



CRM-M-22478-2024 (O&M)

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

CRM-M-22478-2024 (O&M)**Date of decision: 27.08.2024**

Sikandar Singh

...Petitioner

Versus

Directorate of Enforcement and another

....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. R.S. Rai and Mr. Chetan Mittal, Senior Advocates,
with Mr. Jatin Sehgal, Mr. Adhirath Singh, Ms. Devna Soni,
Ms. Molly Sharma, Mr. Viren Sibal, Mr. Raymon Singh,
Mr. Aditya Varun, Mr. Shivashish Dwivedi, Mr. Ashish Garg,
Mr. Viren Bansal, Mr. Aaryav Mehra, Ms. Prachi Gupta,
Mr. Mayank Aggarwal, Mr. Satyam Sharda, &
Ms. Rubina Virmani, Advocates,
for the petitioner.

Mr. Zoheb Hossain, Special Counsel (**through VC**)
Mr. Lokesh Narang, Senior Panel Counsel,
Mr. Manish Jain, Special Public Prosecutor (**through VC**),
for the respondent(s)

MAHABIR SINGH SINDHU, J.

Present petition has been filed, under Section 482 of the Code of Criminal Procedure, 1973, (for short, "Code"), *inter alia*, to set aside:-

- i. the impugned order dated 29.04.2024 (P-17); thereby fresh warrants of arrest against the petitioner and co-accused were issued;
- ii. order dated 01.05.2024 (P-22), vide which petitioner was remanded to the custody of Enforcement Directorate (for short, "E.D"), by learned Special Judge for a period of 05 days;
- iii. order dated 01.05.2024 (P-23), whereby application filed by the petitioner under Section 227 of the Code for discharge was declined;
- iv. grounds of arrest dated 30.04.2024 (P-18); arrest order dated 30.04.2024 (P-19); and arrest memo. dated 30.04.2024 (P-20) issued by E.D against the petitioner.



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2. M/s Mahira Homes Pvt. Ltd is the holding company of various other associate companies, including M/s Sai Aaina Farms Pvt. Ltd. (for short, “SAFPL”), M/s Czar Buildwell Pvt. Ltd. (Presently Mahira Buildwell Pvt. Ltd.) and M/s Mahira Buildtech Pvt. Ltd., which are dealing with construction projects in Sectors 68, 103 & 104; respectively, at Gurugram.

2.1 On 17.05.2016, the SAFPL applied for an Affordable Housing Project under *Pradhan Mantri Awas Yojana*-Urban for construction of 1500 Flats in the land measuring 9.96875 acres, situated in revenue estate of Village Badhsahpur, Sector 68, Gurugram.

2.2 On the basis of above request, the Director General, Town & Country Planning, Haryana, (for short, “DGTCP”) issued a Letter of Intent (LOI) vide Memo. No.LC-3298-JE(VA)2017/27074 dated 27.10.2017 in favour of SAFPL. In order to comply with the terms & conditions of the aforesaid LOI, the SAFPL furnished two Bank Guarantees issued by IDBI Bank i.e.

- (i) LC No.3298 B.G No.1401381BGF00103 for an amount of Rs.2,63,23,892/- towards External Development Charges (EDC); and
- (ii) LC No.3298 B.G No.1401381BGF00104 for an amount of Rs.1,24,61,000/- in lieu of Internal Development Work (IDW)

2.3 Thereafter, vide memo dated 22.12.2017, the Director, Town and Country Planning, Haryana (for short, “D.T.C.P”) granted License No.106 of 2017 for construction of 1500 flats in favour of SAFPL, in Sector 68, Gurugram. Also transpires that SAFPL obtained requisite license on 02.02.2018 from Haryana Real Estate Regulatory Authority (HRERA) under the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short, “Act of 2016”). On the basis of above permission/license granted by D.T.C.P/HRERA, the



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SAFPL collected booking amount from 1500 prospective home buyers to the tune of Rs.363 crores.

2.4 One Neeraj Chaudhary, claiming to be the Additional Director of M/s D.S. Estates & Construction Pvt. Ltd.(in one of the companies of petitioner), filed two separate complaints (Nos.COMI/486/2020 & COMI/487/2020) before learned Chief Judicial Magistrate, Gurugram (for short “CJM”), under Section 200 of the Code read with Section 156(3) thereof, for registration of FIRs against SAFPL, present petitioner as well as other co-accused.

2.5 Learned CJM, vide order dated 07.01.2021 (P-1), directed the Station House Officer, Police Station Sushant Lok, Gurugram, for registration of FIRs and in pursuance thereof, FIR Nos.10 & 11 dated 14.01.2021 were registered against SAFPL and other co-accused, including present petitioner, under Sections 120-B, 406, 420, 467, 468 & 471 of the Indian Penal Code, 1860 (for short, “IPC”) at Police Station, Sushant Lok, District Gurugram.

2.6 It was alleged in the above FIRs that SAFPL furnished fake bank guarantee(s) in favour of D.T.C.P while obtaining License No.106 and apart that, cheated said Neeraj Chaudhary.

2.7 The contents of above FIRs were scrutinized by the E.D and it was found that offences under Sections 120-B, 420, 467 & 471 IPC are falling within the definition of “*scheduled offence*” as envisaged under Section 2(y) of the Prevention of Money Laundering Act, 2002 (for short, “PMLA”) and covered under Part-A of the Schedule thereof. As a result of the above, ECIR No.GNZO/20/2021 was recorded by the E.D on 16.11.2021 against SAFPL as well as other co-accused, including present petitioner.

2.8 Initially, petitioner appeared before E.D, but he did not co-operate in the matter and gave evasive replies to the queries put to him by the E.D. It is alleged that later on, despite repeated summons under Section 50 of the PMLA,



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as well as the non- bailable warrants issued by learned Special Judge, petitioner and co-accused did not come forward and remained un-traceable. Therefore, finding no other alternative, the E.D moved an application for declaring them as proclaimed offender under Section 82 of the Code. Learned Special Judge after examining the application and hearing both sides, declined the request of E.D for issuing proclamation, vide order dated 29.04.2024 (P-17); but issued fresh arrest warrants against the petitioner as well as co-accused Dharam Singh Chhoker and Vikas Chhoker.

2.9 In pursuance of the aforesaid order, petitioner was apprehended on 30.04.2024 at about 6.30 a.m from Hotel “Pilibhit”, situated at 38/1 Niranjan Akhara Marg, Sharwan Nath, Haridwar by E.D and taken to its Zonal Office, Dehradun. Thereafter, he was brought to Zonal Office, Gurugram and upon supplying “grounds of arrest” dated 30.04.2024 (P-18); arrest order dated 30.04.2024 (P-19) as well as arrest memo. dated 30.04.2024 (P-20), he was arrested on the same day i.e. 30.04.2024.

2.10 Thereafter, E.D approached learned Special Judge, Gurugram to produce the petitioner; but learned Special Judge was not available at his official residence as well as in PWD Guest House, Gurugram; where, he was staying, temporarily. On the next date i.e. 01.05.2024, petitioner was produced before learned Special Judge along with an application for seeking his remand for 14 days which was partly allowed vide order dated 01.05.2024 (P-22) and he was remanded to E.D custody for 05 days i.e. uptill 06.05.2024. On the same very day, petitioner also moved an application for seeking discharge from E.D custody, but the same was declined by learned Special Judge vide order of even date (P-23); hence the present petition.

**CONTENTIONS:****ON BEHALF OF PETITIONER:-**

3. Learned Senior counsels contend that prosecution has miserably failed to comply with the provisions of Section 19(1) of the PMLA inasmuch as the “grounds of arrest” and “reasons to believe” were not supplied. Also contended that these are two distinct and material documents, which ought to have been prepared and supplied before arresting the petitioner; but E.D completely failed to do so. Again contended that “grounds of arrest” were prepared on 30.04.2024 at 04:50 p.m; whereas, the petitioner had already been arrested from Haridwar by the E.D on 30.04.2024 at 6.30 a.m.

3.1 Further contended that when petitioner was arrested from Haridwar, the “grounds of arrest” were not even in existence; rather the same had been prepared and served to him, after reaching at Zonal Office, Gurugram on the evening of 30.04.2024.

3.2 Specifically contended that “reasons to believe” and “grounds of arrest” cannot be made after the arrest of petitioner; thus, there is an apparent breach of Section 19(1) of the PMLA.

3.3 Still further contended that “reasons to relieve” have not been served upon the petitioner till date; but in law, the same ought to have been supplied within 24 hours of the arrest and/or at least, before seeking his remand, so that petitioner could challenge the arrest.

3.4 Again contended that E.D failed to comply with the provisions of Section 19(2) of the PMLA and Rule 3 of the Prevention of Money-Laundering (the Manner of Forwarding a Copy of the Order of Provisional Attachment of Property alongwith the Material, and Copy of the Reasons alongwith the Material in respect of Survey, to the Adjudicating Authority and its Period of Retention) Rules, 2005 (for short “Rules, 2005”) as the sealed envelope containing (i)



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material in possession; (ii) “grounds of arrest” and; (iii) “reasons to believe” was sent to Adjudicating Authority on 01.05.2024 at 01:53 p.m and which was received by the concerned quarter on 01.05.2024 at 02:33 p.m i.e. much after the conclusion of hearing before learned Special Judge.

3.5 Also contended that an attempt by E.D to show compliance of Section 19(2) of PMLA before conclusion of the remand hearing on the basis of an e-mail dated 30.04.2024 sent at 07:56 p.m is a cock and bull story, as no relevant document was sent along with the e-mail. In either case, the compliance of Section 19(2) of PMLA should have been in a proper format as prescribed in Rule 3 of the Rules, 2005 by sending through sealed envelope.

3.6 Yet again contended that remand application was filed before learned Special Judge on 01.05.2024 and by that time, “material in possession”; “grounds of arrest” and “reasons to believe”, in compliance of Section 19(2) of PMLA, were not even placed before learned Special Judge. However, learned Special Judge while granting the remand, vide order dated 01.05.2024, failed to record his satisfaction as to whether the mandatory provisions of Section 19(1) & (2) of PMLA have been complied with in *stricto senso* by the E.D; before and after the arrest of petitioner.

3.7 Forcefully contended that remand of the petitioner was sought by E.D on the premise that there was a *prima facie* case of money laundering against him and not on the basis of “reasons to believe” that petitioner is guilty of an offence in terms of Section 19(1) of the PMLA. As per allegations in the remand application, petitioner was not appearing before the E.D in pursuance to the summons issued under Section 50 of PMLA and his custodial interrogation was required to confront him with certain documents, detect money trail and unearth the involvement of other co-accused. Thus, in such circumstances, there was no occasion to issue warrants of arrest of petitioner for his non-appearance/non-



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cooperation or giving evasive replies in response to summons issued under Section 50 of PMLA especially, when there are separate and independent consequences in terms of Section 63(2) of PMLA.

3.8 Lastly contended that there is complete violation of the provisions of Sections 70, 72, 75, 79 & 80 of the Code read with Section 65 of PMLA for execution of the non-bailable warrants issued by learned Special Judge in favour of Assistant Director, E.D; which were collected on 30.04.2024 at 11:30 a.m; however, the petitioner was arrested by Sh. Pawan Kumar, Stenographer, working in the office of E.D, along with three local police officials at 06:30 a.m from Haridwar, without having any physical copy of non-bailable warrants. Thus, the petitioner's arrest by the person, who was neither authorised for execution of non-bailable warrants; nor having the physical copy thereof; is violative of Sections 70, 72 & 75 of the Code. Still further, the omission of E.D, while not producing the petitioner before local Magistrate, from where he was arrested on 30.04.2024 at 6:30 a.m is in violation of Sections 79 & 80 of the Code.

3.9 In support of the above contentions, learned Senior counsels have also relied upon the following judicial pronouncements:- **(i) *Raghuvansh Dewanchand Bhasin Versus State of Maharashtra (2012) 9 SCC 791*; (ii) *Vijay Madanlal Choudhary and others Versus Union of India and others, 2022 SCC Online SC 929*; (iii) *V. Senthil Balaji Versus State Represented by Deputy Director and others, 2023 SCC Online SC 934*; (iv) *Pankaj Bansal Versus Union of India and others, 2023 SCC Online SC 1244*; (v) *Roop Bansal Versus Union of India and others, 2023 SCC Online P&H 3597*; (vi) CRM-M-2191-2024 titled as "*Dilbag Singh @ Dilbag Sandhu Versus Union of India and another*" decided on 08.02.2024 (Pb. & Hr.); (vii) *Arvind Kejriwal Versus Directorate of Enforcement, 2024 INSC 512*; (viii) *CWP No. 24787 of 2023***



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“Pranav Gupta Versus Union of India and another: (ix) Joginder Nath Versus State of U.P 1994(4) SCC 260; (x) Lalita Kumari Versus Government of Uttar Pradesh and others (2014) 2 SCC; (xi) Satender Kumar Antil Versus CBI and another (2022) 10 SCC 51; (xii) D.K. Basu Versus State of West Bengal (1997) 1 SCC 416; (xiii) Chandra Deepak Kochhar Versus CBI (2023) SCC Online Bom 72 and; (xiv) State through C.B.I. Versus Daud Ibrahim Kaskar, AIR 1997 SC 2494.

ON BEHALF OF THE RESPONDENTS:-

4. On the other hand, learned counsel for E.D, while opposing the prayer, submits that petitioner was rightly apprehended from Haridwar on 30.04.2024 in compliance of warrants of arrest dated 29.04.2024 issued by learned Special Judge; therefore, the same cannot be said to be an illegal act in any manner.

4.1 Further submitted that petitioner was supplied “grounds of arrest” and the same were read out to him at the time of his arrest in Zonal Office, Gurugram on 30.04.2024 at 18:45 hours; father of the petitioner was also informed about his arrest; copy of the arrest order, “grounds of arrest”, arrest memo. along with material in possession of E.D were sent to learned Adjudicating Authority, PMLA, immediately after his arrest; and he was duly produced before the Court having jurisdiction within 24 hours from his arrest.

4.2 Still further submitted that learned Special Judge, after hearing both sides and taking into consideration the material available on the file, rightly passed the order dated 01.05.2024 (P-22), while remanding the petitioner to E.D custody for a period of 05 days. Even learned Special Judge, while passing order dated 06.05.2024, has explicitly recorded his satisfaction that *“On 1.5.2024 the application for ED remand was filed by the applicant and the court has granted remand of 5 days. The application is annexed with annexure, i.e. grounds of*



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arrest and at the time of arrest, he was supplied copy of grounds of arrest under Section 19(1) of the PMLA, 2002 and information with regard to material which was in possession of the E.D was forwarded to the Adjudicating Officer in a sealed cover under Section 19(2) of the PMLA, 2002.”

4.3 Again submitted that the order dated 29.04.2024 (P-17) was pronounced in open court and Investigating Officer as well as Special Public Prosecutor, both were present at that time; therefore, the Investigating Officer had knowledge in terms of judgment of Hon’ble the Supreme Court rendered in **Bunna Prasad vs. State of U.P, 1952(2) SCC 421**, that a person, who by virtue of being present in Court has acquired knowledge of the orders passed by a Court, is duty bound to enforce it.

4.4 Also submitted that in view of the provisions of Section 75 of the Code, the police officer or other person executing warrants of arrest shall notify the substance thereof to the person to be arrested, and ***if so required***, shall show him the warrant; but its non-supply shall not vitiate the arrest.

4.5 While stressing upon the expression “*if so required*”, learned counsel submitted that not showing the warrants of arrest, which is otherwise in existence, does not vitiate the arrest in any manner. In the present case, the petitioner did not make any request to show him the warrants of arrest; nor any such averment has been made in the petition; therefore, in absence of any such request, it was not important to show him the warrants of arrest.

4.6 Further submitted that in view of the provisions of Section 76 of the Code, the police officer shall, without unnecessary delay, bring the person arrested within 24 hours before the Court concerned. Learned counsel by stressing upon the expression “without unnecessary delay”, submitted that petitioner was produced well within 24 hours of his arrest before the Court concerned. Moreover, it is a matter of records that learned Duty Magistrate in its



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report confirmed that E.D produced the petitioner during intervening night of 30.04.2024 at 12:30 a.m and it is so recorded by learned Special Judge in the order dated 01.05.2024.

4.7 Also submitted that Section 48 of the PMLA read with Section 74 of the Code envisages that even if warrants of arrest are directed to any officer, he can authorize another officer to execute the same. In compliance thereof, investigating Officer had authorized the Assistant Enforcement Officer to execute the warrants of arrest. Resultantly, petitioner was arrested on 30.04.2024 at 6:30 a.m. The contention of petitioner that a Stenographer executed the warrants of arrest is false; hence denied as he merely joined to escort the petitioner from Dehradun to Gurugram along with three other police officers.

In the evening of the same day i.e. 30.04.2024 at 18:45 hours, petitioner was arrested by the Investigating Officer himself based on his “reasons to believe” that he is guilty on the basis of material in his possession.

4.8 Still further submitted that as recorded in the “grounds of arrest”, petitioner is an accused in the following four more FIRs:-

1. FIR No.0175 dated 18.05.2022 under Sections 420, 467, 468, 471 IPC and Section 10 of the Haryana Development and Regulations of Urban Areas Act, 1975, registered at Police Station, Rajendra Park, Gurugram.
2. FIR No.0151 dated 31.05.2023 under Sections 420, 467, 468, 471 IPC, registered at Police Station Rajendra Park, Gurugram.
3. FIR No.0152 dated 01.06.2023 under Sections 420, 467, 468, 471 IPC, registered at Police Station Rajendra Park, Gurugram.
4. FIR No. 0151 dated 05.07.2023 under Sections 420, 467, 468, 471 IPC, registered at Police Station Sushant Lok, Gurugram.



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4.9 Unlike local Police, which is bound by its territorial limits of the State, the E.D, being Presence Across Nation (PAN) India investigating agency, need not seek any permission from the court of a particular State; or transit remand of an accused, who is apprehended/arrested in any other State.

4.10 In support of his contentions, learned counsel for the respondents has relied upon various judicial pronouncements and which are as under:- (i) **Arvind Kejriwal's case** (supra); (ii) **Pankaj Bansal 's case** (supra); (iii) **Vijay Madanlal Choudhary's case** (supra); (iv) **Senthil Balaji's case** (supra); (v) **Sundeeep Kumar Bafna Versus State of Maharashtra, (2014) 16 SCC 623;** (vi) **Gautam Thapar Versus Directorate of Enforcement, 2021 SCC Online Del 4599;** (vii) **Roshan Beevi and others Versus Joint Secretary to Government of Tamil Nadu and other, 1983 SCC Online Mad 163;** (viii) **Directorate of Enforcement Versus Deepak Mahajan, (1994) 3 SCC 440;** (ix) **Harbansingh Sardar Lenasingh Versus. State, 1968 SCC Online Bom 51;** (x) **State of Madhya Pradesh Versus Shobharam and others, 1966 SCC Online SC 229 and;** (xi) **Union Territory of Ladakh and others Versus Jammu and Kashmir National Conference and another (SLP(Civil) No.18727 of 2023).**

5. Heard learned counsel for the parties and perused the paper-book.

I. ISSUANCE OF FRESH ARREST WARRANTS DATED 29.04.2024 (P-17) BY Ld. SPECIAL JUDGE, GURUGRAM:-

6. Records reveal that initially, on 16.08.2023, E.D moved an application under Section 70 of the Code read with Section 65 of the PMLA seeking issuance of open-ended non-bailable warrants against petitioner, co-accused Dharam Singh Chhoker as well as Vikas Chhoker with the allegations that despite various summons issued under Section 50(2) & (3) of the PMLA, they were intentionally avoiding to appear before the Investigating Officer. After



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hearing both sides, learned Special Judge allowed the application for issuance of open ended non-bailable warrants against aforesaid accused, vide order dated 29.09.2023.

In pursuance thereof, open ended non-bailable warrants dated 04.10.2023 were issued against all three accused and in terms of Section 54 of PMLA, E.D officials requested Commissioner of Police, Gurugram and/or SHO, DLF Phase-I, Sikandarpur, Gurugram for extending cooperation in execution of the same vide communication dated 11.03.2024. Despite sincere efforts, aforesaid open ended non-bailable warrants could not be executed as the accused were not available at their residence.

6.1 Thereafter, on 19.03.2024, 2nd application (P-14) was moved by E.D for issuance of Proclamation under Section 82 of the Code read with Section 65 of the PMLA, directing the accused to appear personally before E.D officials on 29.04.2024 at 11:30 Hrs at their office. Learned Special Judge, after hearing both sides, kept the request of E.D for issuance of proclamation, in abeyance, but ordered fresh warrants of arrest of the accused vide order dated 20.03.2024.

6.2 Again, a request was made by E.D on 30.03.2024 to the aforesaid Police officers as well as to the Deputy Commissioner of Police (East) for execution of arrest warrants dated 20.03.2024; but the warrants could not be executed due to non-availability of the accused at their residence, and it was so reported by the Police vide report dated 03.04.2024.

6.3 Thereafter, on 05.04.2024, E.D moved 3rd application for the same purpose and learned Special Judge, after considering the matter, again issued fresh warrants of arrest on 06.04.2024, but the same remained unexecuted.

6.4 Later on, 4th application dated 15.04.2024 was moved by E.D for issuance of Proclamation against petitioner as well as co-accused Vikas Chhoker.

On the same day, in view of the order dated 10.04.2024, passed by Hon'ble the



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Supreme Court in **SLP (Crl.) No. 3867 of 2024**, filed by co-accused Dharam Singh Chhokar, he moved an application for deferring the Proclamation.

6.5 Finally, learned Special Judge, vide order dated 29.04.2024 (P-17), while declining the issuance of Proclamation, issued fresh warrants of arrest against present petitioner as well as co-accused-Vikas Chhoker.

It is necessary to mention here that although, in compliance of order dated 10.04.2024, passed by Hon'ble the Supreme Court, co-accused Dharam Singh Chhoker joined investigation; but later on, SLP (*supra*) filed by him was dismissed vide order dated 06.05.2024 and now the fact of the matter is that he is absconding from the proceedings.

6.6 In pursuance of the order dated 29.04.2024 (P-17), petitioner was apprehended on 30.04.2024 at about 06:30 a.m from Hotel "Pilibhit", situated at 38/1 Niranjan Akhara Marg, Sharwan Nath, Haridwar and thereafter, he was brought to Zonal Office, Dehradun and then to Zonal Office, Gurugram. Records reveal that "grounds of arrest" dated 30.04.2024 (P-18); arrest order dated 30.04.2024 (P-19) and arrest memo. dated 30.04.2024 (P-20) were duly served upon the petitioner by E.D officials on 30.04.2024 at 18:45 hours. Also evident that on 30.04.2024 itself, the E.D approached learned Special Judge, Gurugram at about 8:30 p.m, for production of the petitioner, but due to non-availability of learned Special Judge, they could not succeed. Thereafter, E.D tried to produce the petitioner before learned Duty Magistrate during night on 30.04.2024 itself at 12:30 a.m; but learned Duty Magistrate had shown her inability to entertain the request.

6.7 Finally, on 01.05.2024, petitioner was produced before learned Special Judge, along with an application for seeking his remand for 14 days, which was allowed partly vide order dated 01.05.2024 (P-22) and he was remanded to E.D custody for 05 days i.e. uptill 06.05.2024.



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6.8 It is noteworthy that on previous occasion also, all three accused i.e. Sikandar Singh (petitioner), Dharam Singh Chhoker and Vikas Chhoker challenged non-bailable warrants dated 29.09.2023 (*supra*) issued by learned Special Judge, Gurugram before Division Bench of this Court through CRM-M-51250-2023 and CRM-M-37710-2023; but the same were dismissed on 26.02.2024, while observing as under:-

*“14(iii) In the case of **State Through CBI Vs. Dawood Ibrahim Kaskar and Others** (*supra*), the CBI had moved an application before the designated Court praying for issuance of non-bailable warrants of arrest against the accused to initiate further proceedings in the matter to apprehend them and/or to take further action to declare them as proclaimed offenders. These applications came to be rejected by the designated Court. It was held by the designated Court that there was no provision which entitled the Investigating Agency to seek for and obtain aid from the Court for the same. It was held that presence could be compelled only to face the trial but no process could be issued in aid of investigation under Section 73 of the Code. The matter reached the Hon'ble Apex Court. After examining the matter, the Hon'ble Apex Court held that Section 73 of the Code gave the power to a Magistrate to issue warrants of arrest and that too during investigation. Reference was made to Section 73 of the Code and Section 155 of the Code. The Hon'ble Apex Court then examined as to whether such issuance of warrants could be for production of such a person before the police in aid of investigation. This, the Hon'ble Apex Court held could not be done and it was held that the warrants could be issued for appearance before the Court only and that thereafter it was for the Court to decide as to whether detention is to be given or not. The relevant observations and findings of the Hon'ble Apex Court in the said judgment are extracted as under:-*

12. The moot question that now requires to be answered is whether a Court can issue a warrant to apprehend a person during investigation for his production before police in aid of the Investigating Agency. While Mr. Ashok Desai, the learned



Attorney General who appeared on behalf of CBI, submitted that Section 73 coupled with Section 167 of the Code bestowed upon the Court such power, Mr. Kapil Sibal, who appeared as amicus curie (the respondents did not appear inspite of publication of notice in newspaper) submitted that Court had no such power. To appreciate the steps of reasoning of the learned counsel for their respective stands it will be necessary to refer to the relevant provisions of the Code and TADA relating to issuance of processes.

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21. *Apart from the above observations of the Law Commission, from a bare perusal of the Section (quoted earlier) it is **manifest that it confers a power upon the class of Magistrates mentioned therein to issue warrant for arrest of three classes of person, namely, (i) escaped convict, (ii) a proclaimed offender, and (iii) a person who is accused of a non-bailable offence and is evading arrest.** If the contention of Mr. Sibal that Section 204 of the Code is the sole repository of the Magistrate's power to issue warrant and the various Sections of part 'B' of Chapter VI including Section 73 only lay down the mode and manner of execution of such warrant a Magistrate referred to under Section 73 could not- and would not- have been empowered to issue warrant of arrest for apprehension of an escaped convict, for such a person cannot come within the purview of Section 204 as it relates to the initiation of the proceeding and not to a stage after a person has been convicted on conclusion thereof.*

22. ***That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code.** As already noticed under this Section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest*



without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is 'accused of a non-bailable offence and is evading arrest.'

23. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C' of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI. [Section 8(3) in case the person is accused of an offence under TADA].

24. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the



provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summons and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.

*25. Now that we have found that Section 78 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need to answer the related question as to **whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code, Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on***



materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Courts solely for the production of the accused before the police in aid of investigation.

26. On the conclusions as above we allow these appeals, set aside the impugned order and direct the **Designated Court** to dispose of the three miscellaneous applications filed by CBI in accordance with law and in the light of the observations made herein before."

14(iv). This view was reiterated by the Delhi High Court in ***'Ottavio Quattrocchi Vs. CBI*** (supra). Relying upon the judgment of the Hon'ble Apex Court in ***State Through CBI Vs. Dawood Ibrahim Kaskar and Others*** (supra), it was held by the Delhi High Court that the Special Judge was justified and within his jurisdiction in having issued non-bailable warrants of arrest during the course of investigation. In the present case also, no fault can be found with the order dated 29.09.2023 (Annexure P-23) which has been impugned by the petitioners and by way of which non-bailable warrants were ordered to be issued. The order is a well reasoned and speaking order and it nowhere directs the production of the petitioners before the Investigating Agency. It goes without saying that once the warrants are executed, the respondent-ED would be bound by the provisions of law be that the PMLA or that of the Code. The other judgments relied upon by the petitioners, therefore, would be of no aid to them."

"17. A perusal of the aforesaid judgment shows that even if one of the petitioners was not shown to be an accused, he could be prosecuted under the PMLA so long as the scheduled offence exists. The scheduled offence, as already mentioned in the preceding paragraphs, is not only in FIR Nos.10 & 11 dated 14.01.2021 but also in other FIRs referred to therein. It is also clear from a perusal of the aforesaid judgment that since there were other FIRS also, proceeds of crime cannot be ruled out and, therefore, it cannot be



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said that no offence of money laundering can be said to have been committed. As has been observed in the preceding paragraphs, the case is only at the stage of investigation and nothing can be said conclusively at this stage. The reality would emerge only once the concerned Investigating Agencies conclude the investigation/inquiry.”

6.9 It is also noteworthy that above order of Division Bench was challenged by co-accused Dharam Singh Chhoker before Hon’ble the Supreme Court in SLP (Crl.) No. 3867/2024; but the same was dismissed as withdrawn on 06.05.2024.

6.10 From the discussion made here-in-above, it is apparently clear that non-bailable warrants were issued against the petitioner as a last resort when he failed to appear before the E.D as well as learned Special Judge, despite issuance of summons under Section 50 of PMLA and non-bailable warrants on various occasions. There is sufficient material to the effect that petitioner knowingly and deliberately avoided the process of law and remained hidden at unknown places to thwart the ongoing investigation. Thus, the E.D was quite justified while approaching learned Special Judge and obtaining the non-bailable warrants, time and again to enforce the provisions of PMLA. Consequently, there would be no hesitation to observe that petitioner is trying to rake up the issue regarding non-bailable warrants which has already attained finality upto Hon’ble the Supreme Court.

6.11 It is also discernible that in terms of provisions of Section 54 of PMLA, E.D requested local Police to co-operate in the matter, but despite best efforts, non-bailable warrants could not be executed as the accused were not found at their residence. It was only when E.D got some definite information about the whereabouts of petitioner, that he was hiding himself in Hotel “Pilibhit”, Haridwar then only, E.D officials along with local police, visited the



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spot and apprehended him on the strength of non-bailable warrants dated 29.04.2024. Thus, in such a scenario, in the opinion of this Court, there is nothing wrong with the course adopted by E.D; rather their steps are appreciable in the present case.

6.12 It has also come on record that petitioner tried to escape on the pretext of urinating on the way from Dehradun to Gurugram; but could not succeed and he was again apprehended by E.D officials with the help of local Police. Thus, all these facts clearly indicate that petitioner has no respect for the rule of law; rather tried to flee from the justice. Despite repeated non-bailable warrants issued by learned Special Judge, petitioner has made the process of law as a mockery; hence no interference is warranted with the order dated 29.04.2017 (P-17); rather the same is perfectly legal and valid. Hence, rightly been executed by E.D officials with the assistance of local Police. That apart, petitioner is involved in four other FIRs (*supra*).

II. REMAND ORDER DATED 01.05.2024

7. As already discussed, due to unavoidable circumstances, E.D could not produce the petitioner before learned Special Judge on 30.04.2024 at PWD Guest House, where he was staying temporarily, due to some exigencies. E.D made efforts to produce petitioner before learned Duty Magistrate, but remained unsuccessful and the factual position is already narrated under preceding paragraph No.6.6; hence not repeated here. Ultimately, after serving “grounds of arrest” (P-18); arrest order (P-19) and arrest memo. (P-20) to petitioner on 30.04.2024, he was produced before learned Special Judge in the opening hours of Court on 01.05.2024 along with an application for seeking his remand for 14 days to confront him with relevant documents, placement of funds, detect the money trail and unearth the involvement of other persons.



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7.1 Learned Special Judge after hearing both the sides; on due application of judicial mind; going through the remand papers as well as “grounds of arrest”, observed that the allegations of siphoning off money of home buyers by the petitioner, depicting proceeds of crime resulting into offence of money laundering are *prima facie* proved. Hence, learned Special Judge rightly granted remand of petitioner for 05 days uptill 06.05.2024 which was later on extended, from time to time. This Court has also gone through the impugned order along with the material available on record and no ground is made out to interfere with the same; rather the remand was rightly granted to question the petitioner for completion of ongoing investigation and to know the real facts of the case. Otherwise, there was no option for E.D to complete the investigation. The order is well reasoned, containing satisfaction upon perusal of the entire records, thus, warranting no interference by this Court.

III. DISMISSAL OF DISCHARGE APPLICATION ON 01.05.2024

8. On 01.05.2024 when E.D moved an application for seeking remand of the petitioner, at the same time, he filed an application for his discharge from the custody of E.D.

8.1 During the course of hearing, learned counsel for E.D apprised this Court that a complaint under Section 44 and 45(1) of the PMLA has been filed against the petitioner as well as four other co-accused for commission of the offence under Section 3 read with Section 70 and Section 4 thereof, before learned Special Judge on 27.06.2024; but cognizance is yet to be taken. Filing of complaint is duly acknowledged on behalf of the petitioner as well. Therefore, at this stage, there was no occasion for the petitioner to move an application for his discharge before learned Special Judge on 01.05.2024. Moreover, there is sufficient material on record against the petitioner for his complicity in the



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present case; therefore; no ground is made out to interfere with the order dated 01.05.2024. Besides, in the present factual situation, learned Special Judge while considering the application for discharge was not supposed to record the findings like acquittal or conviction of the petitioner in PMLA case.

Needless to say that petitioner shall have opportunities to raise his plea(s) before learned Special Judge at the time of taking cognizance as well as consideration of charges.

IV. GROUND OF ARREST (P-18); ARREST ORDER (P-19); ARREST MEMO. (P-20):-

9. From records, it is quite evident that petitioner is the major share holder of Mahira Group Companies. Also discernible that M/s SAFPL; M/s Mahira Buildtech Pvt Ltd and M/s Czar Buildwell Pvt Ltd are the companies under Mahira Group, engaged in housing project in Sector 68, 103 and 104, respectively, Gurugram. It is discernible that above companies submitted fake bank guarantees while obtaining licenses for Affordable Housing Projects and collected huge money from home buyers to the tune of Rs. 363 crore (approx.), Rs. 160 crore (approx) and Rs.90 crore (approx.), respectively on the basis of above licenses and siphoned off the money collected from the home buyers for their personal gains and the petitioner, who is the main beneficiary of the proceeds of crime, utilized the tainted money through various transactions and tried to convert the same into untainted money.

9.1 It is noteworthy that an amount of Rs. 85 Lakhs & Rs. 25 Lakhs were paid in lieu of providing fake bank guarantees during the year 2021-22 from M/s. DS Home Constructions Pvt Ltd, when petitioner was director of the said company and he also signed the balance sheet for the years 2021-22.



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9.2 Records also reveal that petitioner, being director of SAFPL, in connivance with his associates, including M/s DS Home Constructions Pvt. Ltd, siphoned off the home buyers' money while diverting the funds for non-intended purposes, group companies, personal accounts in the form of loans, advances, bogus expenditure for personal use and the same were reflected in companies' accounts to inflate expenditure. Also transpires that an amount of Rs. 55,94,26,905/- was siphoned off on the basis of bogus invoices and Rs. 50,08,63,678/- were spent in the guise of loans/advances to associated persons/entities on the direction of petitioner.

9.3 It has also come on record that House No. A-2-15, DLF, Phase-1, Sikanderpur Ghosi, Gurugram, where family members of the petitioner reside, has been purchased from the proceeds of crime while routing through M/s DS Home Constructions Pvt. Ltd as well as M/s. Dezire Homesquare Pvt. Ltd and he is trying to project the same as valid transactions of an immoveable property which is running in crores of rupees.

9.4 It further transpires that in the balance sheet of M/s DS Home Construction Pvt Ltd, for the years 2020-21 and 2021-22, an amount to the tune of Rs. 6,42,57,117/- and Rs. 9,42,92,405/-, respectively have been shown as advance to Mahira Fuels and the said company is the proprietorship firm of his brother co-accused Vikas Chhoker; thus, again the proceeds of crime were being used to convert the same into valid transaction.

9.5 Petitioner also used the funds of home buyers for wedding ceremony of family member while booking 273 room nights in Le Meridien Hotel, Delhi in the name of M/s DS Home Construction Pvt Ltd. from 22.02.2023 to 13.03.2023. The contract was executed and crores of rupees were spent for the unintended purpose from hard earned money of the home-buyers and again the proceeds of crime were swindled as purported to be genuine.



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9.6 It further transpires that M/s Balaji Cement Store and M/s Shri Balaji India Private Limited issued invoices/bills to SAFPL & M/s DS Home Construction Pvt. Ltd. for selling construction materials and the payments were got credited in the bank accounts of M/s Balaji Cement Store and M/s Shri Balaji India Private Limited; but no material was supplied against the said invoices; rather the amount of approximately Rs.30 crore was refunded in cash to petitioner after deducting 4% commission by the dummy sellers.

9.7 Apart that, from the “grounds of arrest”, it transpires that *prima facie*, petitioner is guilty of the offence of money laundering. There is sufficient material on record that petitioner knowingly, actually and directly indulged in the illegal activities connected with proceeds of crime; he has siphoned off the hard earned money of 1500 prospective home buyers and used the same for his personal gain; thus, committed the offence of money laundering. For reference, the relevant part of “grounds of arrest” is recapitulated as under:-

“26. Analysis of material evidences in possession found so far and statement of various key and related persons recorded under Section 50 of PMLA, clearly establish that petitioner is guilty of offence of money laundering as defined under Section 3 of PMLA punishable under Section 4 of PMLA for directly and actually involved, knowingly assisted and knowingly have been a party in the process/activity connected with proceeds of crime by the following activities namely concealment, possession, acquisition and use, in the manner given below:

- *For booking the bogus expenditure and*
- *Knowingly siphoning off the Proceeds of Crime in the form of Loans and advances for acquisition of the property from Proceeds of Crime and other purposes.*
- *receiving the cash back for personal use*
- *using the Proceeds of Crime for other personal expenses done by petitioner as well as his family members.*



- *using the Proceeds of Crime in the wedding of his sister.”*

9.8 During the course of hearing, learned counsel for E.D supplied the photocopy of “reasons to believe” in a sealed envelope to this Court and which were recorded on 30.04.2024 by the Joint Director (E.D) which are running into 31 pages. The “reasons to believe” have been duly approved by Special Director (N.R.), E.D. After going through the same, it is more than clear that huge proceeds of crime have been laundered by the petitioner and the minute details of the same are not revealed here, so that it may not prejudice case of either of the parties.

9.9 It is also apparently clear that the “grounds of arrest” along with arrest order and arrest memo. were read out as well as handed over to petitioner at the time of his arrest on 30.04.2024 at 18:45 hours. Even father of petitioner, namely, Dharam Singh Chhoker was also informed in this regard.

9.10 Although, it was argued on behalf of petitioner that provisions of Section 19(2) of PMLA were not complied with, but the same is not acceptable in view of the fact that due compliance of the aforesaid provisions has been made by the E.D and copy of the arrest order, “grounds of arrest”, arrest memo. along with material in possession were sent to Adjudicating Authority, immediately after the arrest of petitioner through an e-mail on 30.04.2024 at 7:56 p.m, as well as in a sealed envelope on the very next i.e. 01.05.2024.

9.11 Similarly, in consonance with the provisions of Section 19(3) of the PMLA, petitioner was produced before learned Special Judge in the opening hours of the Court on 01.05.2024 along with remand application; thus, it is wrong to contend on behalf of petitioner that there was non-compliance in this regard. Moreover, it is a matter of records that learned Duty Magistrate in its

report dated 01.05.2024 confirmed that E.D had produced petitioner at 12:30 a.m



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during night of 30.04.2024 and as such, the same is well within 24 hours and it is so recorded by learned Special Judge in his order dated 01.05.2024.

9.12 Keeping in view the discussion made here-in-above, it is held that “grounds of arrest”; arrest order and; arrest memo. were duly and validly served upon petitioner at the time of his arrest on 30.04.2024. That apart, “reasons to believe” were also recorded by E.D officials. Thus, there has been due compliance of Section 19 of the PMLA, in letter and spirit.

V. DISCUSSION ON JUDICIAL PRONOUNCEMENTS:-

10. Although, learned Senior counsels for petitioner tried to convince the Court while citing various judicial pronouncements that his arrest is illegal, but the same are not helpful in any manner for the following reasons:-

(i) ***Raghuvansh Dewanchand Bhasin***’s case (supra), lays down guidelines to be adopted for issuance and execution of non-bailable warrants in terms of Section 78 & 79 of the Code. There is no quarrel with this legal proposition; but in the present case, as already discussed, meticulous compliance of the provisions was made while executing the arrest warrant with the help of local police by the E.D officials in terms of Section 54 of the PMLA.

(ii) In ***Vijay Madan Lal’s case*** (supra), it was held by Hon’ble the Supreme Court that (i) there must be material in possession with the Authority before arresting a person; (ii) there should be reason to believe that the person being arrested is guilty of the offence punishable under PMLA; (iii) “reasons to believe” must be reduced in writing; (iv) Arrestee has to be informed of the “grounds of arrest”. In the present case, all these safeguards were duly complied with by the E.D officials.

(iii) In ***V. Senthil Balaji’s case*** (supra), it was again reiterated that “grounds of arrest” have to be supplied to the accused; (ii) The Authorised officer shall immediately send a sealed envelope, containing material in possession to adjudicating authority. In the



case in hand, the “grounds of arrest” were duly supplied to petitioner and an e-mail coupled with sealed envelope; containing the relevant material was sent to the Adjudicating Authority.

(iv) ***Pankaj Bansal’s case (ibid)*** is a reiteration of the dictum of law that “grounds of arrest” have to be supplied to the arrestee and that “reasons to believe” that person is guilty of the offence have to be recorded. Both the directions were duly followed in the present case.

(v) ***Roop Bansal’s judgment*** rendered by this Court is in line with the dictum laid down in ***V. Senthil Balaji’s case***. As noticed above, the provisions of Section 19 (*ibid*) were duly taken care of.

(vi) ***Dilbag Sandhu’s case (supra)***, follows the law laid down in ***V. Senthil Balaji’s case***. Besides, laying down that the arrestee shall within 24 hours be taken to the Special Court or Judicial Magistrate. The directions were duly followed in the present case.

(vii) In ***Arvind Kejriwal’s case (supra)***, Hon’ble the Supreme Court while making a reference to the larger Bench opined that (i) “reasons to believe” that person to be arrested is guilty of an offence are to be recorded; (ii) The arrestee, as soon as may be, must be informed of “grounds of arrest”; “reasons to believe” should be furnished to the arrestee. However, at the same time, Hon’ble the Supreme Court issued a *caveat* that “where the non-disclosure of the “reasons to believe” with redaction is justified and claimed, the Court must be informed. The file, including the documents, must be produced before the Court. Thereupon, the Court should examine the request and if they find justification, a portion of the “reasons to believe” and the document may be withheld. This requires consideration and decision by the Court. In the present case, “grounds of arrest” were duly supplied to petitioner at the time of his arrest. The “reasons to believe” were also recorded by the officers and this Court has minutely gone through the same. In ***Union Territory of Ladkhakh’s case (supra)***, Hon’ble the Supreme



Court observed that the High Courts will proceed to decide matters on the basis of law as it stands, unless specifically directed by Hon'ble the Supreme Court to await an outcome of a reference or review petition. In other words, till the time, reference in ***Kejriwal's case***(supra) is decided, the law laid down in ***Vijay Madan Lal's case*** (supra) is to be followed being binding under Article 141 of the Constitution.

(viii) In ***Pranav Gupta's case*** (supra) it was observed that in pursuance of summons, the E.D officials cannot put restraint on the liberty of the accused. In the present case, petitioner was apprehended in pursuance of the non-bailable warrants, which were legally issued by learned Special Judge.

(ix) In ***Joginder Nath, Lalita Kumari, Satender Kumar Antil, D.K. Basu and Chandra Deepak Kochhar's cases*** (supra), Hon'ble the Supreme Court observed that existence of power to arrest is one thing, but justification to exercise that power is quite another and upon commission of a crime, the arrest does not become automatically, mandatory. The Investigating Police Officer should record reasons for necessity of arrest of accused. In the case in hand, there is sufficient satisfaction recorded by learned Special Judge before issuing non-bailable warrants of the petitioner and he was rightly apprehended from Haridwar on 30.04.2024.

(x) In ***Dawood Ibrahim Kaskar's case*** (ibid) Hon'ble the Supreme Court held that warrant can be issued for appearance before the Court only & not before the police and since authorisation for detention in police custody is neither to be given as a matter of course; nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him. In the case in hand, the warrants were issued for appearance of the accused before learned Special Judge. Simultaneously, after reaching at Zonal office, Gurugram, due compliance of Section 19 of PMLA was made by the competent officer and thereafter,



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petitioner was arrested under PMLA at 6:45 p.m in terms of Section 45.

VI. CONCLUSION:-

11. There is no quarrel that object and purpose of Section 482 of the Code is to secure the ends of justice and not to frustrate the same. As already discussed, in the present case, huge proceeds of crime have been identified, and *prima facie*, the offence of money laundering is clearly made out against the petitioner.

11.1 Apart that, it is duly established that petitioner is the beneficial owner of Mahira Group of companies as well as other shell companies and has been found involved in money laundering; thus present petition is nothing, but complete misuse of the process of Court as well as law.

11.2 Above all, as already discussed, about 1500 prospective home buyers have invested their hard earned money with the hope that they will get shelter, but the entire money of Rs.363 crore (approx.) has been misappropriated and laundered by the petitioner in conspiracy with other co-accused; thus, there is no option, except to dismiss the petition.

12. Ordered accordingly.

13. The above observations be not construed as an expression of opinion on merits of the complaint pending before learned Special Court; rather confined only to decide the present petition.

Pending criminal misc. application(s), if any, shall also stand disposed off.

27.08.2024

SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No