of the Petitioner in the District Jail, Darjeeling, it was not necessary

to decide them in view of well settled position that the earliest date with reference to which the legality of the detention can be challenged in a habeas corpus proceeding is a date of filing of the application for habeas corpus and not any other date. As on the date of filing of Habeas Corpus application, the detention of the Petitioner Kanu Sanyal was in the District Jail at Vizakhapatnam, it was held that legality of his earlier detention need not be considered. As regards the third ground, it was held that the conditions laid down were clearly satisfied and hence there was no question of granting relief. While concluding, in last paragraph, it was categorically held that,

“a Writ of Habeas Corpus cannot be granted when a person is committed to jail custody by the competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal.” (emphasis supplied)

Accordingly, the Petitioner was held not entitled to a Writ of Habeas Corpus to free him from detention.

43. Learned Additional Solicitor General has in this respect also placed reliance on the judgment of the Hon'ble Apex Court in the case of *Ram Narayan Singh vs. The State of Delhi & ors.*, AIR 1953

SCC 277, to submit that in habeas corpus proceeding, the Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceedings. It is urged that in this judgment, in paragraph (4), it was categorically held that “in a question of habeas corpus, when the lawfulness or otherwise of the custody of the persons concerned is in question, the Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceedings”. Accordingly, it was held that;

“the material date on the facts is the date when the affidavit on behalf of the Government was filed justifying the detention as a lawful one. If, on that date, the detention is not illegal, which is authorised by the Magistrate, vide his remand orders, then there is no question of considering the petition for habeas corpus.”

(emphasis supplied)

44. Per contra, learned Senior Counsel appearing for the Petitioner has relied upon the Three-Judge Bench decision of the Hon'ble Supreme Court in the case of *Madhu Limaye (supra)*, wherein Madhu Limaye, the then Member of Lok Sabha, and several other persons were arrested, on November 6 in the year 1968 at Lakhisarai Railway Station, near Monghyr. On the same date,

Madhu Limaye had addressed a Petition in the form of a letter to the Apex Court under Article 32 of the Constitution mentioning that he along with his companions had been arrested, but had not been communicated the reasons or the grounds of arrest. It was stated that the arrested persons had been merely told that the arrest had been made under sections, which were bailable. It was, therefore, prayed that the Writ of Habeas Corpus be issued for restoring liberty of the Petitioners therein, as their arrest and detention were illegal. In this Petition, the Apex Court has at length, considered the various facts and circumstances under which Madhu Limaye and others were came to be arrested and kept in preventive detention under Article 22 of the Constitution. In that context, reliance was placed by the Hon'ble Apex Court on Article 22(1) of the Constitution and observed that, *"Article 22(1) of the Constitution embodies a rule which has always been regarded as vital and fundamental right for safeguarding personal liberty in all legal systems, where the rule of law prevails*. It provides that, no person, who is arrested, shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice".

45. Considering that *Madhu Limaye* and others had made a positive assertion in their Petition that they had not been informed of the grounds of their arrest and the said assertion had remained uncontroverted, having regard to the specific mandatory safeguard laid down in clause (1) of Article 22 of the Constitution, in para No.14, it was observed by the Hon'ble Apex Court that;

“14.Once it is shown that the arrests made by the police officers were illegal, it was 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. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that Mr. Chagla has said is that if the arrested persons wanted to challenge their legality the High Court should have been moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Article 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in custody could not continue after their arrest because of the violation of Article 22 (1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This

disposes of the third contention of Madhu Limaye.”

(emphasis supplied)

46. Accordingly, the Apex Court was pleased to order the release of *Madhu Limaye* and others on the ground of violation of the provisions of Article 22(1) of the Constitution and Remand Order not disclosing application of the mind by the Magistrate.

47. The bare perusal of these two Judgments; one in the case of *Kanu Sanyal (supra)* and the other in the matter of *Madhu Limaye (supra)*, thus, make it clear that both the Judgments pertain to the preventive detention of the Petitioners therein under the provisions of Article 22 of the Constitution and not in respect of the arrest of a person accused of an offence punishable under IPC or under any other special law. Secondly, as per the Judgment in the case of *Kanu Sanyal (supra)*, only when the detention of the Petitioner on the date of filing of the Writ Petition is illegal, it was held that the Writ of Habeas Corpus can lie and it cannot be granted where a person is committed to Jail custody by a competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal. Even the Judgment in the case of *Madhu Limaye (supra)* also makes it clear that it has to be shown that the arrest made by the

Police Officer was illegal and further it has to be established that, at the stage of remand, the Magistrate directs detention in the custody without applying his mind to all the relevant matters. As held in the said authority, if the orders of remand are passed by the Magistrate without application of mind and they are patently routine and appear to have been made mechanically, then only, such orders of remand would not cure the Constitutional infirmities in effecting arrest.

48. Thus, the necessary inference that can be drawn from the law laid down in both these authorities is that, in the first place, Petitioner has to show that his arrest is patently and manifestly illegal and null, being without jurisdiction. The Petitioner has to then further show that the Magistrate or the Special Court in this case, which has granted his remand, has not applied its mind to all the relevant matters and the remand orders are either patently routine or appear to have been made mechanically. Only when these essential two conditions are satisfied, the Petition for Habeas Corpus can lie, otherwise, as held in the above-said authority of *Kanu Sanyal (supra)*, if the person is committed to Jail custody by a competent Court by an order, which, prima facie, does not appear to

be without jurisdiction or wholly illegal, such Writ of Habeas Corpus can neither be asked for, nor can be granted.

49. This legal position has been further clarified and reaffirmed by the Hon'ble Apex Court in the recent decision of *Manubhai R.P. Vs. State of Gujarat and Ors., (2013) 1 SCC 314*. In this case, the complaint was lodged against the appellant-accused for the offences punishable under Sections 467, 468, 409 and 114 of IPC. He filed an application under Section 482 of the Code, challenging the registration of FIR and further investigation. On 16th July 2012, the accused was arrested and produced before the Judicial Magistrate, First Class (JMFC) at 4:00 p.m. on 17th July 2012. The JMFC granted remand to custody of the appellant-accused upto 2:00 p.m. on 19th July 2012. On the same day, i.e. 17th July 2012, the High Court passed an interim order staying further proceedings in respect of the investigation. The interim order passed by the High Court was brought to the notice of an investigating agency on 18th July 2012. On 19th July 2012, an application was filed seeking bail by the appellant on the ground that the High Court had stayed further investigation and sought the release of the appellant-accused. The JMFC rejected the bail application holding that the High Court order was regarding stay on investigation. The appellant-accused

unsuccessfully approached the Sessions Court. Then the appellant-accused filed a Habeas Corpus Petition under Article 226 of the Constitution before the High Court. It was rejected as the High Court did not find any infirmity in the remand order of the applicant-accused passed by the JMFC. The appellant, therefore, approached the Hon'ble Apex Court challenging the order of the High Court.

50. In this Appeal, while considering the object of the Writ of Habeas Corpus, it was held by the Hon'ble Apex Court that;

“The Writ of Habeas Corpus was devised for production of an individual in case of illegal restraint or confinement. It is, no doubt, of the highest constitutional importance to provide a swift and expedient remedy by determining the Petitioner's right to freedom and to protect the individual's liberty against arbitrary action of the executive or by private person. Its main objective is to release persons illegally detained or confined.”

(emphasis supplied)

51. Having stated about the significance of the Writ of Habeas Corpus as a weapon for protection of individual liberty through judicial process, the Hon'ble Apex Court referred to its earlier decisions in which the Apex Court has expressed its views

pertaining to the legality of the order of detention; especially that ensuing from the order of the Court when an accused is produced in custody before a Magistrate after arrest. The Apex Court then also noted the opinion expressed in earlier cases relating to the relevant stage of delineation for the purpose of adjudicating the legality of the order of detention. Then the Hon'ble Apex Court referred to its earlier decision in *Col. B. Ramachandra Rao Vs. State of Orissa*, (1972) 3 SCC 256, wherein it was opined that,

“a Writ of Habeas Corpus is not granted where a person is committed to jail custody by a competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal”.

(emphasis supplied)

52. Thereafter, in paragraph No.18, the Hon'ble Apex Court considered its Judgment in *Madhu Limaye (supra)*. In paragraph No.19, the Hon'ble Apex Court has considered, in detail, the above referred Judgment in the case of *Kanu Sanyal (supra)* and, ultimately, in paragraph No.21, the Hon'ble Apex Court quoted with approval the principle laid down in the case of *Kanu Sanyal (supra)* that,

“any infirmity in the detention of the Petitioner at the initial stage cannot invalidate the subsequent

detention and the same has to be judged on its own merits.” (emphasis supplied)

53. In paragraph No.22, the Hon'ble Apex Court also referred to the decision of the Constitution Bench in the case of *Sanjay Dutt Vs. State, (1994) 5 SCC 410*, wherein it was opined, in paragraph No.48, that;

“48. It is settled by Constitution Bench decisions that a petition seeking the Writ of Habeas Corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order.” (emphasis supplied)

54. Ultimately, while concluding, in paragraph No.31, the Hon'ble Apex Court was pleased to observe as follows :-

“It is well-accepted principle that a Writ of Habeas Corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao and Kanu Sanyal, the court is required to scrutinize the legality or otherwise of the order of detention which has been

passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is opposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus, viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law.”

(emphasis supplied)

55. Accordingly, the Hon'ble Supreme Court in the said case was pleased to uphold the order of the High Court rejecting the relief of Habeas Corpus holding that the order of remand of the appellant, which was a judicial act, having been passed by the learned Magistrate, after considering allegations in the FIR and not in a routine or mechanical manner, such order does not suffer from any infirmity so as to invoke the Writ of Habeas Corpus.

56. Thus, as rightly submitted by the learned Additional Solicitor

General, the law on this point is fairly well settled to the effect that, for invoking extra-ordinary jurisdiction of the High Court to seek the Writ of Habeas Corpus, the Petitioner has not only to show that his arrest is *ex-facie* illegal, but he has further to show that the remand orders passed by the Magistrate are without application of mind, patently routine and passed completely mechanically.

57. Now, in this case, admittedly, the Petitioner is arrested on 14th March 2016, for the offence punishable under Section 4 r/w. Section 3 of PML Act. On 15th March 2016, the Petitioner was produced before the Special Court at Mumbai, established under the PML Act, and the Special Court had, vide its detailed order running into four pages, which is produced in the paper-book by the Petitioner at page Nos.172 to 175 (Exhibit “Q”), remanded the Petitioner to the custody of Enforcement Director till 17th March 2016.

58. May it be noted that the competency of the Special Court to remand the Petitioner, which is established under the provisions of PML Act, is not at all challenged. Thereafter also, from time to time, the said Special Court has extended the remand of the Petitioner to the judicial custody on 17th and 31st March 2016 by passing detail

orders, giving all the reasons.

59. The perusal of the initial order of 15th March 2016, when the Petitioner was produced before the Special Court for the first time, on his arrest on 14th March 2016, clearly reveals that the Petitioner was produced by the Assistant Director, Enforcement Directorate and the grounds for his arrest and production were brought to the notice of the Special Court. In its order, the Special Court has considered in detail the report submitted by Respondent No.2 for seeking remand of the Petitioner, which report is also produced in this Petition at Exhibit "P", from page Nos.166 to 171 of the paper-book. It was pointed out to the Special Court and the Special Court has stated in its order that, as per the order passed by this Court on 18th December 2014 in Public Interest Litigation No.23 of 2014, SIT comprising of Director General, A.C.B., Mumbai, and Director, Enforcement Directorate, was constituted to conduct the enquiry with regard to the allegations made against the Petitioner, who was the then Minister in the Government of Maharashtra and his relatives. In pursuance thereof, FIR No.32 of 2015 was registered against the Petitioner on 8th June 2015 and FIR No.35 of 2015 was registered against the Petitioner on 11th June 2015. The remand

orders gives the details as to how these offences came to be registered against the Petitioner and others. It also gives details as to how during investigation of those offences, the ingredients of the offences under Sections 3 and 4 of PML Act were revealed. The remand order passed by the Special Court clearly states that, in view of the allegations made in the FIRs and also the material revealed during the investigation, it was transpired that M/s. Parvesh Constructions Private Limited and M/s. Armstrong Energy Private Limited, the Firms owned and controlled by the Petitioner, were sold to dubious Entities, against cash, at unrealistic high premium of Rs.9,900/- per share. In this way, the funds to the tune of Rs.75 to 50 crores respectively were channeled by this method. The evidence collected in the investigation also revealed generation of huge illicit funds and its laundering by the Petitioner, his family members and his associates. The remand order also records the *prima facie* satisfaction of the Special Court to the effect that, “the evidence collected and money trail available so far in respect of offence of money-laundering, there are reasons to believe that the accused before the court is guilty of the offence of money-laundering.” The remand order, on the basis of submissions made by learned Senior Counsel for CBI and Petitioner, also records the reasons as to why

remand of accused in the custody of Enforcement Directorate was necessary till 17th March 2016.

60. Having regard to the detailed Remand Report, in which various materials transpired in the course of investigation, was stated, saying that the proceeds of the crime to the tune of Rs.750 Crores were yet to be identified and for that purpose, the custodial interrogation of the Petitioner was necessary to unearth the process of generation of illicit funds and for the purpose of the corroboration and confrontation of the Petitioner with the others involved in the case, the custodial interrogation of the Petitioner was necessary. It was further stated in the remand order that the Petitioner, having played a very crucial role in generation and subsequent monitoring of huge amounts of money and being *prima facie* guilty of the offence of money-laundering, as defined under Section 3 and punishable under Section 4 of PML Act, and further having regard that he being an influential person and may influence the other witnesses or tamper the evidence, if allowed to remain at large, his detention was necessary.

61. The Special Court has, thus, remanded the Petitioner to the

custody of Enforcement Directorate till 17th March 2016. The order passed by the Special Court, in this way, gives detailed reasons as to how there was sufficient material creating a reasonable belief about the commission of the offence and the custodial interrogation being necessary for the same. The Remand Order also shows that not only the learned Public Prosecutor for the Respondents was heard, but even learned Senior Counsel for the Petitioner was also heard at length. It was also taken note of that the Petitioner has not complained in the Petition or orally of ill-treatment, in any way, at the hands of the Enforcement Directorate and, hence, after considering the reasons cited in the Remand Report and being fully satisfied that further custodial interrogation of the Petitioner was really necessary, the Special Court has remanded the Petitioner to the custody of Enforcement Directorate till 17th March 2016.

62. Thus, perusal of the Remand Report and the Remand Order passed thereon by the Special Court, clearly makes it necessary to hold that, in the present case, at the stage of remand, the Special Court has directed detention of the Petitioner first in the custody of the Enforcement Directorate for two days and thereafter in judicial custody, after applying its mind to all the relevant matters. Not only

the first remand order dated 15th March 2016, but even the subsequent remand orders dated 17th and 31st March 2016 also make it clear that they are not routine, far remain “patently routine” or passed “mechanically”, but they have been passed after proper application of mind and having arrived at reasonable belief and conclusion that the arrest of the Petitioner was necessary and his further detention was also necessary, having regard to the sufficient material collected against him, pointing to the siphoning of funds of more than Rs.770 Crores. Therefore, the remand orders are not such as held in the matter of *Madhu Limaye (supra)* by the Hon'ble Apex Court, which could not cure Constitutional infirmities, if any, that one can see in the arrest of the Petitioner. Conversely, if at all there were any Constitutional infirmities in the arrest of the Petitioner, then, they stand fully cured by the remand orders passed by the Special Court.

63. Therefore, as held in above referred authorities, for the sake of arguments, even assuming that the arrest of the Petitioner was illegal, once it is established that, at the stage of remand of the Petitioner, the Special Court has directed detention of the Petitioner after applying its mind to all the relevant factors, the orders of

remand having thus cured the alleged Constitutional infirmities and such orders, *prima facie*, being not passed without jurisdiction or wholly illegal, then, as per the law laid down in the above cited authorities, the Writ for Habeas Corpus itself is not maintainable.

64. It is also pertinent to note that whatever grievances raised by the Petitioner in this Petition to challenge his arrest as illegal on the count of his arrest being not effected by the officer authorized under the PML Act; or he being not produced within twenty-four hours before the Court; or being not supplied with the grounds of arrest; or the offence being non-cognizable he could not have been arrested without permission of the Court, none of these contentions, as can be seen from the remand order of the Special Court, appear to have been raised before the Special Court, either at the time of first remand on 15th March 2016 or thereafter from time to time when he was remanded. He had not even raised the ground that he was called at the office of the Enforcement Directorate at 10:30 hours and was detained illegally. He had also not contended that his arrest was wrongly shown at 22:05 hours to further show his production before the Special Court within twenty-four hours. Though the Special Court has specifically stated the timing of his production as “4:30

p.m.” and asked him whether he has any complaint of ill-treatment, it was noted that “there was no such complaint of ill-treatment or illegal detention”. This was also submitted by his learned Senior Counsel also, who was representing him before the Special Court.

65. Therefore, now it is too late in a date for the Petitioner to contend, in this Petition, that the learned Special Court has not applied its mind to these contentions and remanded him mechanically to the judicial custody. If really there was such illegal detention of the Petitioner or he was not given the grounds of arrest or was wrongly arrested by an officer, who had no authority to do so, then, the Petitioner, who was ably represented by his learned Senior Counsel, would not have failed to raise these grounds before the Special Court. The fact that those grounds were not raised before the Special Court either at the time of first remand or thereafter from time to time or in the two Bail Applications; one filed before the Special Court and another before this Court, and after the lapse of more than six months, when he is raising these contentions for the first time to challenge his custody on the count that it is illegal for non-compliance of mandatory requirements, then, it goes without saying that this Petition for Habeas Corpus can hardly be

maintainable on the ground that his arrest itself was illegal and, therefore, the remand order was also illegal.

66. It is pertinent to note that in the case of *Madhu Limaye (supra)*, on which much reliance is placed by learned Senior Counsel for the Petitioner, on the very day on which Madhu Limaye and others were arrested, they had addressed a Petition in the form of a letter to the Hon'ble Supreme Court, under Article 32 of the Constitution, mentioning that they had been arrested but not been communicated the reasons or the grounds for the arrest and in view thereof, the cognizance of their Petition seeking the Writ of Habeas Corpus was taken; particularly when the said assertion had remained uncontroverted in the 'Return' filed by the State. The perusal of paragraph No.10 of the order passed by the Hon'ble Supreme Court in the said matter reveals that the authorities wanted to invoke all kinds of provisions, like Sections 151, 107 and 117 of the Code, apart from Section 188 of IPC, and since no arrest could be effected for an offence under Section 188 of IPC by the Police Officers without proper orders, it was held that "these officers may have been naturally reluctant to comply with the mandatory requirements of Article 22(1) of the Constitution, by giving

necessary information and that was the reason why the reasons of arrest were not told to *Madhu Limaye* and others”. In that backdrop, it was held that this infirmity being not cured in view of the routine remand orders passed by the Magistrate mechanically, without applying his mind to all the relevant matters, the Petition for Habeas Corpus would lie.

67. As against it, in the present case, the Remand Report and the order of remand passed by the Special Court clearly state which offence is made out against the Petitioner and on the basis of which material. As stated above, all the Remand Reports are in detail, so also the remand orders, in which the Special Court has applied its mind to all the relevant matters. Therefore, in no way, it can be said that the impugned order of remand, which validated custody of the Petitioner on his alleged illegal arrest, suffers from any illegality. Once it is held to be so, then it follows that on this very ground itself, Petition for Habeas Corpus is bound to fail. On this very ground itself, this Petition is liable to be dismissed in *limine* at the threshold itself.

68. This is also for the reason that, the Hon'ble Apex Court has refused to issue such Writ of Habeas Corpus, even when it found that

the Remand Order was passed by the Magistrate mechanically, without any application of mind, in a cavalier manner, betraying insensitivity.

69. The case in point is that of *Saurabh Kumar through his father vs. Jailor, Koneila Jail & anr., (2014) 13 SCC 436*, which is relied by learned Additional Solicitor General. In this case also, the writ of habeas corpus was sought by the petitioner alleging his detention to be illegal. It was contended by the Petitioner that he was unnecessarily and illegally detained by the police. When the matter came up before the Hon'ble Apex Court, the Hon'ble Apex Court took note of the two counter affidavits filed by the Respondents, which showed that the petitioner was an accused in a Criminal Case which was registered for the offences punishable under Sections 147, 147, 149, 323, 427, 504, 379 and 386 of IPC and under Section 27 of the Arms Act and after such registration he was arrested and produced before the Additional Chief Judicial Magistrate and thereafter he was taken in judicial custody. It was however, contended by learned Senior Counsel for the Petitioner that direction be given to the jailor to produce the Remand Report of the Petitioner that itself would show the illegal detention.

70. After hearing the arguments advanced by both the parties, the Hon'ble Apex Court in paragraph (13) of its judgment was pleased to hold as follows;

“13. It is clear from the said narration of facts that the petitioner is in judicial custody by virtue of an order passed by the Judicial Magistrate. The same is further ensured from the Original Record which this Court has, by order dated 9th April, 2014, called for from the Court of Additional Chief Judicial Magistrate, Dalsingsarai, District Samastipur, Bihar. Hence, the contention of the learned counsel for the petitioner that there was illegal detention without any case is incorrect. Therefore, the relief sought for by the petitioner cannot be granted. Even though there are several other issues raised in the Writ Petition, in view of the facts narrated above, there is no need for us to go into those issues. However, the petitioner is at liberty to make an application for his release in Criminal Case No. 129/13 pending before the Court of the learned Addl. Chief Judicial Magistrate, Dalsingsarai.”

(emphasis supplied)

71. Accordingly, it was held that the Petitioner cannot be entitled to the relief of the habeas corpus, which he was seeking, making it clear that the petitioner is at liberty to avail the remedies as

available to him, in accordance with law.

72. In his supplementary judgment, Hon'ble the Chief Justice of India had also in paragraph (21) held that two things are evident from the record as follows;

“21. *Firstly*, the accused is involved in a criminal case for which he has been arrested and produced before the Magistrate and remanded to judicial custody;

Secondly, the petitioner does not appear to have made any application for grant of bail, even when the remaining accused persons alleged to be absconding and remain to be served. The net result is that the petitioner continues to languish in jail.”

73. In paragraph (22), the Hon'ble the Chief Justice of India was further pleased to hold that;

“22. The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for offences, cognizance whereof has already been taken by the competent Court. He is presently in custody pursuant to the order of remand made by the said

Court. A writ of Habeas Corpus is, in the circumstances, totally mis-placed. Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the Court below, having regard to the nature of the offences allegedly committed by the petitioner and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody.”

74. The last paragraph (23) of this judgment is very significant and it puts a complete quietus to the entire controversy. It has been categorically observed in this paragraph as follows;

“23. We are also of the view that the Magistrate has acted rather mechanically in remanding the accused petitioner herein to judicial custody without so much as making sure that the remaining accused persons are quickly served with the process of the Court and/or produced before the Court for an early disposal of the matter. The Magistrate appears to have taken the process in a cavalier fashion that betrays his insensitivity towards denial of personal liberty of a citizen who is languishing in jail because the police have taken no action for the apprehension and production of the other accused persons. This

kind of apathy is regrettable to say the least. We also find it difficult to accept the contention that the other accused persons who all belong to one family have absconded. The nature of the offences alleged to have been committed is also not so serious as to probablise the version of the respondent that the accused have indeed absconded. Suffice it to say that the petitioner is free to make an application for the grant of bail to the Court concerned who shall consider the same no sooner the same is filed and pass appropriate orders thereon expeditiously.

(emphasis supplied)

75. Thus, it is clear that, even after finding that the Magistrate has acted rather mechanically in remanding the petitioner/accused to the judicial custody, and has taken the process in a cavalier fashion, that betrayed his insensitivity towards denial of personal liberty of a citizen, the Hon'ble Apex Court did not thought it fit to issue the writ of habeas corpus. It is also significant to note that the Hon'ble Apex Court has expressed its regrets towards the kind of apathy shown by the Magistrate but even then the Hon'ble Apex Court did not issue the writ of habeas corpus. It is also pertinent to note that though the Hon'ble Apex Court opined that the nature of offences alleged to have been committed by the Petitioner/accused is not so serious, so as to probablise the version of the Respondent that accused has

indeed absconded, despite that, the Hon'ble Apex Court refused to grant the relief of writ of habeas corpus and observed that the Petitioner was free to make an application for grant of bail to the Court concerned who shall consider the same and pass an appropriate order thereon expeditiously.

76. Thus, the legal position as laid down in this authority makes it abundantly clear that even in respect of an illegal order of remand, which was passed mechanically in a cavalier fashion also, the remedy of writ of habeas corpus was not found to be appropriate remedy, but the only remedy which Hon'ble Apex Court considered appropriate was that of filing the application for bail.

77. Here in the instant case, as observed hereinabove, the order passed by the Special Court of remanding the accused initially for two days to the custody of Enforcement Directorate and thereafter to the judicial custody clearly reflects the application of mind. Elaborate reasons are given, while passing the orders of remand. In such situation, there does not arise any question of this Court invoking the extra ordinary remedy of writ jurisdiction, that too of habeas corpus. Such relief can be asked only when the person is in

illegal detention, without the order of the Court. Once the person is produced before the Magistrate and the order of remand is passed by the Magistrate, that too after application of mind, as in the present case, then the only remedy available to such person is that of an application for his release on bail and not at all the writ of habeas corpus. In the present case, having regard to the entire facts that the Petitioner was arrested for the offence which is not only serious but grave one. He was within 24 hours produced before the Special Court. He has not at all raised any grievance, at that time, that his arrest was not made following due procedure by law or not by Competent Authority. For more than eight months, he did not utter a single word challenging his arrest or detention. He sought the bail on medical grounds to the Special Court and this Court and only when his application(s) for bail came to be rejected by both the Courts, now he is seeking the writ of habeas corpus, that too raising some grounds. Needless to state that this Court is expected to exercise some judicial restraint from passing any such order of releasing him on bail, when the appropriate remedy of applying for the regular bail or even bail on medical ground, if there is any change in circumstance, still being available to him.

Interim Relief for Bail

78. Once it is held to be so, then, as regards the interim relief claimed by the Petitioner for his release on bail on the medical ground, also cannot be granted. We say so, not only because the Petition for Habeas Corpus is not maintainable, but, we say so, because already the Petitioner has, on this very medical ground, applied for his release on regular bail, under Section 439 of the Code. It is a matter of record that his application for bail filed before the Special Court on 3rd May 2016 on the medical ground came to be rejected by the Special Court vide its detail order on 13th May 2016, after considering all the contentions raised therein and being satisfied that the Petitioner is given proper medical treatment, which may be necessary. The copy of the said order is produced at Exhibit "AA", page Nos.352 to 362, of the paper-book. In the said application, it was brought to the notice of the Special Court by the Respondents that the Petitioner was already taken to the J.J. Hospital for his medical ailment and there necessary tests were advised, for which he was taken to the private Bombay Hospital. The detailed order of the Special Court reveals that, after considering each and every aspect of the matter, Petitioner's application for bail came to be rejected.

79. Petitioner has then preferred Criminal Bail Application before this Court bearing Bail Application No.1050 of 2016. This application was also considered and heard by the learned Single Judge of this Court in detail and vide its order dated 16th June 2016, rejected the same on the count that the medical problems of the Petitioner are adequately and more than sufficiently attended to by the concerned Doctors in the J.J. Hospital and private Bombay Hospital.

80. Thus, it is clear that, so far as the urgent relief, which the Petitioner is seeking, of his release on medical ground, the Special Court and this Court having considered the same and rejected the same and no further change in the circumstances being brought to our notice so as to reconsider the said prayer; especially, when it is sought in the Writ of Habeas Corpus, Petitioner cannot be entitled to such interim relief. As rightly submitted by learned Additional Solicitor General, the Petitioner is having adequate alternate remedy to redress his grievance, if any, either by approaching the Hon'ble Apex Court against the order of the learned Single Judge of this Court, or, even by filing fresh Bail Application on that ground. Therefore, no case is made out even for grant of ad-interim relief of his release on bail also.

Grounds of challenge to Arrest

81. However, as we have heard learned Senior Counsel for the Petitioner and learned Additional Solicitor General for Respondent Nos.1 to 3 on the merits of the Petition also, considering that this Petition pertains to the personal liberty of the Petitioner, which is sacrosanct under the Constitution of India and which should not be affected in any way, without following the due process of law, we deem it appropriate to proceed further for dealing with various contentions raised in the Petition challenging alleged illegalities in the Petitioner's arrest.

82. The first ground on which the arrest is challenged by the Petitioner is that the offence punishable under Section 4 read with Section 3 of PML Act is a non-cognizable one and, hence, without permission of the competent Court, as required under Section 155(1) of the Code, the arrest could not have been effected. The second ground pertains to his arrest, being not effected by the Officer, duly authorized by the Central Government and, thirdly, the procedural safeguards for the arrest, as laid down under the PML Act and also under the Code, being not followed in the case.

Provisions of PML Act

83. Now, in order to consider and appreciate various contentions raised on these three grounds, it would be necessary to first consider, in detail, the provisions of PML Act, along with its object and reasons and the purpose for which the said Act was brought on the Statute Book.

84. It needs to be stated that the PML Act was enacted on 17th January 2003 to prevent the offences of money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. In the 'Statement of Objects and Reasons' of the Act, it was specifically stated that;

“It is being realized, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty”.

85. The 'Statement of Objects and Reasons' further elaborates some of the initiatives taken by the international community to obviate such threat. One of those measures are stated to be *“the Political Declaration and Global Programme of Action, adopted by United Nations General Assembly by its Resolution dated 23rd*

February 1999, inter alia, calling upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of Legislation to prevent such laundering.” It was further stated that India is a signatory to this declaration.

86. In paragraph No.2 of the 'Statement of Objects and Reasons', it is stated that;

“In view of an urgent need for the enactment of a comprehensive legislation, inter alia, for preventing money- laundering and connected activities, confiscation of proceeds of crime, setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering etc., the Prevention of Money Laundering Bill, 1998 was introduced in the Lok Sabha on 4th August 1998.”

87. In paragraph No.3 of the 'Statement of Objects and Reasons', it was stated that though the conditions for enlargement on bail for the offences punishable under the said Act are stringent, *“considering the recommendation of the Standing Committee, the Central Government has proposed to relax the conditions prescribed for grant of bail in respect of the person, who is below sixteen years of age and or woman or sick or infirm”*. It is a matter of record that,

though the Act was enacted in the year 2003 itself, the Presidential Notification for enforcement of the Act was not issued till the year 2005 and by way of Amendment Act No.20 of 2005, some amendments were introduced in the Act, before it came to be enforced, to remove the difficulties arisen in implementation of the Act. The relevant amendment for the purpose of this Petition pertains to omission of clause (a) of sub-section (1) of Section 45 of the Prevention of Money-Laundering Act, 2002, which provided that, *“every offence punishable under the PML Act shall be cognizable”*. The PML Act was subsequently amended again in the year 2009 to expand the scope of the Act by adding certain offences in Part 'A' and Part 'B' of the Schedule to the Act; to make provisions for the “offences with cross border implications” and to add new Part 'C' in the Schedule of this Act for such offences; to ensure that the Investigating Agency can attach any property, and to empower the Enforcement Directorate to search the premises immediately after the offence is registered etc.

88. As recently as in the year 2013, taking note of the fact that the problem of money-laundering has become a global menace and it has no longer restricted to the geopolitical boundaries of any country

and also considering the fact that India has become member of the Financial Action Task Force, an Asia Pacific Group on Money-Laundering, thereby evidencing its commitment to the effective implementation and enforcement of internationally accepted standards against money-laundering and the financing of terrorism, the necessity was felt. To bring the Legislation of India relating to Anti-Money-Laundering at par with the international standards and to obviate some of the deficiencies in the Act that had been experienced by the implementing agency, the Act was amended with effect from 15th February 2013.

89. The Amendment Act, 2013, was intended also to enlarge the definition of “Offence of Money-Laundering” to include therein the activities, like, concealment, acquisition, possession and use of proceeds of crime as criminal activities and remove existing limit of Rs.5,00,000/- of fine under the Act. The Act was also amended to make provision for attachment and confiscation of the proceeds of crime even if there is no conviction, so long as it is proved that the offence of money-laundering has taken place and property in question is involved in money-laundering.

90. The Act was also amended for putting all the offences listed in Parts 'A' and 'B' of the Schedule into Part 'A' of the Schedule, instead of keeping them in two Parts, so that the provision of monetary threshold does not apply to the offences.

91. Thus, as can be seen from the Legislative Intent, the amendment in PML Act was carried out in order to make its provisions more stricter and to enlarge the definition of “Money-Laundering”.

92. In this backdrop, if the provisions of PML Act are considered, it can be seen that Section 2 of the PML Act contains the 'Definitions' and the relevant definition for the purpose of this petition. The definition of “*Investigation*”, as given in sub-clause (na) of Section 2 of PML Act, is relevant, which reads as follows :-

“Investigation includes, all the proceedings under this Act conducted by the Director or by an authority authorized by the Central Government under this Act for the collection of evidence”.

93. The definition of “money laundering”, as given in sub-section (p) thereof, assigns to it the same meaning as given in Section 3. Section (3) of the PML Act defines the “offence of money-

laundering” as under:-

“Section 3 - Offence of Money-Laundering -

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime, including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, shall be guilty of offence of money-laundering.”

94. Chapter II, Section 4 of the PML Act provides for punishment for money-laundering as follows;

“Whoever commits the offence of money-laundering, shall be punishable with rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words, “which may extend to ten years” had been substituted.”

95. Chapter III of the PML Act provides for *“Attachment, Adjudication and Confiscation of the Property, involved in Money-*

Laundering”, to which we are not presently concerned. Similarly, Chapter IV of the PML Act, which deals with the “*Obligations of Banking Companies, Financial Institutions and Intermediaries*”, is also not relevant for the purpose of this Petition.

96. Chapter V of the PML Act deals with the “*summons, searches and seizures etc.*” In this Chapter, Section 19 is of relevance, as it deals with “*power to arrest*”. It reads as follows :-

“Section 19 - Power to arrest –

- (1) *If the Director, Deputy Director, Assistant Director or any other officer authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (that 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 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 Magistrate's Court."

97. Section 22 of the PML Act deals with “*presumption as to records or property in certain cases*”; whereas, Section 24 of the PML Act deals with “*burden of proof*”. Both these provisions are of some relevance and they read as follows :-

“Section 22 - Presumption as to Records or Property in certain cases -

(1) Where any records or property are or is found in the possession or control of any person in the cause of a survey or a search, [or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force,] it shall be presumed that-

- (i) such records or property belong or belongs to such person;*
- (ii) the contents of such records are true; and*
- (iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.*

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall-

- (a) presume, that the signature and every other part of such record which purports to be in the handwriting of any particular person or which the Court may reasonable assume to have been signed by, or to be in the handwriting of, any particular person, is in*

that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

Section 24 - Burden of Proof -

In any proceeding relating to proceeds of crime under this Act -

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”

98. Chapter VI contains provisions relating to “*Appellate Tribunal*” and for the purpose of this Petition, the said provisions being not relevant, not recited in detail. For our purposes, Chapter VII of PML Act, which deals with “*Establishment of Special Courts for Trial of the Offence Punishable under Section 4 this Act*” and Section 45

therein is of relevance, which reads as follows :-

“Section 45 - Offences to be cognizable and non-bailable -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

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

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

(i) the Director; or

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

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

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

99. Chapter VIII of the PML Act deals with the “*Authorities established under the Act*” and Sections 48 and 49 of the said Chapter are of relevance and they are as follows :-

“Section 48 - Authorities under the Act -

There shall be the following classes of authorities for the purposes of this Act, namely:-

- (a) *Director or Additional Director or Joint Director,*
- (b) *Deputy Director,*

- (c) *Assistant Director, and*
- (d) *Such other class of officers as may be appointed for the purposes of this Act.*

Section 49 - Appointment and powers of authorities and other officers -

- (1) *The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.*
- (2) *Without prejudice to the provisions of sub-section (1), the Central Government may authorize the Director or an Additional Director or a joint Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant Director.*
- (3) *Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act.”*

100. Then comes Chapter IX of the PML Act, which deals with *“Reciprocal Arrangement for Assistance in Certain Matters and Procedure for Attachment and Confiscation of Property”*, which is strictly speaking not relevant for the purpose of this Petition.

101. Chapter X of the PML Act, deals with *“Miscellaneous Provisions”*; out of which, Section 65 of the Act, pertaining to

application of provisions of the Code, is of much relevance and it reads as follows :-

“Section 65 - Code of criminal Procedure, 1973 to apply -

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”

102. Section 71 from the said Chapter, which gives “*Overriding Effect*” to the provisions of PML Act is also of much relevance and it reads as follows :-

“Section 71 - Act to have overriding effect -

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

103. In addition to these provisions, the Legislature has also framed various Rules, from time to time, laying down the procedure for implementation of the provisions of PML Act. The relevant Rules for the purpose of this Petition are pertaining to the “*Prevention of Money-Laundering Rules*”. In these Rules, the definition of “Material” is of significance and it reads as under :-

“Material’ means any information or material in the possession of the Director or Deputy Director or Assistant Director or any authorized officer, as the case may be, on the basis of which he has recorded reasons under sub-section (1) of section 19 of the Act.”

104. In these Rules itself, the definition of “Arresting Officer” is given in Rule 2(c), which reads as follows :-

“Arresting Officer’ means the Director, Deputy Director, Assistant Director or any other officer, authorized in this behalf by the Central Government by general or special order to exercise the power to arrest any person under sub-section (1) of Section 19 of the Act.”

105. Thus, the entire scheme of the PML Act makes it patently clear that this Act is a complete Code in itself, thereby indicating that Legislature intended that the procedure laid down here in is to be followed in respect of the offences punishable under this Act. Section 71 of the Act makes it further clear by giving overriding effect to the provisions of this Act vis-a-vis. the provisions of the Code or any other Act. Thus, the provisions of the Code can be looked into only and only when the provisions of this Act are silent as to the particular aspects, such as 'arrest' etc. and provided that they are not inconsistent with the provisions of this Act.

Offences under PML Act whether non-cognizable ?

106. In the light of these provisions of PML Act, the very first contention raised by learned Senior Counsel for the Petitioner needs to be considered, which pertains to the question whether the offences under the PML Act are cognizable or non-cognizable. Learned Additional Solicitor General for Respondent Nos.1 to 3 has in this respect relied upon the head-note of Section 45 of the PML Act, which states that the *“offences are cognizable and non-bailable”*; whereas, learned Senior Counsel for the Petitioner has relied upon the amendment carried out to Section 45 of PML Act, in the year 2005 omitting clause (a) of sub-section (1) of Section 45, which provided that, *“every offence punishable under the PML Act shall be cognizable”*. According to learned Senior Counsel for the Petitioner, in view of this amendment, omitting clause (a) of sub-section (1) of Section 45 of PML Act, the offences under the Act no more remain cognizable. It is also urged that the head-note of the Sections is often misleading and cannot be a guiding principle for interpreting the provisions of the Act. To substantiate this submission, learned Senior Counsel for the petitioner has relied upon the decision of the Hon'ble Apex Court in *Guntaiah vs. Hambamma, (2005) 6 SCC 228*, wherein, the Hon'ble Apex Court has relied upon following

observations of a Privy Council Judgment in *Chandler vs. D.P.P.* (*All ER pp. 145 I-146 A-B*)-

“In my view, sidenotes cannot be used as an aid to construction. They are mere catchwords and I have never heard... that an amendment to alter a sidenote could be proposed in either House... So sidenotes cannot be said to be enacted in the same sense as the long title or any part of the body of the Act.”

107. Learned Senior Counsel for the Petitioner has then further relied upon the decision of the Hon'ble Supreme Court in the case of *Union of India vs. National Federation of the Blind & ors.*, (2013) 10 SCC 772, wherein, the Hon'ble Apex Court found that the heading or marginal note would not play any crucial role in interpretation, while observing that;

“45. It is clear that when the provision is plainly worded and unambiguous, it has to be interpreted in such a way that the court must avoid the danger of a prior determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somehow fitted. While interpreting the provisions, the court only interprets the law and cannot legislate it. It is the function of the legislature to amend, modify or repeal it, if deemed necessary.

46. The heading of a section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. However, when the section is clear and unambiguous, there is no need to traverse beyond those words, hence, the headings or marginal notes cannot control the meaning of the body of the section. Therefore, the contention of Respondent 1 herein that the heading of Section 33 of the Act is “Reservation of posts” will not play a crucial role, when the section is clear and unambiguous.”

(emphasis supplied)

108. As against it, learned Additional Solicitor General has placed reliance on the decision of the Hon'ble Apex Court in the case of *Eastern Coalfields Ltd. vs. Sanjay Transport Agency and anr.*, (2009) 7 SCC 345, wherein, while dealing with the interpretation of the provisions of Section 2(1)(b) and Section 11(6) of Arbitration and Conciliation Act, 1996, the Hon'ble Apex Court was pleased to observe in paragraph (6) as follows;

“It is well settled rule of interpretation that the section heading or marginal note can be relied upon to clear any doubt or ambiguity in the interpretation of any provision and to discern the legislative intent. The section heading constitutes an important part of the Act itself, and may be read not only as explaining

the provisions of the section, but it also affords a better key to the constructions of the provisions of the section which follows than might be afforded by a mere preamble.”

(emphasis supplied)

109. Therefore, as held in both these decisions, head-note is important to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. Further as held therein, the Section-heading constitutes an important part of the Act itself, as it not only explains the provisions of the section but it also affords key to the construction of the provision. Here in the case, it is pertinent to note that the Legislature has, though deleted Clause (a) of Sub-Section (1) of Section 45 of PML Act, it has not changed the heading, thereby giving clear indication that Legislature did not intend to make the offence “non-cognizable” but only wanted to clear the conflict between the powers of arrest as regards police and the authorities established under the Act.

110. This intent of the legislature can be definitely gathered from the object and reasons, in the light of the Parliamentary debates, when the particular legislation was introduced and passed. The law is fairly well settled to that effect.

111. Learned Senior Counsel for the Petitioner has also produced on record the copies of the transcripts of the 'Debates' that took place in the Parliament when this Amendment Act No.20 of 2005 was introduced. In our considered opinion, it would be necessary to reproduce the relevant portion under which the *“Bill to Amend the PML Act”* was introduced by the then Minister of Finance. In paragraph No.2 of his statement, the then Minister of Finance has stated that;

“Under the existing provisions in Section 45 of the Act, every offence is cognizable. If an offence is cognizable, then any police officer in India can arrest an offender without warrant. At the same time, under Section 19 of the Act, only a Director or a Deputy Director or an Assistant Director or any other officer authorized, may arrest an offender. Clearly, there was a conflict between these two provisions. Under Section 45(1)(b) of the Act, the Special Court shall not take cognizance of any offence punishable under Section 4, except upon a complaint made in writing by the Director or any other officer authorized by the Central Government. So, what would happen to an arrest made by any police officer in the case of a cognizable offence? Which is the Court that will try the offence? Clearly, there were inconsistencies in these provisions. They have now

been removed. We have now enabled only the Director or an officer authorized by him to investigate offences. Of course, we would, by rule, set up a threshold; and, below that threshold, we would allow State police officers also to take action.”

(emphasis supplied)

112. Thus, bare perusal of the statement made by the then Finance Minister, while introducing this amendment in Section 45(1) of the Act, makes it clear that, as it was apprehended that if the offence is cognizable, then any Police Officer in India can arrest an offender without warrant; whereas, Section 19 of the PML Act authorizes only certain authorities, like Director or a Deputy Director or an Assistant Director or any other officer authorized, to arrest an offender, there was a conflict between the two provisions and in view thereof, it was felt that it was necessary to remove such conflict. This necessity was also felt on the ground, that under Section 45(1) (b) of the PML Act, the Special Court can take cognizance of an offence punishable under Section 4 thereof, only upon a complaint made in writing by the Director or any other officer authorized by the Central Government. Hence, it was apprehended as to “*what would happen to an arrest made by the Police Officer in the case of a cognizable offence?; which is the Court that will try such offence?*”

Hence, in view of this clear inconsistency, it was thought fit to enable, only a Director or an officer authorized by him to investigate into the offences and, therefore, the provision in sub-clause (a) of Section 1 of Section 45 making the offence cognizable, was sought to be omitted.

113. Therefore, this statement, which was made by the then Finance Minister in the Parliament, while introducing the Amendment of 2005 to the Act, on which much reliance is placed by learned Senior Counsel for the Petitioner, makes it clear that the intention to delete the provision making the offence cognizable was only to ensure that there should not be any conflict between the power of the Police Officer, who can arrest, in cognizable offence, without warrant and the authority established under Section 19 of the PML Act, who can arrest on conditions being satisfied, as laid down therein.

114. Thus, it necessarily follows that the intention of the Legislature in deleting sub-clause (a) of sub-section (1) of Section 45 of the PML Act was not, in any way, to make it “non-cognizable” as such, irrespective of the provisions of the Code, which make the

offence punishable above the imprisonment of three years as cognizable offence, but to ensure that, as a specific authority is authorized to arrest the person accused under the PML Act, Police Officer should not arrest the person accused under the provisions of this Act.

115. That appears to be the reason why the heading of Section 45 was not changed. If the legislature really intended to make the offence non-cognizable, there was no difficulty for legislature to amend the heading of Section 45. The very fact that the legislature has neither amended the heading nor made any positive statement or assertion that the offences are non-cognizable makes it necessary to infer that the legislature did not intended to do so.

116. At this stage, it may be also relevant, to refer to the definition of “cognizable offence” and “non-cognizable offence”, as laid down in Section 2(1) of the Code, which reads as follows :-

“Section 2(c) – Cognizable Offence -

“Cognizable Offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.”

“Section 2(1) – Non-cognizable Offence -

“Non-Cognizable Offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant.”

117. In view of this definition of “cognizable offence”, it is clear that if the offence falls under the First Schedule of the Code or under any other law for the time being in force, the Police Officer may arrest without warrant. The 'First Schedule' of the Code specifically provides classification of the offences, which are “cognizable” or “non-cognizable”; bailable or non-bailable and triable by which Court according to the punishment, which is provided for the said offences. Under Part II of the First Schedule, “Classification of Offences against Other Laws” provides that, “offences punishable with imprisonment for more than three years or upwards would be cognizable and non-bailable”.

118. In the instant case, the offence under Section 4 r/w. Section 3 of the PML Act, as reproduced above, is punishable with imprisonment for more than three years and which may extend upto seven years or even upto ten years, as the case may be. Therefore, in view of Part II of the First Schedule of the Code, the said offence

becomes cognizable. Therefore, merely because sub-clause (a) of sub-section (1) of Section 45 of the PML Act is omitted / deleted, in view of the Amendment Act of 2005, the offence cannot automatically become non-cognizable. In the first place, the said clause was deleted merely with an intention to ensure that there should be no conflict in the power of arrest exercised by the Police Officers and the authorities authorized under the PML Act. The deletion of the clause (a) was, therefore, only with that specific intention and not to state that all the offences under the Act have to be treated now as “non-cognizable”. The, Legislature, by way of amendment, had not prescribed in positive terms that on account of deletion of clause (a) of sub-section (1) of Section 45, now all the offences under the PML Act have become non-cognizable. There is no positive assertion to that effect, even after the amendment was introduced. Hence it has to be held that, even if one ignores the heading of Section 45, then as it follows that in the absence of any positive assertion of making the offence cognizable, the PML Act is silent about it.

119. As a result, when the Special Act like PML Act, dealing with the offences stated therein, is silent about the cognizability or non-cognizability of those offences, the provisions of the Code will

prevail, in view of Section 65 of the PML Act, which provides that the provisions of the Code shall apply, in so far, as they are not inconsistent with the provisions of the PML Act, in respect of arrest, search, seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. Section 4 and 5 of Code also provide that;

“4. Trial of offences under the Indian Penal Code and other laws-

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving -

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special

jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

120. Therefore, accepting that sub-clause (a) of sub-section (1) of Section 45 of PML Act is deleted and as a result, now the provisions of PML Act are silent as to whether the offence is cognizable or non-cognizable, the recourse has to be taken to the provisions of Section 65 of the PML Act and Section 4(2) and 5 of the Code to hold that, in view of Part II of 'First Schedule' of the Code, the offence under this Act being punishable with imprisonment for more than three years and extending upto seven years, the offence has become cognizable.

121. As a matter of fact, in our considered opinion, there is also no need to enter into this aspect whether the offences under this Act are cognizable or non-cognizable, because Section 19 of the PML Act is very much clear. The said provision clearly confers power on the authorized officer to arrest any person, if the authority has reason to believe, on the basis of the material in its possession, that a person has been guilty of an offence punishable under the said Act. Thus, it is clear that, the moment, the authority under the Act arrives at such reason to believe on the basis of the material in its

possession that a person has been guilty of an offence under the Act, such authority can arrest the person. In other words, the 'power of arrest' under Section 19 of PML Act does not depend upon whether the offence is cognizable or non-cognizable. This power of arrest u/s. 19 is, not in any way circumscribed or qualified, depending upon the nature of the offence or the punishment prescribed therefor or its cognizability or non-cognizability. Section 19, lays down conversely, in clinching and un-flinching words that the only three conditions which are necessary for the arrest of the person for the offence under the provisions of this Act, firstly, the reason to believe on the part of the authorized officer that any person has been guilty of the offence punishable under this Act and second condition is that such reason is on the basis of the material in his possession and the third condition is that reason for such belief is recorded in writing. This section nowhere contemplates or states that, only when the offence is cognizable, such officer can effect the arrest. Even the Amendment Act of 2005, which deletes clause (a) of sub-section (1) of Section 45, nowhere states that in view of this deletion of clause (a), the power of arrest, to be exercised under Section 19, is no more available unless the offence is cognizable and such a power will not be available now, as the offence is being made non-cognizable.

122. Even the statement made in the Parliament by the then Finance Minister does not restrict power of arrest of the authorized authority under Section 19 of the PML Act depending upon cognizability or non-cognizability or depending upon punishment prescribed for the offence. On the contrary, the amendment was sought to be introduced only to confirm the power of Authorised Officer of arrest and to ensure that the Police Officer does not exercise that power. With that intention only, it was found necessary to delete clause (a) of sub-section (1) of Section 45 of the PML Act, which was making the offence cognizable and in which case, the Police Officer would have exercised that power. Therefore, in our opinion, even the Amendment Act of 2005, nowhere restricts the power of arrest of the authorized authority conferred under Section 19 of the PML Act, irrespective of the question whether the offence is cognizable or non-cognizable.

123. It is obviate that if the intention of the Legislature was to restrict such power of arrest of even the authorized officer in respect of the offence punishable under this Act, there was no difficulty for the Legislature to do so when the Amendment Act of 2005 was

introduced; even before the Act of 2002 was notified. The very fact that the Legislature has not done so and has also not intended to do so, as can be seen from the statement made by the then Minister of Finance in the Parliament, makes it necessary to infer that Legislature did not intend to curb the power of arrest, which was given to the authority under Section 19 of the PML Act; whether such offence was cognizable or non-cognizable. In such situation, in our considered opinion, this argument relating to whether the offence under the PML Act is cognizable or non-cognizable becomes merely of an academic interest.

Compliance with provisions of the Code of Criminal Procedure

124. In our considered view, for the same reason the question, *'whether the arresting authority was required to follow the procedure laid down in Section 155(1) of the Code'*, becomes redundant.

125. Section 155(1) of the Code falls in Chapter XII of the Code, which pertains to the *"information given to the Police and their powers to investigate"*. Section 154 of the Code deals with *"information in cognizable offences"*, where Police are required to register the offence when any information relating to commission of

cognizable offence is given orally or in writing; whereas, Section 155 of the Code deals with “*Information Relating to Non-Cognizable Offence*”. As per Section 155(1) of the Code, whenever the information as to non-cognizable offence is given, then, the Police Officer cannot investigate into the same without the order of the Magistrate, having power to try such case or commit such case for trial. Much emphasis is led by learned Senior Counsel for the Petitioner on the provisions of Section 155(1) of the Code to submit that, if the offence is non-cognizable, then, even the authorities under the PML Act could not have carried out investigation and arrested the Petitioner without the order of the Magistrate.

126. As a corollary thereto, it is also argued that, even if the offences under PML Act are held to be cognizable, then, in view of the decision of the Apex Court in the case of *Lalita Kumari (supra)*, whenever information related to cognizable offence is given, the Police is bound to register the offence and follow the procedure laid down in the said Chapter. Hence, the moment such information of the cognizable offence was received, FIR should have been registered first and then only the Petitioner could have been arrested. In the instant case, it is submitted that on the date of arrest of the

Petitioner, neither the FIR was registered, nor its copy was sent to the Magistrate or the Special Court, nor any permission was obtained from the Special Court for arrest of the Petitioner. Hence, according to learned Senior Counsel for the Petitioner, on this count also, the arrest of the Petitioner is required to be held as illegal.

127. In our considered opinion, however, the reliance placed by learned Senior Counsel for the Petitioner, on the provisions contained in Sections 154 to 173 in Chapter XII of the Code, is also misplaced. These provisions in the Code are clearly made to be applicable to the Police Officers, when they receive any information relating to cognizable and non-cognizable offences. The very title of Chapter XII of the Code states that “Police and Their Powers to Investigate”, thereby meaning that this Chapter concerns to the restrictions on the powers of Police in respect of the information received by them about commission of cognizable or non-cognizable offence and, depending thereon, arrest of the concerned accused. The provisions of this Chapter of the Code can be applied to the offences punishable under the provisions of PML Act, only if the provisions in PML Act are silent as regards the investigation and arrest of person, who has been found to be guilty of committing the

offences punishable under the PML Act.

128. This is for the reason that of the PML Act gives overriding effect to the provisions of PML Act. Section 71 of the PML Act clearly lays down that, *“the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force”*. Section 65 of PML Act further makes the position clear by stating that, *“the provisions of the Code shall apply, only if they are not inconsistent with the provisions of PML Act, even as regards arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the PML Act”*.

129. Therefore, if PML Act contains certain provisions relating to arrest, then, the PML Act being a complete Code in itself and also being a special law enacted with a particular object, in view of Section 5 of the Code, the provisions of PML Act will prevail and will have overriding effect on the provisions of the Code. The provisions of the Code will apply, only if they are not inconsistent with the provisions of PML Act.

130. Now the definition of the term 'investigation' as given in Section 2 (na) of the PML Act includes all the proceedings under the Act conducted by the Director by an Authority Authorised by the Central Government under this Act for the collection of evidence. Thus, investigation under this Act does not given any role to the Police. It is to be conducted by the Authorities under the Act. Hence as far as investigation is concerned, there is no scope for importing the provisions of the Code, which apply to the Police Officers. Section 19 of the PML Act exclusively and specifically deals with the “*power to arrest*” of the Authorised Officers for the offences punishable under the PML Act. Therefore, when there are specific provisions dealing with the investigation and power to arrest under the PML Act itself, the provisions of the Code will not have any application.

131. At the costs of repetition also, it has to be stated that Section 19 of the PML Act does not contemplate either registration of FIR, on receipt of information relating to cognizable offence or of obtaining permission of the Magistrate in case of non-cognizable offence before taking cognizance or before effecting arrest of the accused in respect of any offence punishable under this Act. The only conditions, which are laid down under Section 19 of PML Act, pertain to the reasonable

belief of the authority, which is on the basis of the material in its possession. As a result, when there are no such restrictions on the “power to arrest”, as laid down under Section 19 of PML Act, it cannot be accepted that the officer authorized to arrest under the PML Act was, in addition to the procedure laid down in PML Act, expected to follow the procedure laid down in the Code also, of registering FIR or seeking permission of the Court in respect of non-cognizable offence for arrest of the accused under this Act. If those provisions of Chapter XII of the Code are to be read even in respect of these offences, then, it follows that Section 19 of PML Act would be rendered nugatory and that cannot be the intention of the Legislature. The Court cannot make any special provision in the Act as nugatory or infructuous by giving the interpretation which is not warranted by the Legislature. As a matter of fact, the endeavour of the Court should always be to ensure that the provisions enacted by the Legislature are not rendered nugatory in any way.

132. It is pertinent to note that Section 19 of PML Act, which does not contemplate the compliance with the procedure required to be followed by the Police Officer under Chapter XII of the Code, is not challenged in this Petition, as being ultra vires. In the absence of

such challenge raised and in view of the clear provision laid down in Section 19 of PML Act, it cannot be accepted that the officer authorized under the PML Act should have followed the procedure laid down in Chapter XII of the Code, which is meant for Police Officers, to be followed in respect of the informations received by them.

133. Section 19(1) of the PML Act, at the cost of repetition, it has to be stated that, does not contemplate lodging of complaint before effecting arrest. It only contemplates the reason to believe, which should be on the basis of material in possession. Here in the case, there was ample material in possession of the arresting authority, on the basis of which there was reason to believe that the Petitioner has been guilty of an offence punishable under Section 4 read with Section 3 of the PML Act. It is not controverted that after the arrest, the copy of the order, along with the material in possession, was forwarded to the executing authority in a sealed envelope and, as stated above, it is also not disputed that immediately on the next day, the Petitioner was produced before the Special Court.

134. In the instant case, what is pertinent to note is that the Rules framed under PML Act, in detail, lay down the procedure to be followed when the arrest is to be effected under Section 19 of the PML Act. Those Rules are called as *“The Prevention of Money-Laundering (the Forms, Search and Seizure [or Freezing] and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules, 2005.”*

135. It is not disputed that the summons issued to the Petitioner was as per Form 'V' as given in Rule 11. The Petitioner has also not challenged any of the Rules or the Sections of PML Act and neither any challenge has been made to the vires of PML Act, that it is violative of any procedure established by law and that it is also violative of the fundamental rights guaranteed under the Constitution. Whatever challenge was raised to the provisions of Sections 19 and 45 of PML Act in the earlier Petition has been given up in this Petition and, therefore, when the procedure, as laid down in these Rules, has been not disputed to be valid and there is no challenge to the said Rules, then, there remains hardly any

substance in the grievance raised by the Petitioner that his fundamental rights have been violated. The arrest order, as prescribed in 'Form III' under Rule 6, and the manner of forwarding the copy of the order of arrest and material to the adjudicating authority as laid down in the Rules is complied with in this case.

136. Once it is held that the Act itself provides for a complete procedure to be followed whenever the arrest is to be effected and such procedure being followed in the instant case, it can hardly be accepted that the arrest or detention of the Petitioner is, in any way, illegal or without jurisdiction, so as to invoke the extra-ordinary writ remedy and that too of a habeas corpus; especially when the writ of habeas corpus is to lie whenever there is reason to believe that the person is in illegal detention; whereas, in the instant case, the Petitioner is arrested and detained for commission of specific offences. His detention is also validated by the order passed by the Special Court and as such, his detention cannot be called as illegal, far remain null and void, so as, for the Constitutional Court to exercise its extra-ordinary powers under writ jurisdiction; especially, when the Petitioner has already approached the competent Special Court and this Court also, for his release on bail

and the said relief having been rejected with valid reasons by both the Courts.

137. As regards the reliance placed by learned Senior Counsel for the Petitioner on the landmark decision of the Hon'ble Apex Court in the case of *Lalita Kumari (supra)*, it is also pertinent to note that the important issue, which was raised for consideration in the said decision, was, "*whether a Police Officer is bound to register an FIR upon receiving any information relating to commission of a cognizable offence under Section 154 of Cr.P.C. or the Police Officer has the power to conduct a preliminary inquiry in order to test the veracity of such information before registering the same?*"

Therefore, it is apparent that the issue raised before the Constitutional Bench of the Hon'ble Apex Court in this Judgment was totally different, which pertained to the bounden duty of the Police Officer of registration of the FIR on receipt of the information of cognizable offence and in that context, in paragraph No.120 of its Judgment, it was laid down by the Hon'ble Supreme Court that, "*the registration of FIR is mandatory under Section 154 of the Code, if information discloses commission of cognizable offence and no preliminary inquiry is permissible in such situation*". This decision

nowhere deals with the powers of the authorities established under Section 19 of PML Act or the procedure, which is laid down in PML Act, in respect of arrest of the accused person.

138. As to the reliance placed by learned Senior Counsel for the Petitioner on the Judgment of *Om Prakash (supra)*, again the issue raised before the Hon'ble Apex Court in the said Judgment was totally different. As can be seen from the opening paragraph of the said Judgment, the issue raised before the Apex Court was relating to the provisions of the Customs Act, 1962 and the provisions of Central Excise Act, 1944. The common question in these two sets of matters was, as stated by the Hon'ble Apex Court, '*since all the offences under the Central Excise Act, 1944 and the Customs Act, 1962 are non-cognizable, are such offences bailable?*'

139. In that context, it was found that the provisions of both these Acts in that regard were in *pari materia* to each other and provisions of both the Acts provided that certain offences therein were non-cognizable. While dealing with the contentions raised before it, the Hon'ble Apex Court has considered relevant provision of Section 9-A(1) of the Central Excise Act, 1944, which reads as follows :-

“9A.Certain Offences to be Non-Cognizable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), offences under Section 9 shall be deemed to be non-cognizable within the meaning of that Code.”

140. In view thereof, it was held that, this “*non-obstanti clause*”, with which the Section begins, in very categorical terms, makes it clear that “*notwithstanding anything*” contained in the Code, offences under Section 9 of Central Excise Act, 1944 would be deemed to be non-cognizable within the meaning of the Code. As against it, in the case of PML Act there is no such section containing positive assertion that the offences under the Act are non-cognizable, notwithstanding anything contained in the Code. There is also no judicial pronouncement to that effect from the Hon'ble Apex Court. As pointed out by learned Senior Counsel for the Petitioner that issue is pending for consideration before the Hon'ble Apex Court.

141. The Hon'ble Apex Court has in this judgment of *Omprakash (supra)*, then also dealt with Sections 13, 18, 19, 20 and 21 of the said Central Excise Act, 1944, which read follows :-

“13. Power to Arrest -

(1) Any Central Excise Officer not below the rank of Inspector of Central Excise may, with the prior approval of the Commissioner of Central Excise may, arrest any person whom he has reason to believe to be liable to punishment under this Act or the Rules made thereunder.”

18. Searches and Arrests How to be Made -

All searches made under this Act or any Rule made thereunder and all arrests made under this Act shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating respectively to searches and arrests made under that Code.”

(emphasis supplied)

19. Disposal of Persons Arrested -

Every person arrested under this Act shall be forwarded without delay to the nearest Central Excise Officer empowered to send persons so arrested to a Magistrate, or, if there is no such Central Excise Officer within a reasonable distance, to the officer-in-charge of the nearest police station.”

“20.Procedure to be followed by officer-in-charge of police station.-

The officer-in-charge of a police station to whom

any person is forwarded under Section 19 shall either admit him to bail to appear before the Magistrate having jurisdiction, or in default of bail forward him in custody to such Magistrate.”

“21. Inquiry how to be made by Central Excise Officers against arrested persons forwarded to them under Section 19. -

(1) When any person is forwarded under Section 19 to a Central Excise Officer empowered to send persons so arrested to a Magistrate, the Central Excise Officer shall proceed to inquire into the charge against him.

(2) For this purpose the Central Excise Officer may exercise the same powers and shall be subject to the same provisions as the officer-in-charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898 (5 of 1898), when investigating a cognizable case:

Provided that -

(a) if the Central Excise Officer is of opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward

him in custody to such Magistrate;

- (b) if it appears to the Central Excise Officer that there is no sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the Central Excise Officer may direct, to appear, if and when so required, before the Magistrate having jurisdiction, and shall make a full report of all the particulars of the case to his official superior.”*

142. In the light of all these relevant provisions of Section 9A making the offences non-cognizable, notwithstanding anything contained in the Code and Section 18 making it mandatory, as use of the word “shall” denote, that all the arrests made under those Act's shall be carried out in accordance with the provisions of the Code and Section 19 of the said Act providing that the person arrested shall be forwarded to the Officer-in-Charge of nearest Police Station, it was held by the Hon'ble Apex Court that; as all the searches and arrests made under the said Act has to be carried out in accordance with the provisions of the Code, the provision of Section 155 of the Code, which deals with information relating to non-cognizable

offences also becomes applicable and hence it was held that in respect of the information relating to non-cognizable offences, in view of Section 155(1) of the Code, investigation cannot be commenced or a person cannot be arrested without a warrant for such arrest. In the light thereof, the provisions of Section 41 of the Code, wherein the Police Officer cannot arrest without an order from the Magistrate and without a warrant, were dealt with. In this context, it was held, in paragraph No.41, that, *“in respect of a non-cognizable offence, a Police Officer and, in the instant case, an Excise Officer, will have no authority to make arrest without obtaining a warrant for the said purpose. The same provision is contained in Section 41 of the Code, which specifies that, when a Police Officer may arrest without an order from a Magistrate and without a warrant, having regard to the specific provisions of Section 18 of the Central Excise Act, 1944, which mandated that all arrests made under the said Act shall be carried out in accordance with the provisions of the Code.”*

143. It thus needs to be emphasized that in view of Section 9A of the Central Excise Act making all the offences under the said Act as non-cognizable and in view of Section 18 of the said Act positively

making the provisions of the Code relating to arrest being made applicable to arrest under the said Act, it was held in the case of *Om Prakash (supra)* that Excise Officer has to follow those provisions. There are no such *pari materia* provisions in PML Act. The PML Act does not make the offences there under 'non-cognizable', notwithstanding anything contained in the Criminal Procedure Code, nor PML Act provides that all the arrests under the Act are to be made in accordance with the provisions of the Code. Conversely in PML Act, there is separate Section 19 relating to arrest and Section 71 giving overriding effect to the provisions of PML Act above the provisions of the Code or any other law.

144. According to learned Senior Counsel for the Petitioner, in the case of *Om Prakash (supra)*, the argument advanced by learned Additional Solicitor General therein, that as the authorities under the Customs Act, 1962 and Central Excise Act, 1944 do not derive their powers from the Code, but under the Special Statutes, such as Central Excise Act and Customs Act, hence they are not bound by the provisions of the Code, was rejected. The Review Petition preferred against the said Judgment also came to be rejected. Hence, according to him, the provisions in the Code relating to arrest of

accused in case of non-bailable offence are applicable not only to Police Officers, but to the authorities established under other Acts also, like, Customs Act, 1962, Central Excise Act, 1944 and in this Petition, the authorities under PML Act also. According to him, in this case, as these provisions of the Code were not followed in effecting the arrest of the Petitioner, arrest of the Petitioner is illegal.

145. However, in our considered opinion, this line of argument is misconceived as in the PML Act, there is no such provision, like Section 18 of the Central Excise Act, 1944, laying down that arrest under PML Act shall be carried out in accordance with the provisions of the Code. The conspicuous absence of such provision like Section 18 of the Central Excise Act, 1944 in PML Act, is a very relevant aspect for deciding the issue, 'whether the authorities under the PML Act, like the authorities under the Customs Act, 1962 and Central Excise Act, 1944, are also bound by the provisions of the Code relating to arrest and investigation?'

146. In our considered opinion, therefore, once it is held that such provision like Section 18 of the Central Excise Act, 1944, is not

appearing and is conspicuous by its absence in PML Act, then, one has to go by the provisions of the PML Act only, as Section 71 thereof is giving overriding effect to the said provisions. Section 19 of the PML Act, as stated above, does not contemplate at all the procedure, as laid down in Sections 18 to 21 of the Central Excise Act, 1944. The only two conditions contemplated under Section 19 of PML Act, being the reasonable belief, based on the material in possession of the authorized officer, on the satisfaction of which the authorized officer can arrest. In such situation, importing the provisions of the Central Excise Act, 1944 or Customs Act, 1962 in PML Act, would be reading something which is not there in the Statute itself. Such interpretation, therefore, cannot be accepted. In our considered opinion, therefore, this Judgment in the case of *Om Prakash (supra)* cannot be of any avail to the Petitioner, as, in the first place, it deals with the question, “*whether the offences under the Customs Act, 1962 and Central Excise Act, 1944, are bailable or not?*”, and, secondly, the provisions of Customs Act, 1962 and Central Excise Act, 1944, are totally different from the provisions of PML Act, as the objects and reasons for bringing these Statutes are also different.

147. Even the emphasis placed by learned Senior Counsel for the

Petitioner on the Judgment of the Hon'ble Apex Court in the case of *Directorate of Enforcement Vs. Deepak Mahajan & Anr., (1994) 3 SCC 440*, is also misplaced as the salient and indeed substantial question, which involved for determination, in the said Appeal was formulated as follows :-

“Whether a Magistrate before whom a person arrested under sub-section (1) of Section 35 of the Foreign Exchange Regulation Act of 1973 which is in pari materia with sub-section (1) of Section 104 of the Customs Act of 1962, is produced under sub-section (2) of Section 35 of the Foreign Exchange Regulation Act, has jurisdiction to authorize detention of that person under Section 167(2) of the Code of Criminal Procedure?”

148. Therefore, it is apparent that in the said decision, the provisions of sub-section (1) of Section 35 of Foreign Exchange Regulation Act, 1973, (*for short, “FEMA”*), which were *pari materia*, with sub-section (1) of Section 104 of the Customs Act, 1962 were for consideration before the Apex Court. Hence, in the light of the provisions of Section 167(2) of the Code, while deciding the said question, it was held that, even in respect of the person arrested under the FEMA or Customs Act, the provisions of Section 167(2) of the Code are having mandatory application. Thus, this decision does

not pertain to the 'power of arrest', but to the provisions of Section 167 of the Code, which pertain to the custodial detention. It is also pertinent to note that provisions of the Code were resorted to in this judgment in the aid of implementation of the provisions of the Customs Act and not to create hindrance in implementation of the said Act. It would be necessary in this respect to refer to the observations made by the Hon'ble Apex Court in paragraph No.23 of the said Judgment. It was observed that;

“23. Keeping in view the cardinal principle of law that every law is designed to further the ends of justice but not to frustrate on the mere technicalities, we shall deal with all those challenges in the background of the principles of statutory interpretations and of the purpose and the spirit of the concerned Acts as gathered from their intendment.” (emphasis supplied)

149. Therefore, in our considered opinion, as this Judgment also lays down that the provisions of law are to be interpreted to further the ends of justice and not to be frustrated on the mere technicalities, the provisions of PML Act are also required to be interpreted with that objective in view and not allowed to be frustrated by mere technicalities. Hence, when Section 19 of PML Act gives wide powers to the authorized officer to arrest an accused

person, who is found to be guilty of having committed an offence punishable under the said Act, said provision cannot be rendered nugatory by importing the technicalities, so as to frustrate the object of Legislature. Hence, this decision of the Hon'ble Apex Court also cannot be of any help to the Petitioner, having regard to the fact that Section 19 of PML Act gives the wide powers of arrest to the authorized officer and the vires of the said provisions are not challenged.

150. Learned Senior Counsel for the Petitioner, has then placed reliance on the observations of the Hon'ble Apex Court in paragraph 60, in the case of, *State of Haryana and ors. vs. Bhajanlal and ors.*, 1992 Supp.(1) SCC 335, which read as follows;

“60. The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under

Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.”

151. There can hardly be any dispute or two opinions about the legal proposition laid down in this authority that that the police should exercise the investigatory powers by following statutory provisions so as to not cause any serious prejudice to the personal liberty and also property of a citizen. However, in the instant case,

the perusal of the remand orders does not reflect that there was breach of any statutory provisions, so as to cause any serious prejudice to the liberty of the Petitioner.

152. In this respect, reliance placed by learned Senior Counsel for the Petitioner on the decision of Punjab and Haryana High Court, in the case of *Gorav Kathuria vs. Union of India and ors. In Criminal W.P.No.595 of 2016* is also misplaced. The reason for the same is that the said decision pertains to the petition which has challenged the vires of firstly, Section 2(y)(ii) of PML Act as amended vide Section 45(ii) of the Finance Act, 2015, enhancing the monetary threshold for the offences specified under Part B of the Schedule from the total value involved in such offences from 'Rs.30 Lakhs or more' to 'Rs. One Crore or more', and secondly the insertion of Section 132 of Customs Act, 1962 in Part-B of the Schedule in PML Act, vide Section 151 of the said Finance Act, 2015. The Petitioner, in that case was an Advocate and was desirous of instituting Criminal Case alleging duty evasion in import of Heavy Melting Scrap classifiable under Customs Tariff Heading 7204 4900 at ICD Ludhiana and laundering by the offender of the proceeds of crime so generated. It was his contention that these amendments were unconstitutional

and ultra vires, unless read down so as to make them constitutional, stringent and harmonious with the objects of PML Act.

153. While deciding these contentions raised before it by the Petitioner, it was held by the Division Bench of Punjab and Haryana High Court that the Petitioner is a third party and not the authority established under the provisions of PML Act. The Division Bench then considered the effect of the omission in Section 45(1) of words “every offence punishable under this Act shall be cognizable” and further considered whether Section 45(1) puts an embargo on grant of bail in such offences. Thus, the judgment in case of *Gorav Kathuria (supra)*, necessarily pertains to the provisions relating to the grant of Regular Bail under Section 45 of the PML Act. Moreover, as stated in paragraph (13) of the judgment, this decision pertains to the issue as to whether the Petitioner who was a third party can file a composite private complaint to seek an order for investigating the alleged schedule offence punishable under the Customs Act, 1962 and also the offence under PML Act. This judgment, therefore, though considers the decisions of the Hon'ble Apex Court in the cases of *Om Prakash vs. Union of India*, (2011) 14 SCC 1 and *Directorate of Enforcement vs. Deepak Mahajan*, (1994)

3 SCC 440, it was particularly in the light of the issues raised before it. In such situation, in our considered opinion, this judgment can be of no avail to the Petitioner.

154. In the present case, in the first place, the Petitioner is not seeking Regular Bail under Section 45 of PML Act but he is seeking the relief of habeas corpus. Therefore, this decision in *Gorav Kathuria (supra)*, which deals with Section 45 of the PML Act pertaining to regular bail, is of absolutely no help to the Petitioner. Even accepting that the SLP preferred against the said judgment by the Petitioner therein, challenging it on the count that he was refused *locus-standi* to file such private complaint, was dismissed by the Hon'ble Apex Court in Criminal Appeal No.737 of 2016 vide its order dated 12th August, 2016, despite the Certificate granted by the Punjab and Haryana High Court, in our considered opinion, as this judgment and the issues raised therein were totally different and the provisions of PML Act and other Acts were considered in the light of the issues raised therein, this judgment cannot be of much help for the purpose of deciding the issues raised in this petition, in which, the Petitioner is claiming his release under the writ of habeas corpus and not under regular bail under Section 45 of PML Act.

155. Even as regards the decision of *Gautam Kundu vs. Manoj Kumar*, *Criminal Appeal No.1706 of 2015*, which is also considered in the case of *Gorav Kathuria (supra)*, in our considered opinion the said judgment also pertains to the challenge raised by the Appellant therein to the rejection of his application for bail under Section 439 of the CrPC and therefore, may not be of much help, as it also deals with the provisions relating to Regular Bail and not the release on count that arrest is illegal and therefore, the writ of habeas corpus. However, what is relevant to know is that, in this judgment of *Gautam Kundu (Supra)* the Hon'ble Apex Court has considered the various objects and reasons of the PML Act, the presumption raised in Section 24, of the Act casting burden of proof on the accused and the rigors which the Petitioner has to overcome to get the relief of bail under the said Act. In doing so, the Hon'ble Apex Court has referred to its earlier decisions in *Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation*, (2013) 7 SCC 439 and *Union of India vs. Hassan Ali Khan*, (2011) 10 SCC 235, making it very clear that offence under Section 4 of PML Act is of a serious nature, and the burden of proof is shifted on the accused person to prove that the monies were not the proceeds of crime and were not, therefore tainted. In such situation, the Petitioner cannot by way of this Writ

of Habeas Corpus, side track or bye-pass these stringent provisions of Regular Bail, to get his release.

156. Learned Senior Counsel for the Petitioner has, then also, placed reliance on the Judgment of the Division Bench of Gujarat High Court in the case of *Rakesh Manekchand Kothari Vs. Union of India & Ors.*, dated 3rd August 2015, in *Special Criminal Application (Habeas Corpus) No.4247 of 2015*, wherein, on the basis of the similar contentions, as raised in this Petition, the Division Bench of Gujarat High Court was pleased to grant the relief of release of the Petitioner therein. It is submitted that Special Leave to Appeal (Cri.) No.9727 of 2015 preferred by the Union of India against the said decision is already dismissed by the Apex Court vide its order dated 23rd November 2015. However, in our considered opinion, as this Judgment is merely an order of interim nature and does not decide the dispute involved therein finally, it has neither the persuasive value, far remain the binding effect. In paragraph No.31 of the judgment, Division Bench itself has stated that “we prima facie agree with some of the arguments advanced by Mr.Vikram Chaudhary, learned Advocate for the Petitioner”. In view thereof, regard was given to the peculiar facts of that case, which showed

that fraud has been committed by some of the accused, however, the complaint did not show any material evidence, direct or circumstantial against the Petitioner. It was found that “so far as the Petitioner therein was concerned, there was no recovery or discovery from or at the instance of the Petitioner. Barring statements, there was no *prima facie* material evidence against the Petitioner of any money laundering, despite the fact that he was in custody for the last about 11 months”. It was also noticed that “the uncle of the Petitioner, who was alleged to have much higher role and stated to be the main accused was on bail. Not only that, out of 89 accused persons and entities, all were on bail, except eight or nine including the Petitioner”. Hence, it was held that, “if about 80 out of 89 accused are ordered to join investigation under protection of Court order, the Petitioner who had already undergone about 11 months is entitled to interim relief as prayed”. Needless to state that the facts of the present case are totally different, as in this case the Petitioner, who is the then Ex-Minister in the State of Maharashtra is alleged to be the master-mind and the kingpin in the money-laundering of multi-crore. Therefore, the factors which weighed with the Division Bench of Gujrat High Court in allowing the release of the Petitioner in that case being totally different, the said decision needs

to be differentiated.

157. Similarly, the reliance placed by learned Senior Counsel for the Petitioner on the order of Delhi High Court in the case of *Gurucharan Singh Vs. Union of India, in Criminal Writ Petition No.307 of 2016, dated 27th April 2016*, wherein also, similar contentions raised by learned Senior Counsel for the Petitioner were accepted at the interim stage; while admitting the Petition; and granting interim relief, cannot be of much avail, as the observations made therein are of a “*prima facie* nature” and not concluded or decided finally. In paragraph No.43 of the judgment therefore, it was specifically clarified that any opinion expressed at this stage is primarily for the purposes of considering the prayers for the grant of bail.

158. In this respect, learned Additional Solicitor General has rightly placed reliance on the decision of the Punjab and Haryana High Court in the case of *Karam Singh and ors. vs. Union of India and ors., CWP No.3317 of 2015, decided on 22nd December, 2015*, where in, the Division Bench has considered the binding element of an interim order in paragraph (21) of the judgment as follows;

“An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing *prima facie* findings, are only tentative. Any interim directions issued on the basis of such *prima facie* findings are temporary arrangements to preserve the *status quo* till the matter is finally decided, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.”

159. It was further held in this authority that whatever observations are made in the interim order, being made on tentative reasons, it is not possible to read such tentative reasons as final conclusions.

160. In this petition, before the Division Bench of Punjab and Haryana High Court, similar contentions were raised by the Petitioner, challenging the summons issued to the Petitioner, therein, by the Officers of Enforcement Directorate under Section 50(2) and (3) of the PML Act, on the ground that the offences are non-cognizable in nature and in absence of any prior sanction/order of Magistrate, the investigation being conducted by the said authorities, is not justified. The Division Bench of the Punjab and

Haryana High Court was pleased to reject these contentions and dismissed the petition by its final order. Hence this judgment being a final authoritative pronouncement can be of more help. In this Judgment of Division Bench of the Punjab and Haryana High Court, after considering all the relevant case laws, which are cited by learned Senior Counsel for the Petitioner in this case also, Division Bench found no substance or reason to hold that offences under PML Act are non-cognizable and the Authorities under the PML Act have to follow the procedure laid down in the Code in respect of the arrest under Section 19 of the Act.

161. In this judgment, the judgments of the Hon'ble Apex Court in the case of *Om Prakash and another vs. Union of India (supra)*, *Directorate of Enforcement vs. Deepak Mahajan (supra)*, *Lalita Kumari vs. Government of Utter Pradesh (supra)* were considered in detail and it was held the right to investigate under the Act is very much part of the scheme of the Act. Hence the argument that the offence is non cognizable as defined under Section 2(1) of CrPC cannot be accepted. It was further held that if the argument raised by learned Senior Counsel for the Petitioner was to be accepted, then Section 19 which pertains to the Power of Arrest would be rendered a dead letter on the statute book, if the offence under Section 3 is to

be treated as non-cognizable. We find the reasons given in the Judgment of the Division Bench of Punjab and Haryana High Court in this decision more in tune with the reasoning given by us, on the analysis of the provisions of this Act vis-a-vis the provisions of the other Acts and the Code.

162. As a result, we do not find any substance in the first ground raised by learned Senior Counsel for the Petitioner challenging his arrest as illegal.

Section 19 – Authority Competent to Arrest

163. Coming to the next grievance raised by the Petitioner that Respondent No.2, the then Assistant Director of Enforcement Department, who has effected his arrest, was not having the authority to do so. It is submitted that as per Section 19 of the PML Act, the power to arrest is conferred only on the Director, Deputy Director, Assistant Director or any other officer authorized in this behalf by the Central Government by general or special order. Here in the case, it is submitted that no such notification is produced on record to show that Respondent No.2 was authorized by the Central Government to effect the arrest. It is urged that in the absence of such notification, the arrest of the Petitioner, as effected by

Respondent No.2 is, ex-facie, illegal. It is submitted that Section 49(1) of the PML Act authorizes Central Government to appoint such persons, as it thinks fit, be the authorities for the purpose of this Act. As per Section 49(2) of PML Act, without prejudice to the provisions of sub-section (1) thereof, the Central Government may authorize the Director or Additional Director or Joint Director or a Deputy Director or an Assistant Director, appointed under that sub-section, to appoint other authorities below the rank of an Assistant Director. It is urged that the relevant provision is sub-section (3) of Section 49 of PML Act, which provides that, *“subject to such conditions and limitations, as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred and imposed on it under this Act”*.

164. It is submitted that the only notification, which is issued by the Central Government so far, is dated 1st July 2005 and it confers exclusive powers on the Director of Enforcement under FEMA, holding office immediately before the said date. The relevant notification is produced by the Petitioner at Exhibit-F, page No.129 of the paper-book. It can be reproduced as follows;

The Gazette of India

Notification

New Delhi, the 1st July, 2005

G.S.R.411(E).-In exercise of the powers conferred by sub-section (1) of section 49 of the Prevention of Money-Laundering Act, 2002 (15 of 2003), the Central Government hereby appoints, with effect from the 1st day of July, 2005, the Director of Enforcement holding office immediately before the said date under the Foreign Exchange Management Act, 1999 (42 of 1999), as the Director to exercise the exclusive powers conferred under section 5, section 8, section 16, section 17, section 18, section 19, section 20, section 21, sub-section (1) of section 26, section 45, section 50, section 57, section 60, section 62 and section 63 of the said Act and the said Director shall also concurrently exercise powers conferred by sub-section (3), sub-section (4) and sub-section (5) of section 26, section, 39, section, 40, section 41, section 42, section 48, section 49, section 66 and section 69 of the aforesaid Act.

[Notification No.6/2005/F.No.6/2/2005-E.S.]

165. It is urged that in view of this notification “exclusive power” is conferred on the Director of FEMA. No other notification is produced conferring powers of arrest on Assistant Director. As such, Respondent No.2, being Assistant Director, had no authority to effect the arrest.

166. However, in our considered opinion, this submission also cannot be accepted for the simple reason that the perusal of the said notification, reveals that 'exclusive powers' conferred on Director FEMA were not to the exclusion of other authorities established under the Act. It is significant to note that under Section 19(1), the authorities, which can exercise the power of arrest are clearly laid down and they include "Assistant Director". Section 48 further clarifies who are the authorities established under the Act and it also includes the "Assistant Director". Therefore, their powers are not in any way curtailed by the said circular but only for the proper assignment by way of internal management this circular was issued, considering that there were two Directors working in Enforcement Directorate. Hence their powers and area of jurisdiction in respect of implementation of the Act were divided. It was not issued in any way to exclude the power of authorities established under the Act. It is pertinent to note that this Notification is issued under Section under Section 49(1) and not under Section 49(3) to impose any limitations on the powers of the Authorities established under the Act. This aspect is already considered in detail by the learned Single Judge of this Court in the case of *Sayed Mohamed Masood Vs. Dr.*

Shanmugham, Directorate of Enforcement and Anr., in Criminal Bail Application No.71 of 2013, dated 4th February 2013, wherein the similar issue was raised relating to the power of arrest by the Assistant Director. After considering the provisions of the Act, it was rightly held by the learned Single Judge of this Court that “this exclusive power conferred on the director of FEMA is not to the exclusion of other authorities, which are specified in Section 19 of the PML Act itself. The Director may be given exclusive powers, but not to the exclusion of other authorities”.

167. In this judgment the provisions of Section 48 of the PML Act, which defines “Authorities under the Act” and Section 49 of the PML Act, which deal with “Appointment and Powers of Authorities under the Act” are elaborately dealt with. The provisions of Section 50 of the PML Act, which deals with the “Powers of Authorities Regarding Summons, Production of Documents and to Give Evidence etc.” and Section 51 relating to “Jurisdiction of Authorities”, r/w. Section 52, about the “Powers of the Central Government to Issue Directions”, are also considered and thereafter it was held that the Ministry of Finance has appointed the Enforcement Director, as appointed under sub-section (2) of Section 36 of FEMA, as 'Assistant Director'

for the purpose of PML Act and such order is issued in exercise of powers conferred under sub-section (1) of Section 49 of PML Act.

168. In our considered view also having regard to the above notification which is in force and subsequent notifications issued on the same lines by the Ministry of Finance, Department of Revenue, Central Government, and having regard to the definition of “*Assistant Director*”, as contained in Section 2(1)(c) of PML Act, means “*the Assistant Director appointed under sub-section (1) of Section 49 of PML Act*”, it cannot be said that the Assistant Director of Enforcement Department is incompetent to arrest the Petitioner in exercise of the powers under Section 19(1) of the PML Act.

169. As rightly held in the above-said decision, sub-section (2) of Section 49 of PML Act will come into play only when Director, Deputy Director or Assistant Director, as the case may be, would like to appoint any other officer for the purpose of exercising the powers and for discharge of duties conferred or imposed under FEMA. However, that does not preclude the Ministry of Finance, Department of Revenue, to issue order appointing Assistant Director under FEMA to function under the PML Act.

170. In the present case, however, learned Senior Counsel for the Petitioner has placed much reliance on sub-section (3) of Section 49 of PML Act, to submit that this sub-section was not considered in the above-said two decisions and as per this Section, “subject to such conditions and limitations, as the Central Government may impose, an authority may exercise the powers and discharge the duties conferred or imposed on it under this Act”. It is urged that in view of this sub-section, the Central Government is having full authority to impose such conditions and limitations, as it may deem fit, relating to the exercise of powers and duties conferred or imposed under this Act on the said authority. It is submitted that, accordingly, in view of the powers conferred by sub-section (1) r/w. clause (a) and clause (p) of sub-section (2) of Section 73 of PML Act, the Central Government had made rules relating to *“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”*. The said Rules define, in Section 2(1)(c), the expression *“Arresting Officer”* as follows :-

“2(1)(c). “Arresting Officer” means the Director, Deputy Director, Assistant Director or any other officer, authorized in this behalf by the Central

Government by general or special order to exercise the power to arrest any person under sub-section (1) of section 19 of the Act.”

171. It is submitted that the use of the 'comma' after the words “Director”, “Deputy Director”, “Assistant Director” or “any other officer” and subsequent words after the 'comma', “as authorized in this behalf by the Central Government”, make it clear that such a Director, Deputy Director, Assistant Director or any other officer are also required to be authorized in this behalf by the Central Government. According to learned Senior Counsel for the Petitioner, no such authorization is issued in the instant case. It is submitted that this aspect being not properly considered in above said judgment, it needs to be considered in this case.

172. However, perusal of the decision of the learned Judge of this Court, [Coram : R.C. Chavan, J. in Criminal Bail Application No.71 of 2013 decided on 04.02.2013], clearly reveals that this aspect was definitely considered in paragraph Nos.13 and 14 of the said Judgment, which read as under :-

“13. I have considered these arguments. First the rules which have been relied on have been framed in exercise of powers under clauses (a) and (p) of Sub-section (2) of Section 73 of the Act. These

clauses (a) and (p) of Section 73(2) read as under:

*“73(2) (a) the form in which records referred to in this act may be maintained;
(p) the manner in which the order and the material referred to in sub section (2) of Section 19 shall be maintained.*

14. *The rules were, thus, framed in order to prescribe forms in which records were to be maintained and the manner in which order and material referred to in Sub-section (2) of section 19 was to be maintained. The term “Arresting Officer” was defined for the purpose of those rules only. Inserting in clause (c) in sub Rule (1) of Rule (2) of those Rules, a subsequent comma, (,) after the words, “or any other officer”, may be an error of the draftsman. In any case it is not necessary to go into that question since definition is only for the purpose of rules which have been framed for the restricted purpose of clauses (a) & (p) of sub-section (2) of section 73 of the Act. Therefore, definition of “arresting officer” in these rules cannot be held to control the provisions of Section 19 of the Act or to require that the Central Government has to issue notification under those rules for authorising an officer to effect arrest. The definition would have to be read in conformity with the provisions of Section 19 of the Act and the most appropriate interpretation may be that as far as Directors, Deputy Directors, or Assistant Directors*

are concerned, no authorization of the Central Government is required, and while any other officer could also be authorized by the Central Government, if such other officer has to be authorized, a notification by the Central Government would be required. Thus, there is no substance in the contention that the Assistant Director who effected arrest lacked the authority to arrest. Therefore, there is no violation of any procedural safeguards which the applicant had and he cannot be said to have suffered by any eclipse of his rights by not following the procedure established by law in effecting his arrest.”

173. Needless to state that, the Rules framed under the PML Act, which are under “Delegated Powers” cannot override the provisions of PML Act and, therefore, the use of ‘*comma*’ in the definition of the expression “*Arresting Officer*” in Rule 2(1)(c) cannot be held to control the provisions of Section 19 of PML Act, to require that, the Central Government has to issue notification under those Rules for authorizing the officer to effect the arrest. The law is well settled that the definition given in the Rules has to be read in conformity with the provisions of Section 19 of PML Act and hence appropriate interpretation would be, as far as Directors, Deputy Directors and Assistant Directors are concerned, no such authorization of the

Central Government is required; whereas, in respect of other officers, such authorization may be necessary.

174. As to non-consideration of sub-section 3 of Section 49 of PML Act in the above two authorities, even bare perusal of sub-section 3 of Section 49 of PML Act makes it clear that the authority may exercise the powers and discharge duties conferred or imposed on it under this Act, subject to such conditions and limitations, as the Central Government may impose. Therefore, only if some conditions and limitations are imposed by Central Government, the power of arrest, which is already vested in these authorities can be restricted. In the instant case, not a single notification issued u/s.49 (3) of the Act is produced to show that any conditions and limitations have been imposed by the Central Government on the authorities established under the PML Act in exercise of their powers and discharge of duties conferred or imposed on it under this Act. In our considered view, therefore, the Assistant Director, being an authority established under PML Act, Section 48(C) thereof, *sans* any notification issued by the Central Government u/s.49(3) of the Act imposing any conditions or limitations on his powers, the Assistant Director is to be held as '*competent*' to exercise its powers under Section 19(1) of PML Act.

175. Even otherwise, as stated above, there are notifications, which are produced on record, clearly stating that the Assistant Director under FEMA is having the authority to arrest a person accused of any offence under Section 19(1) of the PML Act.

176. The relevant notification dated 13th September 2005 bearing SO No.1275(E) reads as follows :-

The Gazette of India

Order, New Delhi, 13th September, 2005

“S.O. 1275(E.)- In exercise of the powers conferred by Sub-section (1) of Section 49 of the Prevention of Money-laundering Act, 2002 (15 of 2003), the Central Government hereby appoints, with effect from the 1st day of July, 2005, the Assistant Director holding office immediately before the said date under the Foreign Exchange Management Act, 1999 (42 of 1999), as the Assistant Director for the purpose of the Prevention of Money-laundering Act, 2002.”

177. This notification, thus, clearly provides that in view of the powers conferred under sub-section (1) of Section 49 of PML Act, the Central Government has appointed the Assistant Director holding office immediately before the said date under FEMA as the *'Assistant Director for the purpose of Prevention of Money*

Laundering Act'. Therefore, it cannot be accepted that Assistant Director, FEMA, had no authority to act under the provisions of PML Act.

178. In this respect, one can also place reliance on the Circular Order (TECH) No.3 of 2011 produced by the Respondents, which confers powers of arrest on the Assistant Director under the PML Act. Thus, it can hardly be accepted that Respondent No.2 herein, who is an Assistant Director, had no power to arrest the Petitioner.

Non-compliance with mandatory

Constitutional safeguards and provisions of PML Act

179. This brings us to the next issue relating to the compliance of proper procedure prescribed under the Act for effecting arrest. Though learned Senior Counsel counsel for the Petitioner has placed much reliance on Article 22 of the Constitution, which lays down certain safeguards for effecting arrest, the only relevant clauses of Article 22 of the Constitution for the purpose of deciding this Petition are clauses (1) and (2). So far as clause No.(3) is concerned, it makes it clear that clause Nos.(1) and (2) of Article 22 of the Constitution do not apply to any person, who, for the time being, is an enemy alien or to any person, who is arrested or detained under

any law providing for preventive detention. Subsequent clauses, namely, (4), (5), (6) and (7) deal with the arrest of the person under preventive detention. As regards clause Nos.(1) and (2) of Article 22 of the Constitution, they lay down the following safeguards :-

“(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

“(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

180. Thus, first safeguard expects the person arrested to be informed of the grounds for such arrest and his right to consult and to be defended by a legal practitioner of his choice shall not be denied. In the instant case, the Arrest Order produced at page No.165 goes to show that such grounds of arrest were informed to the Petitioner. In acknowledgment thereof the Petitioner has signed on the Arrest Order.

181. As regards the second safeguard, it expects such person arrested to be produced before the nearest Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for journey from place of arrest to the Court of Magistrate. In the instant case, admittedly, the Petitioner was produced before the Magistrate on the next day. Though he contends that he was called at the office of the Enforcement Directorate at 10:30 hours itself and since then he was detained there, though his arrest shown at 22.05 hours, and he was produced before the Magistrate on the next day at 16:30 hours, there is nothing on record to show that immediately on reporting to the Enforcement Department's office, Petitioner was arrested or detained. The mere fact that inquiry was being made with him and hence he could not leave the office or was not allowed to leave the office of Enforcement Department, does not amount to his arrest or detention. Moreover, the period of taking him from the place of his arrest to the Special Court needs to be excluded and, therefore, it cannot be accepted that there was breach of the safeguard laid down in clause No.(2) of Article 22 of the Constitution.

182. Further, it is pertinent to note that Section 19 also contains the same safeguards, like the arrested person being produced before the Magistrate within twenty-four hours, excluding the time necessary for journey from the place of arrest to the Magistrate's Court. The said safeguard and provision is apparently complied in this case and there is no violation of it in any way.

183. Much emphasis is placed by the learned Senior Counsel for the Petitioner on Sub Section (1) of Section 19 of the Act. It is submitted that the grounds of arrest are not only to be recorded but they are also required to be informed to the person arrested, immediately. It is urged that, the use of the word "shall" in Sub-Section (1) of Section 19 makes it clear that such grounds are to be provided to the arrested person at the time of arrest or immediately after the arrest. Reliance is also placed on the Rules framed under the Money-Laundering Act, 2002, particularly, the Prevention of Money-Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person alongwith the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005. It is submitted that as per Rule 6, it is provided that the Arresting Officer, while exercising powers under Sub-Section (1) of Section 19

of the Act shall, sign the Arrest Order in Form III appended to these rules. The Form III, read as follows;

FORM III
(See rule 6)
ARREST ORDER

Whereas, I....., Director/Deputy Director/Assistant Director/Officer authorised in this behalf by the Central Government, have reason to believe that.....resident of.....

(name of the person arrested)
has been guilty of an offence punishable under the provisions of the Prevention of Money-Laundering Act, 2002 (15 of 2003).

Now, therefore, in exercise of the powers conferred on me under sub-section (1) of section 19 of the Prevention of Money-Laundering Act, 2002 (15 of 2003), I hereby arrest the said.....

(name of the person arrested)
at.....hours on.....and he has been informed of the grounds for such arrest.

Dated at.....on this.....day of.....two thousand.....

Arresting Officer
(Signature with seal)

To

.....
.....

(Name and complete address of the person arrested).

184. Reliance is also placed on the definition of the word 'order' as given in Rule 2(h) of these Rules, to submit that the 'order' means the “order of arrest of a person and includes the grounds for such arrest under sub-section (1) of section 19 of the Act”.

185. It is submitted that, in the instant case, the Order of Arrest of

the Petitioner, as issued by Respondent No.2 and which is produced in the paper-book at page No.165 does not disclose the grounds of arrest, though it was mandatory, in view of the definition of the word 'order'. It is urged that, hence there is breach of a mandatory provision and therefore, such Arrest Order has resulted into illegality.

186. In our considered opinion, in order to appreciate this submission, the Arrest Order of the Petitioner needs to be considered and it can be reproduced as follows;

F.No.ECIR/07/MZO/2015 Dated : 14th March, 2016

ARREST ORDER

Whereas, I Sanjay V. Kinjawadekar, Assistant Director, Directorate of Enforcement, Mumbai, have reason to believe that Shri Chhagan Chandrakant Bhujbal, resident of 8th floor, Solitaire, Convent Avenue Road, S.V. Road, Santacruz West, Mumbai, has been guilty of an offence punishable under the provisions of Prevention of Money Laundering Act, 2002 (15 of 2003).

Now, therefore, in exercise of the powers conferred on me under sub-section (1) of section 19 of the Prevention of Money Laundering Act, 2002 (15 of 2003), I hereby arrest the said Shri Chhagan Chandrakant Bhujbal at 22.00 hours on 14.03.2016 and he has been informed of the grounds for such arrest. (emphasis supplied)

*Dated at Mumbai on this 14th day of March Two
Thousand Sixteen.*

*Arresting Officer
Sd/-
(Sanjay V. Kinjawadekar)
Assistant Directorate
Directorate of Enforcement, Mumbai*

*To
Shri Chhagan Chandrakant Bhujbal,
8th floor, Solitaire,
Convent Avenue Road,
S.V. Road, Santacruz West, Mumbai.*

187. Thus, perusal of the Arrest Order makes it clear that it is in the exact Form No.III, as given in the Rules referred above and therefore, at this stage it cannot be said that there was non-compliance of any mandatory procedural safeguard.

188. The perusal of the Arrest Order also reveals that the Petitioner has been informed of the grounds for such arrest. The Arrest Order bears the signature of the Petitioner in acknowledgment of having received the same on the same night at about 22.05 hours. Therefore, unless something contrary is produced on record, it has to be presumed and held that the Petitioner was informed of the grounds of arrest and in acknowledgment thereof he has signed on the Arrest Order. If, no such grounds were communicated to him, then, it is clear that he would have made endorsement to the effect

that, he has not received the grounds of arrest. After-all the Petitioner is not some illiterate person but an educated person, in the sense that he was the Minister in the earlier State Government and that too for several years.

189. As regards the Petitioner's grievance that the grounds of arrest were not communicated to him in writing, this grievance also cannot be accepted to hold the breach of any statutory safeguard, because neither Section 19(1) nor the definition of the word 'order' as given in Sub-Clause (h) of Rule 2, provides that the grounds for such arrest are to be provided in writing to the person arrested. It indicates that oral communication of the grounds of arrest is not only a substantial but proper compliance of the provision.

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

191. Here, in the case it is not disputed that the detailed grounds of arrest were furnished in the Remand Report filed before the Special Court, immediately within 24 hours, when the Petitioner was produced before the Special Court. On the basis of the said Remand Report containing the grounds of arrest, the Special Court has passed detailed order, justifying the arrest and granting two days remand to the custody of Enforcement Directorate.

192. It is significant to note that at the stage when the Petitioner was produced before the Special Court, immediately on the next date, the Petitioner has not raised any grievance before the Special Court that he has not been communicated or informed the grounds

of arrest. If it was really the fact that he was not communicated the grounds of arrest, as stated in the Arrest Order, which bears his signature, it goes without saying that the Petitioner, who was ably represented by his Senior Counsel at the time of his first remand and even for subsequent remands, would not have failed to raise this grievance, especially when the Special Court has even taken care to ask the Petitioner, whether he has any complaint. Thus, the Petitioner was given ample opportunity to raise the grievance, if he was really not informed of the grounds of his arrest.

193. It is also significant to note that the Petitioner has not raised this grievance about the grounds of arrest being not informed to him at the time of his arrest, not only when he was first produced for remand before the Magistrate but even thereafter also from time to time when he was remanded to Judicial Custody after the expiry of every 15 days. He has also not raised this grievance in his bail application(s) filed before the Special Court and this Court. If, now after the rejection of those bail applications and after the lapse of more than eight months, he is raising this grievance, then it is obvious that it is clearly an after thought, to advance his case for writ of habeas corpus.

194. Even assuming and accepting that such grounds of arrest were required to be informed to him in writing and immediately at the time of arrest, there is substantial compliance of this statutory safeguard as such grounds were informed to him in the Arrest Order itself and again on the next day as can be seen from the Remand Report and Remand Order. These grounds were also informed to him in the complaint, which was lodged within 15 days on 30th March, 2016. Therefore, there is more than substantial compliance of the provisions.

195. Apart from that, even if the provisions are held to be not complied in strict sense, mere non-compliance thereof will not make the arrest of the Petitioner as wholly illegal, null and void, unless he shows that any prejudice was caused to him for non-compliance of the said safeguard in strict sense. No such prejudice is even whispered. It is pertinent to note that even at the time of his remand, he has not raised the grievance about it, showing any prejudice in his defence or in his representation in the applications for bail. He has pursued all his remedies and even the earlier Writ Petition, knowing fully well what the case of the Respondents is

against him. Therefore, simpliciter “non-compliance of some safeguards in the provisions does not and cannot make arrest of the Petitioner as patently illegal, null and void, so as to invoke the extraordinary writ jurisdiction of this Court for issuance of Habeas Corpus.

196. It is needless to state that the offence alleged against the Petitioner is of money-laundering. The report submitted to the Special Court, on the basis of which the Special Court has taken cognizance vide its order dated 27th April 2016, reveals that M/s. K.S. Chamankar Enterprises secured RTO Development Project amounting to Rs.4,700/- Crores from the Maharashtra Government by misrepresentation and fraud and in connivance with the public servants and the Petitioner, who was the then PWD Minister of Maharashtra State. As a result, the State Government has suffered loss to the tune of Rs.840.16 Crores; whereas, the Petitioner and the others have reaped undue gain of the said amount. The Special Court has observed the reasons why it found that cognizance needs to be taken of the offence, having regard to the specific allegation not only in respect of generation of the proceeds of crime, but also in its laundering and thereafter issued the process. Thus, there was

sufficient material before the arresting authority for the reason to believe that the Petitioner is guilty of the offence punishable under Section 3 r/w. Section 4 of the PML Act. If for such a serious offence in view of this *prima facie* material, Respondent No.2 had reason to believe that the Petitioner is guilty of the offence of money-laundering and hence Respondent No.2 arrests the Petitioner and the Special Court remands him to Custody, then neither the arrest nor the detention of the Petitioner can be called as illegal to issue Writ of Habeas Corpus.

197. As observed by the Apex Court in the case of *Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation, (2013) 7 SCC 439*, the economic offences, having deep rooted conspiracy and involving huge loss of public funds, need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

198. In the case of *Union of India Vs. Hasan Ali Khan, (2011) 10 SCC 235*, the Hon'ble Apex Court was further pleased to hold that, '*what will be the burden of proof when attempt is made to project the*

proceeds of crime as untainted money? It was held that, the allegations may not ultimately be established, but having been made the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted, shifts on the accused persons under Section 24 of PML Act.

199. In view thereof, having regard to the gravity of the offence, the very object of the PML Act would be frustrated, if the Petitioner projects some loophole or infirmity in the implementation of the provisions of the PML Act, in order to get his release from detention, that too by invoking such extra-ordinary remedy, circumventing the very specific provisions of bail, as laid down under Section 45 of the PML Act. After all, the provisions of PML Act or any Statute are to be interpreted in order to advance the substantial cause of justice and not to curtail the same in any way or to create an hindrance in achieving the said cause. If the provisions of PML Act are to be interpreted, therefore, in the proper perspective, then, we do not find that there was any such lacunae, infirmity or, much less, illegality in the arrest and detention of the Petitioner, for this Court to invoke its extra-ordinary jurisdiction for release of the Petitioner.

200. Thus, none of the contention raised by the Petitioner to challenge his arrest as illegal holds merit. As a result, the Petitioner has failed to show that his arrest is wholly illegal, null and void and further failed to show that the Special Court has passed the Remand Order mechanically without application of mind, his petition for Habeas Corpus cannot be maintainable. Hence, we do not find this is a fit case either to admit, much less, to grant the relief, as prayed for. Writ Petition, therefore, stands dismissed. Rule discharged. Civil Application also stands disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]