

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP No. 971 of 2016

DATE OF DECISION :- July 22, 2016

Arun Sharma

...Appellant

Versus

Union of India and others

...Respondents

CORAM: HON'BLE MR.JUSTICE M.JEYAPPAUL

HON'BLE MRS. JUSTICE SNEH PRASHAR

Present:- Mr. Kanhiya Soni, Advocate for the petitioner.

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

M.JEYAPPAUL, J.

1. On asking of the Court Mr. V.K. Kaushal, Advocate took notice for Union of India.
2. Heard the submissions made on either side.
3. The petitioner is a practicing advocate, who has invoked extraordinary writ jurisdiction under Article 226 read with 227 of the Constitution of India, in respect of a PMLA Complaint No.4 of 2015 filed by an authority under PMLA before the Special Court for PMLA at Mumbai in ECIR no. ECIR/14/MZO/2013 inter alia against M/s Namdhari Food International Pvt. Ltd., Shri Inder Singh Bal, Shri Iqbal Singh Bal,

Shri Surjit Singh Bal, M/s. Namdhari Rice and General Mills, Shri Daljit Singh Bal, Shri Jaspal Singh Bal and Jai Singh Bal, collectively known as 'Namdhari Group' of Sirsa, Haryana. The said ECIR was registered on the basis of Scheduled offences alleged in FIR No. 216 of 2013 registered u/s 120B, 409, 465, 467, 468, 471, 474, 477(A) of IPC inter alia against the said two companies, which was later investigated by Economic Offence Wing, Mumbai by renumbering the same as CR no. 89 of 2013. Charge Sheet and Supplementary Charge Sheets have been filed in the said Scheduled Offence in CR no. 89 of 2013. Vide a Provisional Attachment Order no. 05/2015 the Plant of M/s Namdhari Food International Ltd at Sri Jiwan Nagar, Dabwali Road, Tehsil: Rania, Sirsa, Haryana was also attached under PMLA.

4. The petitioner contends that despite grave and heinous offence under PMLA by these accused, no arrest was made during investigations by exercising power conferred vide Sec.19 of PMLA. Even the Special Court while taking cognizance, instead of issuing non-bailable warrants, issued only summons to these accused persons. He submits that economic offences is worse than murder and therefore Sec. 45(1)(ii) of PMLA imposes twin conditions, which are to be satisfied before release on bail or bond of any person accused of offence under PMLA, and which are similar to those imposed under NDPS Act, TADA, POTA, MCOCCA etc. Consequently, according to him the application of Sec. 45 and Sec.19 of PMLA is not governed in any manner by the fact of filing a Complaint under PMLA or by an order of taking cognizance thereon. He submits that a Division Bench of this Court, however, vide **order dated 1.10.2015 in CRM NO. M-28490**

of 2015 in the matter of **Dalip Singh Mann and Ors vs. Enforcement Directorate**, erroneously, without any rational basis and contrary to the legislative intent, held that the rigors of Section 45(1)(ii) of the Act would be attracted only while considering the bail plea of an accused who has been arrested by the Enforcement Directorate under Section 19 of the Act. He submits that the view cannot be treated as having any precedent value and shall not be applied in the instant PMLA Case No. 4 of 2015. He submits that these accused have amassed moveable and immoveable assets by resorting to money laundering, and that if they are not arrested under section 19 of PMLA and taken in judicial custody, they are likely to tamper with the evidence and may influence the witnesses.

5. We have adverted to the ratio laid down by the Hon'ble Supreme Court in **Navinchandra N. Majithia v. State of Maharashtra, (2000) 7 SCC 640** as regard the issue of jurisdiction. We are satisfied that substantial cause of action has arisen in the jurisdiction of this Court.

6. For the purpose of the adjudication of the legal issues involved in the instant petition, detailed allusion on allegations in the PMLA Complaint no. 4 of 2015 as stated in the writ petition is not warranted. It would suffice to say that around June 2016 cognizance was taken by the Special Court for PMLA at Mumbai in the said PMLA Complaint No.4 of 2015. There is no dispute on the fact that during the investigations under PMLA, these accused persons were not arrested by the authorities under section 19 of PMLA. After filing of Complaint, Process was issued by issuing summons to the accused including the aforesaid accused nos. 52 to 55 and 60 to 63 from Sirsa, Haryana, who allegedly committed offence

under PMLA within the jurisdiction of this Hon'ble Court.

7. At the outset, we may say that we find no merit whatsoever in the arguments of the petitioner and are not inclined to take a view different from that taken by the co-ordinate Division Bench of this Court vide order dated 1.10.2015 in CRM NO. M-28490 of 2015 in the matter of **Dalip Singh Mann and Ors vs. Enforcement Directorate**, or even for considering reference to larger bench. We are giving detailed reasons for arriving at this conclusion.

8. We have carefully considered the submissions and the relevant statutory provisions. We find no substance in the submission of the Petitioner that even at post cognizance stage, any person already arraigned as an accused of offense under Sections 3 read with section 4 of PMLA, can be arrested under Section 19 of PMLA. We are also not impressed by the argument that when a person, who is arraigned as accused in the Complaint for trying him for an offence under Section 3 read with Section 4 of PMLA, appears before the Special Court for PMLA pursuant to issuance of process vide summons or warrant, any consideration of his application for furnishing bail or bond by such person, whether interim or final, would be necessarily governed by the rigors imposed under Section 45(1)(ii) of the PMLA, read with section 65 and 71 of PMLA. We find no merit in his submission that section 45(1)(ii) would override the provisions relating to bails and bonds contained in the Code in Section 88 and section 167(2) of the Code, if it relates to person accused of Scheduled Offence under Part A of the Schedule to PMLA (as amended). We also find no merit in the further contention that it is open for the Investigating Agency under PMLA

to file a Complaint without completing investigation. Such contention is totally contrary to section 167(2) of CrPC, which requires completion of investigations and filing complaint, if statutory default bail is to be denied. The submission of the petitioner that section 173(8) would apply in PMLA Complaint cases appears to be erroneous, inasmuch as it is not applicable in absence of a report under section 173(2). Section 173(8) reads as under-

**“173. Report of police officer on completion of
investigation.—**

(8)Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

9. We find that for arresting any person under section 19(1) of PMLA, an authorized officer shall have on the basis of material in his possession, reason to believe, which is to be recorded in writing, that such person has been guilty of an offence punishable under PMLA. Section 19 (3) provides that every person so arrested shall be taken to the jurisdictional Judicial Magistrate or Metropolitan Magistrate within twenty-four hours, which shall exclude the time necessary for the journey from the place of arrest to the Magistrate’s Court. This time of twenty-four hours denotes that if investigation cannot be completed within this time so as to file a Complaint, the arrested person shall be produced before Court for appropriate action i.e. either remand to appropriate custody or his release on

bail or bond. However, section 45 of PMLA creates an embargo on release on bail or on his own bond if such person is accused of an offence punishable for a term of imprisonment of more than three years under Part-A of the Schedule with exception regarding persons mentioned in the first proviso to section 45(1), unless the following two conditions are satisfied-

- (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:

The application of section 45(1) is therefore to be read in the context of section 19(3) of PMLA in respect of an arrested person brought in custody before Court. Second proviso to section 45(1) creates a bar on taking cognizance except upon a complaint in writing by an authorised officer. This insertion of further bar by way of a proviso instead of creating a separate independent section, clearly presupposes consideration of application for release on bail or bond under section 45 of only such a person, who is already arrested and is in custody at a stage prior to stage of taking cognizance upon filing of a complaint.

10. Section 65 of PMLA stipulates that the provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of PMLA, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under PMLA. Section 71 of PMLA provides that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in

force. These provision are akin to section 4(2) read with section 5 of the CrPC, which also makes the provisions of the CrPC applicable for these purposes in every special statute, but subject to the inconsistent provisions of such special statutes. We find that after arrest of a person under section 19 of PMLA, he is to be produced before the Court within 24 hours if the investigations could not be completed within that time. Thereafter, if the investigation is not completed even within further period of sixty days from the date of first remand, in such event section 167(2) of the CrPC would directly come in aid of such arrested person. He shall have indefeasible right to be released on bail in the PMLA case, if he is prepared to and does furnish bail, in the light of the categorical findings contained in the binding precedent in *Union of India v. Thamisharasi*, (1995) 4 SCC 190 in the matter concerning NDPS Act which admittedly contains similar embargo on grant of bail vide section 37 of the said Act. The Hon'ble Supreme Court was pleased to observe that :

“11.....It is this context in which Section 37(1)(b) has to be construed wherein are specified the limitations on granting of bail. We must, therefore, look to the corresponding provision in the Code of Criminal Procedure with which Section 37(1)(b) of the Act can be treated to be inconsistent. In the Code of Criminal Procedure, it is Section 437 and not Section 167 which is the corresponding provision for this purpose. The corresponding limitation on grant of bail in case of non-bailable offences under Section 437 is as follows:

“(i) such person shall not be so released if there appear reasonable grounds for believing that he

has been guilty of an offence punishable with death or imprisonment for life;”

In other words, under Section 437 of the Code the person is not to be released on bail “if there appear reasonable grounds for believing that he has been guilty of an offence ...” while according to Section 37 of the NDPS Act, the accused shall not be released on bail unless “the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence”. The requirement of reasonable grounds for belief in the guilt of the accused to refuse bail is more stringent and, therefore, more beneficial to the accused than the requirement of reasonable grounds for the belief that he is not guilty of the offence under Section 37 of the NDPS Act. Under Section 437 CrPC the burden is on the prosecution to show the existence of reasonable grounds for believing that the accused is guilty while under Section 37 of the Act the burden is on the accused to show the existence of reasonable grounds for the belief that he is not guilty of the offence. In the first case, the presumption of innocence in favour of the accused is displaced only on the prosecution showing the existence of reasonable grounds to believe that the accused is guilty while under the NDPS Act it is the accused who has to show that there are reasonable grounds for believing that he is not guilty.

12. The limitation on the power to release on bail in Section 437 CrPC is in the nature of a restriction on that power, if reasonable grounds exist for the belief that the accused is guilty. On the other hand, the limitation on this power in Section 37 of the NDPS Act is in the nature of a condition precedent for the exercise of that power, so that, the accused shall not be released on bail *unless*

the court is satisfied that there are reasonable grounds to believe that he is not guilty. Under Section 437 CrPC it is for the prosecution to show the existence of reasonable grounds to support the belief in the guilt of the accused to attract the restriction on the power to grant bail; but under Section 37 NDPS Act it is the accused who must show the existence of grounds for the belief that he is not guilty, to satisfy the condition precedent and lift the embargo on the power to grant bail. This appears to be the distinction between the two provisions which makes Section 37 of the NDPS Act more stringent.

13. Accordingly, provision in Section 37 to the extent it is inconsistent with Section 437 of the Code of Criminal Procedure supersedes the corresponding provision in the Code and imposes limitations on granting of bail in addition to the limitations under the Code of Criminal Procedure as expressly provided in sub-section (2) of Section 37. These limitations on granting of bail specified in sub-section (1) of Section 37 are in addition to the limitations under Section 437 of the Code of Criminal Procedure and were enacted only for this purpose; and they do not have the effect of excluding the applicability of the proviso to sub-section (2) of Section 167 CrPC which operates in a different field relating to the total period of custody of the accused permissible during investigation.

14. In our opinion, in order to exclude the application of the proviso to sub-section (2) of Section 167 CrPC in such cases an express provision indicating the contrary intention was required or at least some provision from which such a conclusion emerged by necessary implication. As shown by us, there is no such provision in the NDPS Act and the scheme of the Act

indicates that the total period of custody of the accused permissible during investigation is to be found in Section 167 CrPC which is expressly applied. The absence of any provision inconsistent therewith in this Act is significant.”

11. On the same principles, in absence of anything inconsistent in PMLA with section 88 of CrPC, when a person voluntarily appears before the Special Court for PMLA pursuant to issuance of process vide summons or warrant, and offers submission of bonds for further appearances before the Court, any consideration of his application for furnishing such bond, would be necessarily governed by section 88 of the CrPC read with section 65 of PMLA. Section 88 of the CrPC reads as follows-

“88. Power to take bond for appearance.— When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.”

This Section 88 (corresponding to section 91 of CrPC, 1898) would not apply qua a person whose appearance is not on his volition, but is brought in custody by the authorities as held by the Constitution Bench of the Hon’ble Supreme Court in **Madhu Limaye v. Ved Murti**, AIR 1971 SC 2481 wherein it was observed that-

“18.....In fact Section 91 applies to a person who is present in Court and is free because it speaks of his being bound over, to appear on another day before the Court. That shows that the person must be a free agent

whether to appear or not. If the person is already under arrest and in custody, as were the petitioners, their appearance depended not on their own volition but on the volition of the person who had their custody.....”

Thus, in a situation like this where the accused were not arrested under section 19 of PMLA during investigations and were not produced in custody for taking cognizance, section 88 of CrPC shall apply upon appearance of the accused person on his own volition before the Trial Court to furnish bonds for further appearances.

12. We find that as explained by the Hon’ble Supreme Court in **Union of India v. Thamisharasi** (supra), the embargo under Section 45(1) (ii) of PMLA being similar to that under section 37 of NDPS will operate in a different field occupied by section 437 and would override the same, but would have no bearing on application of the provisions of section 88 and section 167(2) of CrPC. The absence of any provision in PMLA inconsistent with section 88 and section 167(2) of CrPC is significant.

13. The co-ordinate Bench of this Court in the said **Order dated 1.10.2015 in CRM NO. M-28490 of 2015 in Dalip Singh Mann and Ors vs. Enforcement Directorate** (supra) was considering a case where the petitioners were summoned to face trial in a Statutory Complaint titled Niranjana Singh, Assistant Director, Directorate of Enforcement, Jalandhar, Government of India Vs. Balshinder Singh and others filed under Section 45 (1) of PMLA. It was an admitted fact that during investigation of the money laundering case, those petitioners were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act. Since those petitioners showed their willingness to appear before the

Trial Court and to furnish bonds, vide the interim order dated 26.8.2015, they were permitted to appear before the Court of learned Sessions Judge-cum-Special Judge, Patiala with a direction to admit them to interim bail on furnishing bail bonds to the satisfaction of that Court. In this fact situation section 88 of CrPC was applicable, and hence there was no reason for the co-ordinate Bench to take any other view than logically taken by it. Moreover, the view taken by the co-ordinate Bench is also in consonance with the guidelines laid down for criminal courts by the Hon'ble Delhi High Court in **Court on its own Motion v. State through CBI, 2004 (1) JCC 308** which was again reiterated and relied upon in **Sanjay Chaturvedi v. State, (2006) 132 DLT 692** a judgment rendered by Hon'ble Justice A.K. Sikri, wherein the following guidelines were laid down inter alia in relation to offences those could be investigated without arrest -

“4. In case of *Court on its own Motion v. State through CBI* (supra), this Court had issued directions for criminal Courts which are as under:

Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilised society.

Directions for Criminal Courts—

- (i) Whenever officer-in-charge of police station or investigation agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according

to the procedure laid down in Section 173, Cr.P.C and exercise the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.”

“(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/investigating agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.”

14. Even a three judge Bench of the Hon’ble Supreme Court in **Inder Mohan Goswami Vs. State of Uttranchal, (2007) 12 SCC 1** was pleased to lay down the following guidelines-

“49. Non-bailable warrant should be issued to bring a person to

court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.”

“51. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court’s proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.”

15. In view of the above, the Special Court was duty bound to first issue summons in absence of any reasons mentioned in section 87 of the Code or as mentioned in para 53 of the aforesaid binding precedent of a three judge Bench of Hon’ble Supreme Court. It is not necessary to arrest every person during investigations under PMLA. There is no reason to incarcerate such persons in custody after taking cognizance on complaint filed against them, if they were not arrested by the investigating agency though available during investigation.

16. At post cognizance stage, any person already arraigned as an

accused of offence under Sections 3 read with section 4 of PMLA, cannot be arrested under Section 19 of PMLA. Such person can be arrested only upon execution of warrant if issued by the Court taking cognizance. After taking cognizance, any arrest by an authority under section 19 would be illegal, as the Court takes charge of the matter and any arrest thereafter cannot be without obtaining warrant from the Court. Therefore, we do not find merits in the arguments advanced by the petitioner in this behalf.

17. We therefore have no hesitation in holding that if any person was neither arrested during investigation under PMLA, nor produced in custody as envisaged in Section 170, Cr.P.C, upon issuance of process either by summons or warrant, if he appears before Court on his own volition, he would be entitled to forthwith furnish his bonds with or without sureties for further appearances without any incarceration in custody. The Co-ordinate Division Bench of this Court the said **Order dated 1.10.2015 in CRM NO. M-28490 of 2015 in Dalip Singh Mann and Ors vs. Enforcement Directorate** (supra) had correctly observed that-

“2. Vide the interim order dated 26.8.2015, the petitioners were permitted to surrender before the Court of learned Sessions Judge-cum-Special Judge, Patiala with a direction to admit them to interim bail on furnishing bail bonds to the satisfaction of that Court.”

“5) Having given our thoughtful consideration to the submissions, we are satisfied that no purpose shall be served by putting the petitioners in judicial custody pending trial in the Statutory Complaint. We say for the reasons that:

(i) It is an admitted fact that during investigation

of the money laundering case, the petitioners were never arrested by the Enforcement Directorate in exercise of its powers under Section 19 of the Act;”

“(v) It further appears that rigors of Section 45 (1)(ii) of the Act would be attracted only while considering the bail plea of an accused who has been arrested by the E.D. Under Section 19 of the Act;”

“6) Taking into consideration the totality of the circumstances, the interim order dated 26.8.2015 is made absolute.”

18. In view of the detailed reasoning recorded hereinabove-

- (a) We have no hesitation in concurring with the above view already taken by the co-ordinate Division Bench of this Court in **Dalip Singh Mann and Ors vs. Enforcement Directorate** (supra) that rigors of Section 45(1)(ii) of PMLA would be attracted only while considering the application of an accused for release on bail or his own bond, if he has been arrested by the authorized officer under Section 19 of the PMLA before taking cognizance.
- (b) In other words, if any person though available was neither arrested during investigation under PMLA, nor produced in custody as envisaged in Section 170 Cr.P.C, if upon issuance of process in a PMLA Complaint either by summons or warrant he appears before Court on his own volition, he would be entitled to forthwith furnish his bonds with or without sureties for further appearances

without any incarceration in custody.

(c) Section 45(1)(ii) of PMLA has no application in case of a person not arrested under section 19 of PMLA in such execution of bond for further appearance.

(d) At post cognizance stage, any person already arraigned as an accused of offence under Sections 3 read with section 4 of PMLA, cannot be arrested under Section 19 of PMLA, and such person can be arrested only upon execution of warrant if issued by the Court taking cognizance.

19. In view of the above, we dismiss the writ petition by rejecting all the prayers of the petitioner without any cost. We have not expressed any opinion on the merits of the allegations in the PMLA Complaint case.

(M. JEYAPPAUL)
JUDGE

(SNEH PRASHAR)
JUDGE

July 22, 2016
p.singh