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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19th September, 2023

Pronounced on: 17th October, 2023

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CRL.REV.P. 246/2023 & CRL.M.A. 6428/2023 (stay)

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr. Zoheb Hossain, Special Counsel
for the Directorate of Enforcement with
Mr. Vivek Gurnani and Mr. Baibhav,
Advocates.

versus

SH. DEV INDER BHALLA

..... Respondent

Through: Mr. Aditya Singh Deshwal and Ms.
Ridam Arora, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 47 of the Prevention of Money Laundering Act, 2002 ('PMLA') read with Section 397 and 401 of the Code of Criminal Procedure, 1973 ('CrPC') seeks the following prayers:-

- "a. to call for the records, examine the same for the purpose of satisfying itself to the correctness, legality and propriety and set aside the impugned order dated 16.02.2023; and/or
- b. to remand the case to the trial court for further consideration on the



remand application dated 15.02.2023; and/or
 c. to cancel the order for interim bail and send the accused respondent to Judicial custody till remand application is reconsidered by trial court.
 d. to pass any such other or further order(s) as may do complete justice on the facts and circumstances of the case.”

Background

2. Briefly stated, the facts of the case for the purpose of adjudication of the present petition are as under:

- i. ECIR/09/DLZO/2016 was initiated by the petitioner/Directorate of Enforcement (hereinafter referred to as the ‘department’) against 11 accused persons including the present respondent, Sh. Dev Inder Bhalla who was stated to be Director of M/s Interdev Aviation Services Pvt. Ltd., Singapore.
- ii. It is the case of the department that during course of investigation in the aforesaid ECIR, summons were issued to the respondent under Section 50(2) and 50(3) of the PMLA on various dates to join the investigation, however, he did not appear. To secure his presence, on an application moved by the department, open ended bailable warrants were issued by Mr. Naresh Kumar Malhotra, Special Judge, New Delhi *vide* order dated 12.01.2018. It is the case of the petitioner that on completion of investigation, a complaint was filed against 11 persons including the present respondent under Section 44 for the PMLA for commission of offences under Section 3/70 punishable under Section 4 of the said act.
- iii. Upon filing of the said complaint, summons were issued to the 11 persons including the present respondent *vide* order dated 19.03.2021



passed by the learned Special Judge (PC Act): CBI-15, Rouse Avenue District Court, New Delhi.

- iv. As per the records of the present case, the present respondent arrived in India at Netaji Subhash Place Airport, West Bengal on the night of 13.02.2023 at 23:15 hours. In view of the open ended non-bailable warrants, a look-out circular was in operation and the respondent was detained at the said airport. Subsequently, said non-bailable warrants were executed by the department on 14.02.2023 at 2100 hours.
- v. The respondent was produced before the learned Special Court on 15.02.2023 and was sent to judicial custody.
- vi. On the same day, an application was moved by the department seeking police custody of the respondent.
- vii. *Vide* impugned order dated 16.02.2023, the learned Special Judge dismissed the said application and released the respondent on interim bail.

3. Before proceeding further, it is noted that preliminary objections to the maintainability of the present petition was raised by learned counsel appearing on behalf of the respondent, in response to which learned Special Counsel made his submissions drawing the attention of this Court to various judgments demonstrating that the present petition is maintainable. Thereafter, during the course of further arguments, learned counsel for the respondent fairly submitted that he is not pressing the said preliminary objections and, therefore, the said issue has not been dealt with in the present judgment.

Submissions on behalf of the Petitioner/Directorate of Enforcement

4. At the outset, learned Special Counsel for the department drew the



attention of this Court to the following paragraphs of the impugned order dated 16.02.2023:

“28. The short and important question that arises for consideration is whether the agency is justified and empowered to apprehend, arrest the accused and seek his custody remand here, in the given facts and circumstances of the case, particularly when the Agency is aware of the fact that a Complaint case, as referred above, has already been filed by the department through its competent officers and summons for the appearance of the accused Sh. Dev Inder Bhalla alongwith other accused to attend the trial of the case has been issued by the court and are in existence.

29. It may also be noted that the complaint case in the present case was filed on 11.12.2020, as mentioned above, after carrying out due investigations against the accused persons including the accused Dev Inder Bhalla director of M/s Interdev, Singapore (A-11) and his role is also specified in Para No. 7 (k) ;-

Role of accused persons in the commission of offence of money laundering:

(k) ‘During the course of investigation, it is revealed that Dev Inder Bhalla is the director of M/s Interdev Aviation Services Singapore : signed the sham agreement dated 23.11.2009 with Ms KRBL DMCC, Dubai to introduce M/s Interdev Aviation Services Put Ltd to M/s Niki Lufitfahrt GmbH, Austria for supply of used planes to launder the proceeds of crime to hide the real source of the money and has thus being the representative of Ms Interdev, Aviation Services Pvt. Ltd, actually involved in the possession, acquisition and layering of the proceeds of crime in the offence of money laundering. Further, investigation into his role and proceeds of crime generated by him due to this criminal activity related to the scheduled offence is pending’.

32. So, when after carrying out the investigation, complaint/ charge sheet has been filed against the accused herein; cognizance of the offences has been taken ; summons have been issued pursuant to that, the Act of the agency in apprehending/arresting the accused without permission of the Court, and/or seeking his PC remand is totally un-justified in the given facts and circumstances of the case.

34. Acceding to the request of the agency would tantamount to relegating the accused to the stage of pre-cognizance which is, I would say is in-



permissible in law.

35. In a given case, if the accused may intend to appear before the court to attend trial or the accused is present in person in the court alongwith his surety pursuant to the summons issued to him in that situation, can the agency still arrest him merely by stating that his PC remand is required at this stage,; and/or may be the accused is on interim bail or seeking regular bail by moving such applications, can the agency say that NBWs that were taken prior to filing of the charge sheet / complaint case on which cognizance has already been taken and the said accused has been summoned by the court pursuant thereto, and still arrest him and seek his PC, I would absolutely say No. It is not justified and permissible as per the provisions of the Cr.P.C. It is only judicial custody thereafter in the facts and circumstances each case.”

5. Learned Special Counsel submitted that the aforesaid observations made by the learned Special Court are not sustainable in view of Section 70 of the CrPC which provides as under:

“70. Form of warrant of arrest and duration.—(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.”

(emphasis supplied)

6. Learned Special Counsel further submitted that since the non-bailable warrants issued *vide* order dated 12.01.2018 were never cancelled, it cannot be deemed to have been lapsed upon filing of a complaint before the learned Special Court. It was submitted that it is the case of the department that the said non-bailable warrants remained in force and, therefore, the execution of the same by arresting the present respondent was within permissible parameters of the procedure, as envisaged in law. Learned Special Counsel also drew the attention of this Court to the following judgments to argue that



police remand can be sought in respect of an accused person who is arrested during the course of further investigation after filing of the chargesheet.

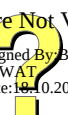
- i. **State v. Dawood Ibrahim Kaskar, 2000 (10) SCC 438** – It was submitted that in the said case, the Hon'ble Supreme Court held that while dealing with an accused person who is produced before the Court pursuant to a warrant of arrest issued under Section 73 of the CrPC, the Court can either release him on bail under Section 439 of the CrPC or order his continued detention (in police custody or in judicial custody) under Section 167 of the CrPC. It is the Court's discretion to allow or deny an application moved by the investigating agency concerned seeking police custody, in accordance with Section 167(3) of the CrPC.
- ii. **Pradeep Ram v. State of Jharkhand, (2019) 17 SCC 327** – Learned Special Counsel for the department submitted that the Hon'ble Supreme Court concluded that an accused person be remanded under Section 167(2) of the CrPC until such time that the investigation continues till cognizance has not been taken. It was further held that even after cognizance has been taken by the competent Court, an accused can be remanded under Section 167(2) of the CrPC if he has been arrested subsequently during the course of further investigation. It was further held if cognizance is taken while the accused person was in custody, he can be remanded to judicial custody only under Section 309(2) of the CrPC.
- iii. **Central Bureau of Investigation v. Rathin Dandapat and Others, (2016) 1 SCC 507** – Learned Special Counsel submitted that in the said case, while placing reliance on **Dawood Ibrahim Kaskar (supra)**, the



Hon'ble Supreme Court held that police remand can be sought under Section 167(2) of the CrPC in respect of an accused person arrested at the stage of further investigation, if interrogation is needed by the investigation agency.

7. It is submitted that in the present case, the respondent was not arrested during the course of investigation. It was urged that although the complaint has been filed but the further investigation is continuing and the right of an investigating agency to further investigate an offence is not exhausted once a chargesheet is filed. Reliance in that regard is placed on a judgment of the Hon'ble Supreme Court in **State of Andhra Pradesh v. A.S. Peter, (2008) 2 SCC 383**. It was further argued that the impugned order passed by learned Special Court, while dismissing the application seeking police remand of the present respondent suffers from inherent illegality, as pointed out hereinabove. It was argued that the premise on which the learned Special Court dismissed the application seeking police remand was that once the chargesheet has been filed *qua* the accused person, the investigating agency cannot seek his police remand. It was argued that the Hon'ble Supreme Court, in **Dawood Ibrahim Kaskar (supra)** has held that if an accused is arrested subsequent to filing of a chargesheet or after cognizance is taken, his police remand can still be sought.

8. In essence, the argument on behalf of the department is that in the present case, despite the complaint having been filed and cognizance being taken, further investigation was continuing and the non-bailable warrants issued by the learned Special Court were in operation and since the respondent was arrested by way of executing the said non-bailable warrants,





his arrest, therefore, would be deemed to be one during the course of further investigation. In this scenario, the application of police custody would be justifiable and if sufficient grounds for seeking such custody were made out, the same ought to have been allowed by the learned Special Court. It was pointed out that in the complaint it is categorically stated that further investigation into the role of the respondent is pending.

Submissions on behalf of the Respondent/Dev Inder Bhalla

9. Learned counsel appearing on behalf of the respondent drew the attention of this Court to the following paragraphs of the impugned order:

“37. Thereby, the IO was duty bound to handover the unexecuted NBW’s so issued to the Court at the time of filing the complaint in the present matter, which has not done by the department for the plausible reasons best known to them, nor the said fact was apprised to the Court at that time or even thereafter.

38. On a specific query by the court regarding the steps taken by the agency qua the execution of the NBWs, the learned PP after discussing with the IO of the case candidly admitted to the fact that no steps whatsoever were taken by the agency after the NBWs were taken from the Court vide its order dated 12.01.2018.

39. Even otherwise also, the proper recourse available to the agency was to handover the said NBWs outstanding against the accused as and when it came to their knowledge, and the act of the agency apprehending the accused in terms of said NBWs is not justified.”

It was submitted that inadvertence or a mistake on the part of the investigating agency cannot be a ground to curtail liberty of an accused person. It was submitted that even in the application seeking issuance of non-bailable warrants filed by the department, nothing was placed on record to show that the summons issued by the department were ever served upon the



present respondent. It was argued that nothing was placed on record before the learned Special Court to demonstrate that the summons sent for the purpose of investigation were served and not complied with by the respondent intentionally. The attention of this Court was also drawn to various orders passed by the learned Special Court after filing of the prosecution complaint, wherein it has been recorded that the department had moved an application before the learned Special Court seeking issuance of ‘request of service of summons in various jurisdictions’ for service to the accused persons named in the complaint who are stated to be residing outside India. Attention of this Court was drawn to order dated 23.12.2021 passed by the learned Special Judge, wherein again an application was moved on behalf of the department seeking service of summons to unserved accused persons residing in foreign jurisdictions, including the present respondent. Learned counsel for the respondent further submitted that no steps were taken to execute the non-bailable warrants against the present respondent. Attention was also drawn to the copy of the complaint filed by the department wherein it has been prayed as under:

- “(i) To pass an order taking cognizance of the offence under Section 3 r/w Section 70 of the Prevention of Money Laundering Act, 2002;,
- (ii) To pass an order issuing process against the accused persons, directing them to appear and face trial for the commission of offences \ under Section 3 r/w Section 70 of the Prevention of Money Laundering Act, 2002;
- (iii) To pass an order confiscating the properties attached vide Provisional Attachment Order No. No. 06/2019 dated 03.07.2019.
- (iv) To pass- an order dispensing the complainant from the deposition under Section 200 of the Code of Criminal Procedure;
- (v) To pass such other or further orders as this Hon’ble Court may deem fit and proper in the interest of justice.”



10. Learned counsel appearing on behalf of the respondent submitted that the judgments relied upon by learned Special Counsel for the department are distinguishable on the facts of the present case as has also been observed by the Special Court in the impugned order dated 16.02.2023. Learned Counsel for the respondent placed reliance on a judgment dated 09.09.2011 in **Criminal Appeal No. 1758 of 2011** titled '**Raghuvansh Dewanchand Bhasin v. State of Maharashtra & Anr.**' wherein in para 23 the following guidelines are laid down which are as under:

“23.However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above, it would be appropriate to issue the following guidelines to be adopted in all cases where non-bailable warrants are issued by the Courts:-

- (a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No.2 for issuing warrant of arrest and each such form is duly accounted for;
- (b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;
- (c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;
- (d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;
- (e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;



(f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;

(g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

(h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;

(i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned agency;

(j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;

(k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.”

11. Learned counsel appearing on behalf of the respondent further submitted that insistence of the department for seeking police custody of the respondent even after declining the same, by the learned Special Court, is not justified. It is pointed out that after being granted interim bail, the respondent has joined investigation as and when called by the Investigating Officer. During the course of investigation, it was pointed out that the present



respondent has been arrested by department in another case and he is in judicial custody in the said case. It was also pointed out that after being released on interim bail, the respondent had moved an application for regular bail before the learned Special Court, which is still pending adjudication. It was also submitted that the present respondent is 75 years old and has various medical ailments and retaining him in custody will serve no purpose.

12. Learned counsel appearing on behalf of the respondent, lastly, drew the attention of this Court to an judgment dated 26.10.2021 passed by a coordinate bench of this Court in **BAIL APPLN. 3619/2021** titled '**Ankit Agarwal v. Directorate of Enforcement**' (**Neutral Citation - 2021:DHC:3378**), whereby anticipatory bail was granted to accused under the PMLA. It was pointed out that in the said case, the complaint had already been filed and cognizance had been taken.

Rejoinder on behalf of the Petitioner/Directorate of Enforcement

13. Learned Special Counsel for the department submitted that the order dated 12.01.2018, by which open ended non-bailable warrants were issued against the respondent herein has not been challenged and has now attained finality. In support of the said contention, reliance was placed on a judgment of the Hon'ble Supreme Court in **State of Punjab and Others v. Gurdev Singh, (1991) 4 SCC 1**, wherein it was held as under:

“**10.** It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for.”



14. Attention of this Court was further drawn to the Hon'ble Supreme Court's decision in **Satender Kumar Antil v. Central Bureau of Investigation and Another, (2022) 10 SCC 51**, wherein in the context of additional conditions for bail in special statutes like Section 45 of the PMLA, it was observed that in cases where the accused persons has not cooperated with the investigation or answered summons and the Court feels that judicial custody is necessary for completion of trial or where further investigation is required, the case has to dealt with differently from other offences. It was further observed that though it is open to the Courts to grant interim bail, such applications would ultimately have to be considered in accordance with the relevant statutory provisions.

15. Learned Special Counsel submitted that in **Satender Kumar Antil (supra)**, the Hon'ble Supreme Court observed that even if a case is required to be committed to the Court of Sessions for trial in terms of Section 209 of the CrPC, the Magistrate has the power to remand an accused to custody until such commitment has been made.

Analysis and Findings

16. Heard learned counsel for the parties and perused the record.

17. For determination of the present petition, it is relevant to take note of the following dates:

- i. **18.10.2016** – The Central Bureau of Investigation registered RC No. 217 2016A0015/ACU-V under Section 120B of the Indian Penal Code read with Sections 7/8/9/12/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.
- ii. **04.11.2016** – Pursuant to the aforesaid case, the department registered



ECIR/09/2016/DLZO.

- iii. **12.01.2018** – Open ended non-bailable warrants were issued *qua* the respondent.
- iv. **08.12.2020** – Under Section 44 of the PMLA, the department filed a prosecution complaint before the Court of the learned Special Judge (PMLA), Rouse Avenue Courts for commission of offences under Section 3/70 of the PMLA punishable under Section 4 of the said Act against 11 accused persons, including the present respondent who was arrayed as accused no. 11:
 - “11. Sh. Dev Inder Bhalla, S/o Rajinder Paul Bhalla
(Representative of M/s Interdev Aviation Serviced Pte. Ltd. –
(i) No. 370 F, Alexandra Rd #03-04, The Anchorage, Singapore –
159959
(ii) No. 1, Tanjong Rhu Road
#06-03, Singapore – 436879”
- iv. **19.03.2021** – The learned Special Court took cognizance of the complaint for offence under Section 3/70 of the PMLA punishable under Section 4 of the said Act and issued summons to the accused persons, including the respondent.
- v. **23.08.2021 to 23.12.2021** – Applications moved on behalf of the petitioner seeking ‘service of summons upon the accused persons residing in foreign jurisdictions, including the present respondent.
- vi. **14.02.2023** – After the respondent arrived in India on 13.02.2023, the open ended non-bailable warrants were executed by the department and the respondent was arrested.
- vii. **15.02.2023** – The respondent was produced before the learned Special



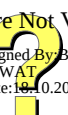
Court and was remanded to judicial custody.

viii. **15.02.2023** – An application was moved by the department before the learned Special Court seeking police custody of the respondent.

ix. **16.02.2023** – The learned Special Court passed the impugned order rejecting the department's application seeking police custody and released the respondent on interim bail.

18. In the present case, the prosecution complaint filed before the learned Special Court against the present respondent does not show him as an absconder. As per the scheme of the CrPC, after issuance of warrants under Part B of Chapter VI of the said Code, if the same are not executed, then the next step is 'Proclamation and Attachment' as provided for in Part C of Chapter VI. Admittedly, in the present case, the non-bailable warrants issued on 12.01.2018 remained on the file of the investigating agency and no steps were taken to execute them. A copy of the said non-bailable warrants has been placed on record as Annexure P-5 to the present petition. A perusal of the said non-bailable warrants reflects that the columns provided to enumerate the steps taken in furtherance of the said warrants are blank except that there is an endorsement that the warrants were executed and the respondent was arrested on 14.02.2023 at 2100 Hours.

19. Normally, warrants are issued by the concerned Court during the course of investigation when an accused person is not available despite efforts or after filing of the chargesheet when the person who has been summoned by the concerned Trial Court does not appear to face trial. Another possible situation can be where warrants issued against a person during the course of investigation could not be executed and a chargesheet/complaint is filed with





respect to the other accused persons and the person against whom warrants have been issued is shown as absconding. In **Dawood Ibrahim Kaskar** (*supra*), the Hon'ble Supreme Court was dealing with a similar situation where an application was moved on behalf of the Central Bureau of Investigation for issuance of non-bailable warrants and publication of proclamation under Section 8(3)(a) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 against the absconding accused named in the chargesheet. In **Dawood Ibrahim Kaskar** (*supra*), the chargesheet was filed showing the said accused persons as absconders. It was in this factual backdrop of the aforesaid case that the Hon'ble Supreme Court held that if such a person is subsequently arrested and brought before Court, in a case where chargesheet has been filed and cognizance has been taken, with respect to other accused persons, power to grant police custody under Section 167 of the CrPC can be exercised by the concerned Court.

20. In the present case, as pointed out hereinabove, open ended non-bailable warrants remained unexecuted till the complaint was filed and cognizance was taken by the learned Special Court. It is also relevant to note that the said non-bailable warrants were never returned to the learned Special Court. In the present complaint, the respondent is not being shown as an absconder. There is no mention of NBWs being issued, during the course of investigation, in the complaint. The guidelines in **Raghuvansh Dewanchand Bhasin** (*supra*) do not specifically provide for a factual situation, as in the present case, but the principle culled out from the said guidelines is that it is the duty of the Investigating Officer to inform the learned Trial Court about the un-executed non-bailable warrants at the time of filing of the complaint.





The non-bailable warrants, technically, did remain in force but once the respondent had been chargesheeted without showing him as an absconder, the same should not have been executed and rather should have been returned unexecuted before the learned Special Court at the time of filing of the complaint. Article 21 of the Constitution of India provides that no person shall be deprived of his life and personal liberty, except according to procedure established by law. It is further settled law that the procedure established by law should be just, fair, reasonable and not arbitrary. The arrest of the respondent in pursuance of the non-bailable warrants cannot be termed as just, fair and reasonable. Even if the respondent was detained on the basis of a lookout circular in pursuance of the said non-bailable warrants, there was no compulsion for the department to arrest the respondent on the basis of the same. It is not the case of the department that the arrest was made in exercise of powers under Section 19 of the PMLA.

21. The application seeking police remand of the respondent was premised on the arrest of the respondent in pursuance of the aforesaid non-bailable warrants. It is no doubt, that it is stated in the complaint that further investigation *qua* the said respondent is continuing, but, at the same time it is pertinent to note that after filing of the said complaint, no application was moved before the learned Special Court seeking issuance of non-bailable warrants in lieu of summons. In fact, the application seeking police remand has the following subject:

“APPLICATION UNDER SECTION 73(3) OF CODE OF CRIMINAL PROCEDURE, 1973 AND SECTION 167 OF CODE OF CRIMINAL PROCEDURE, 1973 READ WITH SECTION 65 OF PMLA, 2002 FOR EXECUTION OF NON-BAILEABLE WARRANT DATED 15.01.2018



ISSUED VIDE ORDER DATED 12.01.2018 AGAINST THE ACCUSED/RESPONDENT AND FOR SEEKING ED CUSTODY OF ACCUSED DEV INDER BHALLA FOR 14 DAYS.”

The prayer in the said application is as under:

“1. To accept the execution report of the open ended NBW dated 15.01.2018 and

2. To remand the accused Sh. Dev Inder Bhalla to ED custody for 14 days; and/or

3. To pass such other or further orders as this Hon’ble Court may deem fit and proper in the interest of justice.”

(emphasis supplied)

It is pertinent to note that apart from averments made in paragraph 14 of the said application that *“having reached a very objective satisfaction that the arrest and interrogation of Sh. Dev Inder Bhalla is absolutely necessary as the accused is required to be confronted with the material/evidence against him and other known and unknown accused person”*, there is no mention that the said arrest was made in pursuance of Section 19 of the PMLA, which provides as under:

“19. Power to arrest.—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.



(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

22. The Hon'ble Supreme Court, in **V. Senthil Balaji v. State Represented by Deputy Director and Others, 2023 SCC OnLine SC 934**, while dealing with the interplay between Section 19 of the PMLA and Section 167 of the CrPC observed as under:

"73. We have already touched upon the mandatory function that a Magistrate is to undertake while dealing with a case of remand. He is expected to do a balancing act. As a matter of rule, the investigation is to be completed within 24 hours and therefore it is for the investigating agency concerned to satisfy the Magistrate with adequate material on the need for its custody, be it police or otherwise. This important factor is to be kept in mind by him while passing the judicial order. We reiterate that Section 19 of the PMLA, 2002, supplemented by Section 167 of the CrPC, 1973 does provide adequate safeguards to an arrested person. **If Section 167 of the CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise.**

74. Such a Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the PMLA, 2002. It is his bounden duty to see to it that Section 19 of the PMLA, 2002 is duly complied with and any failure would entitle the arrestee to get released. The Magistrate shall also peruse the order passed by the authority under Section 19(1) of the PMLA, 2002. Section 167 of the CrPC, 1973 is also meant to give effect to Section 19 of the PMLA, 2002 and therefore it is for the Magistrate to satisfy himself of its due compliance. Upon such satisfaction, he can consider the request for custody in favour of an authority, as Section 62 of the PMLA, 2002, does not speak about the authority which is to take action for non-compliance of the mandate of Section 19 of the PMLA, 2002. A remand being made by the Magistrate upon a person being produced before him, being an independent entity, it is well open to him to invoke the said provision in a given case. **To put it otherwise, the Magistrate concerned is the appropriate authority**



who has to be satisfied about the compliance of safeguards as mandated under Section 19 of the PMLA, 2002...”

(emphasis supplied)

23. Following the aforesaid judgment, the Hon’ble Supreme Court in a recent judgment dated 03.10.2023 in **Criminal Appeal Nos. 3051-3052 of 2023** titled **‘Pankaj Bansal v. Union of Indian and Ors’ (2023INSC866)**, held as under:

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

(emphasis supplied)

24. The principle culled out from the aforesaid judgments is that when the person is arrested in exercise of powers under Section 19 of the PMLA, the provisions of Section 167 of the CrPC have to be complied with and *“if Section 167 of the CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise”*.

25. In the instant case, admittedly, upon completion of investigation, the complaint had been filed, in pursuance of which summons had been issued to the present respondent. If the unexecuted non-bailable warrants issued prior to filing of the complaint had been duly returned to the Court, could the



department have arrested the respondent when only summons for appearance had been issued? The department, after issuance of summons, in such a case, could not have arrested the respondent unless warrants were issued by the learned Special Court on requisite grounds. The exercise of power of arrest by the department was totally unjustifiable. The respondent was produced before the learned Special Court in terms of Section 73(3) of the CrPC and not under Section 19 of the PMLA, as per their own application. Section 73(3) of the CrPC provides as under:

“73. Warrant may be directed to any person.—

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

Under these circumstances, the learned Special Court has rightly rejected the application for remand of respondent on behalf of the department at this stage.

26. Learned Special Counsel is right in his contention that the respondent, even if he presents himself in pursuance of the summons issued by the learned Special Court, would have to be granted bail as per the provisions of PMLA.

27. This Court has been informed that an application for regular bail has been filed by the present respondent which is pending before the learned Special Court.

28. In view of the above discussion, this Court finds no reason to interfere with the impugned order dated 16.02.2023.

29. The petition is dismissed and disposed of accordingly.



30. Pending applications, if any, also stand disposed of.
31. Needless to state, nothing stated hereinabove is an opinion on the merits of the case.
32. The application of regular bail on behalf of the respondent pending before the learned Special Court shall be decided as expeditiously as possible, in accordance with law.
33. Copy of the judgement be sent to the concerned Special Court for necessary information and compliance.
34. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 17, 2023/nk/sn