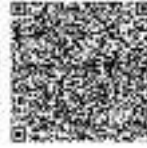


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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM M-41194-2024 (O&M)
Date of Decision: 23.09.2024**

Surender Panwar

.....Petitioner

Versus

Directorate of Enforcement

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. R.S. Cheema, Senior Advocate with
Ms. Tanu Bedi, Advocate,
Mr. Sanjay Suri, Advocate,
Mr. Arshdeep Singh Cheema, Advocate,
Mr. Satish Sharma, Advocate,
for the petitioner.

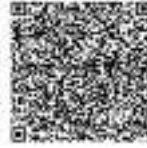
Mr. Zoheb Hossain, Special Counsel, ED (**through VC**) and
Mr. Lokesh Narang, Sr. Panel Counsel,
for the respondent.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 482 of Code of
Criminal Procedure, 1973 (for short "Cr.P.C") with the following prayer:-

- (i) for issuance of a direction to declare the arrest of the petitioner illegal, *non-est* and against the statutory provisions of Prevention of Money Laundering Act, 2002 (for short "PMLA"); Cr.P.C as well as the provisions of Constitution;
- (ii) to set aside the two consequential remand orders-(a)order dated 20.07.2024 (P-2) and (b) order dated 29.07.2024 (P-4) passed by learned Special Court, PMLA, Ambala on the basis of unlawful and illegal arrest of the petitioner in case

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ECIR/GNZO/19/2023 dated 23.09.2023 (for short “ECIR No.19”) under Section 3 and punishable under Section 4 of PMLA.

- (iii) to issue an order or direction as this Court deems appropriate to release the petitioner forthwith and/or also on interim bail during the pendency of the petition in the exigency of forthcoming State Legislative Assembly elections in the State of Haryana.
- (iv) further issue any appropriate order, relief or direction which this Court may deem fit and proper under the facts and circumstances of the present case.

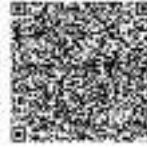
BRIEF FACTS:-

2. In the intervening night of 19/20.07.2024 at 01.40 a.m, petitioner was arrested in the Zonal Office, Enforcement Directorate (for short “E.D”), Gurugram. For reference, the allegations of E.D, as contained in the “Grounds of Arrest” dated 20.07.2024 (R-2 colly.), are recapitulated as under:-

“1. On the basis of 8 FIRs bearing nos. 226 dated 14.10.2022, 116 dated 23.03.2023, 111 dated 01.06.2023, 206 dated 19.09.2022, 216 dated 30.09.2022, 204 dated 14.09.2022, 33 dated 10.02.2023 and 54 dated 16.02.2023 registered at police station of Yamuna Nagar District, an ECIR no. ECIR/GNZO/19/2023 dated 23.09.2023 was recorded for schedule offences u/s 120-B, 411, 419, 420, 467 & 471 of IPC, 1860.

2. Further, an FIR No. 0021 dated 19.01.2024 u/s. 21(1) of Mines and Minerals (Regulation of Development) Act 1957, u/s. 15 & 16 of Environment Protection Act, 1986 and u/s. 120-B & 420 of IPC, 1860 was recorded at P.S. Pratap Nagar, Yamuna Nagar against Dilbag Singh, Rajinder Singh, Kulwinder Singh

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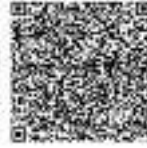
(Proprietor- PS Buildtech), Manoj Kumar Wadhwa, Angad Singh Makkar, Gurpartap Singh Mann, Raman Ojha, Rajesh Chikara, Inderpal Singh & Others. Above accused persons are related to entities/firms namely Development Strategies India Pvt. Ltd., Delhi Royalty Company, Mubarikpur Royalty Company, JSM Foods Pvt. Ltd. & PS Buildtech, which were involved in illegal mining. This FIR was subsumed and taken on record in the proceedings of the ECIR bearing no. ECIR/GNZO/19/2023 dated 23.09.2023.

3. *Based on the information gathered from the field enquiry, it was also found that a huge number of fake e-rawana bills are being generated by these Mining groups on the portal of Mining Department showing purchase from other states and the electronic purchase has been given to various stone crushers and screening plants, through whom, on the basis of this electronic purchase, illegal mining is being done in large quantities from the surrounding areas of Yamuna Nagar, causing huge revenue loss to the state government. No mining is being done from the mining areas mentioned in the e-rawana bills generated by the groups, nor can mining be done from those areas because there is no availability of minerals there at present.*

4. *Further, on the basis of discreet enquiries, investigation and material in possession, search under section 17 of PMLA, 2002 was carried out on 04.01.2024 on various identified entities & Directors/ Promoters/ Employees/ Key persons and others and concluded on 08.01.2024, which resulted in recovery of various incriminating documents, digital devices, valuables and other items.*

5. *During the search proceedings, statement of various key/related persons with respect to mining were recorded, which has revealed that Development Strategies India Private Limited,*

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Delhi Royalty Company, Mubarikpur Royalty Company, PS Buildtech, JSM Foods Private Limited and others are part of the syndicate which is engaged in illegal mining in District Yamuna Nagar.

6. *Further, it was found that Hon'ble NGT vide its order dated 18.11.2022 had observed that these three entities namely M/s Development Strategies India Private Limited (Respondent no. 11), Delhi Royalty Company (Respondent no. 12) and Mubarikpur Royalty Company (Respondent no. 13) are indulged in violating the environmental norms such as violating the requirement of undertaking replenishment study, not developing green belt, not implementing progressive mine closure plan, not installing CCTV cameras and not having GPS system, diversion of river flow, illegal instream mining, etc.:*

".... We find it appropriate to accept the report as there is no meaningful objection against the same. Thus, it is clear that as far as Respondent No. 11 is concerned, apart from violating the requirement of undertaking replenishment study, not developing green belt, not implementing progressive mine closure plan, not installing CCTV cameras and not having GPS system, diversion of river flow, illegal instream mining, not providing weigh bridge at the entry of the mining lease area are clear violations. With regard to Respondent No. 12, apart from violations found in the case of Respondent No. 11, further violations are not installing boundary pillars, continuing mining even after termination of the lease, using groundwater transported through tankers instead of using treated sewage water. With regard to Respondent No. 13, apart from other



violations which are common with Respondent No. 11, the said PP was found crossing the prescribed depth for mining...."

and consequently imposed huge penalties as mentioned below:

S.No.	Name of the Company/Entity	Penalty imposed by the Hon'ble NGT
1.	M/s Development Strategies India Private Limited	Rs.2.5 crores
2.	Delhi Royalty Company	Rs.4.2 crores
3.	Mubarikpur Royalty Company	Rs.12 crores

7. Earlier, Income Tax Department had also conducted searches on Majha Group in 2018 and consequently assessment orders have been passed in this context. Accordingly, additional turnover to the tune of Rs. 24,22,20,646/- in the F.Y. 2016-17 and Rs. 57,52,90,238/- in the F.Y. 2017-18 were admitted by Mubarikpur Royalty Company, Development Strategies India Pvt. Ltd., Delhi Royalty Company & JSM Foods Pvt. Ltd. Details of this are as follows:

S.No.	Names of the mining entities	Additional turnover accepted on account of IT search for the F.Y. 2016-17	Additional turnover accepted on account of IT search for the F.Y. 2017-18
1.	Mubarikpur Royalty Co.	169371645	34,67,60,394
2.	Delhi Royalty Co.	59021640	8,95,84,718
3.	Development Strategies India Pvt. Ltd.	1,38,27,361	9,25,19,234
4.	JSM Foods Pvt. Ltd.	0	4,64,25,892
	Additional turnover accepted on account of Income Tax search	24,22,20,646	57,52,90,238



8. During further investigation, it is found that a dummy/unregistered firm namely G.M. Co. was created by the Syndicate for accounting of total sale of all the entities/firms which were part of the Syndicate and also to facilitate the profit sharing of the cash generated from illegal mining among the members of the Syndicate. Various key members of the Syndicate have tendered statements u/s. 50 of PMLA, corroborating the above facts that:

- Firms namely Mubarikpur Royalty Company, Development Strategies India Pvt. Ltd., Karaj Singh S/o Major Singh, Northern Royalty Company, Ganga Yamuna Mining Co., Delhi Royalty Company, JSM Foods Pvt. Ltd., Routes and Journeys, Paramjeet Singh & Yamuna Infradevelopers Pvt. Ltd. etc., were part of the syndicate and to maintain the account of these firms altogether, a new firm namely G.M. Co. was created; that this accounting was done as per the instructions of Dilbag Singh;
- G.M. Co. was accounting the total sale of all the firms of the syndicate altogether.

9. On perusal of the books of account of G.M. Co. and Income Tax Assessment orders filed by the member firms of the syndicate including M/s Development Strategies India Private Limited, it is evident that a syndicate of illegal mining was functioning under the umbrella of G.M. Co and accounting of the syndicate was maintained in the name of G.M. Co. wherein cash generated from illegal mining activities were recorded. It also maintains the



name of the persons/firm and their shares in the illegal mining activities.

10. Further, during investigation it is revealed that you and your family members has 32% shareholding in Development Strategies India Pvt. Ltd. which is part of the mining syndicate and on perusal of the books of accounts of G.M. Co., it is evident that you, in the name of Panwar Ji & S. Panwar (W), are one of beneficiaries of the Proceeds of Crime.

11. M/s Development Strategies India Pvt. Ltd. was allotted 23.05 hectares at Pobari village in Yamuna Nagar's Radaur block for the mining of sand for nine years. The mining lease order started its production at the site on 09.12.2016. As per the data received from the Department of Mines & Geology, Yamuna Nagar, the details of operation of the mining contract allotted to M/s. Development Strategies India Pvt. Ltd. is as under:

<i>S.N.</i>	<i>Name of the mining contractor</i>	<i>Mining block allotted</i>	<i>Date of start of mining operations</i>	<i>Present status of mining</i>
<i>1.</i>	<i>M/s Development Strategies India Pvt. Ltd.</i>	<i>Pobari Block YNR B11</i>	<i>09.12.2016</i>	<i>Terminated on 26.08.2022</i>

12. The Hon'ble NGT has passed an order dated 18.11.2022 in respect of Delhi Royalty Company. M/s. Development Strategies (India) Pvt. Ltd. and Mubarikpur Royalty Company, wherein in para 8, the Hon'ble NGT has observed that "...compensation in case of illegal mining can be equal to the value to the mined material, apart from compensation for violation of environmental norms, we fix the same @ 10% of the lease money i.e. Rs. 2.5 crore, Rs. 4.2 crore and Rs. 12 crore in respect of Respondents No. 11 to 13 respectively."



13. As discussed in Para 7, the entities, namely Mubarikpur Royalty Co., Delhi Royalty Co., M/s. Development Strategies India Pvt. Ltd., PS Buildtech and JSM Foods Pvt. Ltd. and associated syndicate members have done illegal mining and suppressed their actual turnovers gained out of illegal mining activities, the same had been accepted by the entities while filing their revised Income Tax Returns for F.Y. 2016-17 and F.Y. 2017-18 before the Income Tax Department. Details of the Additional Income declared for F.Y. 2016-17 and F.Y. 2017-18 by M/s. Development Strategies India Pvt. Ltd., are as under:

S. No.	Name of the mining entities	Additional turnover declared on account of IT search for the F.Y. 2016-17	Additional turnover declared on account of IT search for the F. Y. 2017-18	Total
01	M/s Development Strategies India Pvt. Ltd.	1,38,27,361	9,25,19,234 (138% of the turnover declared in Original ITR)	10,63,46,595

Hence, it is evident from the above that M/s Development Strategies India Pvt. Ltd. was involved in illegal mining in Yamuna Nagar and it was "concealing" its actual turnovers gained out of illegal mining activities, which falls within the offence of money-laundering, as defined under section 3 of the PMLA, 2002 and the same is corroborated by the NGT order dated 18.11.2022 and the revised return of income filed by the subject company wherein it has accepted the additional turnover which is the part of proceeds of crime.

14. On perusal of the mining Contract dated 23.08.2016, between Director General, Mines and Geology, Haryana, and M/s. Development Strategies India Pvt. Ltd., it is revealed that the contractor M/s. Development Strategies (India) Pvt. Ltd. is

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authorized to excavate sand from "All the tract of land situated at village 'Pobari' in District Yamuna Nagar bearing Khasra Nos. 14//5. 15//1 min, 2 min, 3 min, 6 min, 7/1,7/2,8,9,10,12,13,14,15,16,17,18,25. 16//6/2 min, 7 min, 8 min, 9 min, 10 min, 11/1, 11/2, 12, 13, 14, 15, 16, 17, 18, 19, 20/1, 20/2, 21 min. 22 min, 23, 24, 25. 17//3 min, 8, 9, 10 min, 11, 12, 13, 18, 19, 20/1, 20/2, 21, 22, 23 AND village 'Nakom' in District Yamuna Nagar bearing Khasra Nos. 2//15, 16 min. 3//11, 19, 20, 21 min, 22, 23. 6//2min, 3 min, 4 min, 5 min, 6, 7, 8 min, 14 min, 15 min. 5//10, 11, 12, 18, 19, 20 min, 22 min, 23, 24, 25. 14//4 min, 5 min. 15//1 min, 2 min containing total area 23.05 hectares or thereabouts delineated on the plan hereto annexed as annexed and bounded as....."

During investigation of the Directorate, materials on records reveal that excavating of minerals was done from the lands which were not authorised for sand excavation vide the above Mining Contract dated 23.08.2016, between the Department of Mines & Geology and the company M/s. Development Strategies (India) Pvt. Ltd. During investigation, it is also revealed that mining on the unauthorised land was done during the period between 2016-2022.

The fact that mining was conducted outside the allotted lease area has also been corroborated by the survey report of the mining site done by an independent technical field expert. Further, the survey report also highlights the many other violations done by the Mining company. Details of the such violations are as follows:

Pobari (Sand Mine) (M/s Development Strategies (I) Pvt Ltd.)::-

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a. On the basis of the physical survey at the site, it is revealed that the mining has been done outside the leased area also. It is confirmed from physical survey and the photographs and video recordings of the site.

b. As per Letter of Intent, mining shall be restricted, within the central 3/4th width of the river, however, mining was conducted inside the restricted area of the central 3/4th width of the river. This violation is confirmed from the digital topographical survey of the river.

c. As per Letter of Intent, the maximum depth of mining in the river bed shall not exceed 3m depth, however, the survey revealed has exceeded the 3m depth. It is confirmed from the physical survey done at site.

d. The physical survey found few boundary pillars on one side of the site and no sign of pillars on the other three sides of the site. There was no proper demarcation of the area allocated for mining operations. It is confirmed by the field crews during physical survey at site.

e. The survey revealed that the predetermined parameters of the mine closure plan were not adhered to, including Haphazard mining of minerals.

Quantification of the mining done:

On the basis of the study conducted, details of mineral mined within the leased site and outside the leased site for 09.12.2016 to 26.08.2022 (5 years 8 months) period are as follows:

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<i>Mining contractor</i>	<i>Mined Mineral/S and/ BG.S.</i>	<i>Quantity Inside mining Limit (cum)</i>	<i>Quantity Outside mining Limit (cum)</i>	<i>Quantity Inside mining Limit (Metric Ton)</i>	<i>Quantity outside mining Limit (Metric Ton)</i>
<i>M/s Development Strategies (1) Pvt. Ltd.</i>	<i>Sand</i>	<i>4576666</i>	<i>16030144</i>	<i>7734569</i>	<i>27090939</i>

Block	Village	KhasraNo.(Lease Area)
<i>Pobari Block YNR B11</i>	<i>Village Pobari</i>	<i>14//5, 15//1 min, 2min, 3 min, 6 min, 7/1, 7/2, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 25, 16//6/2 min, 7 min, 8 min, 9 min, 10 min, 11/1, 11/2, 12, 13, 14, 15, 16, 17, 18, 19, 20/1, 20/2, 21 min, 22 min, 23, 24, 25, 17//3 min, 8, 9, 10 min, 11, 12, 13, 18, 19, 20/1, 20/2, 21, 22</i>
<i>Pobari Block YNR B11</i>	<i>Village Nakom</i>	<i>2//15, 16 min, 3//11, 19, 20, 21 min, 22, 23, 6//2 min, 3 min, 4 min, 5 min, 6, 7, 8 min, 14 min, 15 min, 5//10, 11, 12, 18, 19, 20 min, 22 min, 23, 24, 25, 14//4 min, 5 min, 15//1 min, 2 min.</i>

So far, the investigation findings confirm that the land with certain Khasra numbers at Block Pobari Block YNR B11 situated at village Pobari and Nakom have been illegally mined as these lands were not allotted by the mining department for excavation of minerals.

Further, the quantity of mined minerals reported by the company to the mining department is 5226540 metric ton for the period 2016-2022 whereas the survey findings reveal that the quantity of minerals mined within the leased area allotted to the company is 7734569 metric ton for the period 2016- 2022. This shows that the company has excavated more minerals within the leased area than the reported quantity.



15. *During investigation, it is found that you, Sh. Surender Panwar, your wife Smt. Sunita Panwar, your sons namely Sh. Rahul Panwar and Lalit Panwar are shareholders in Development Strategies India Pvt. Ltd. which is part of the mining syndicate. Even in Election Affidavit filed by you i.e. Surender Panwar, for the Haryana Assembly Elections, 2019, you had declared your and your wife's shareholding in Development Strategies India Pvt. Ltd. However, during recording of statements, you tried to mislead the investigation by giving false replies to the questions pertaining to your shareholding and shareholding of your family members in M/s. Development Strategies India Pvt. Ltd.*

16. *Moreover, during statements, your wife and sons, who are also shareholders in M/s. Development Strategies India Pvt. Ltd., submitted that you look after the business transactions for your family members also and you were controlling business affairs of the other family members as well and one of the direct beneficiary of proceeds of crime generated by illegal mining through M/s Development Strategies India Pvt. Ltd. which was part of the mining syndicate engaged in illegal mining. Hence, it is clearly established that you, Mr. Surender Panwar, through M/s Development Strategies India Pvt. Ltd. were involved in illegal mining activities.*

17. *Based on material on record and investigation findings so far, it is revealed that you have received proceeds of crime to the tune of approx. Rs. 26 crores.*

18. *Further, you incorporated a company namely M/s Hanuman Infrastructure Pvt. Ltd. on 21.03.2005 and you have been the Director since inception till 12.10.2019. You resigned on 12.10.2019 and your son, Lalit Panwar has been appointed Director in M/s Hanuman Infrastructure Pvt. Ltd. on 12.10.2019.*



19. Also, you had 49% shareholding in M/s Hanuman Infrastructure Pvt. Ltd. till 31.03.2019.
20. The Shareholding pattern of Hanuman Infrastructure Pvt. Ltd. is as follows:

S.No.	Name of the Shareholder	Upto 31.03.2019	From 31.03.2020
1.	Surender Panwar	2,03,335	
2.	Rahul Panwar	3,332	3,332
3.	Lalit Panwar		2,03,335
4.	Surender Chikara	2,03,333	2,03,333

21. On analysis of bank statements of account number 1952012100000173 held with Punjab National Bank in the name of Hanuman Infrastructure Private Limited (hereinafter referred to as HIPL), it is found that HIPL has many transactions with entities/firms which are part of the syndicate involved in illegal mining in Yamuna Nagar. The details of the banking transactions with entities of the Syndicate in the bank account statement of HIPL, are tabulated as below:

Details of Account statement of HIPL (Account no. 1952012100000173) showing transactions with multiple



mining entities which are also part of G.M. Co. & Mining
Syndicate:

Name of the Entity & date of transaction	Details	Credit	Debit
7/13/2017	Delhi Royalty Company		25,00,000
5/17/2018	Delhi Royalty Company	25,00,000	
3/22/2019	Development Strategies India Pvt. Ltd.		65,00,000
3/22/2019	Development Strategies India Pvt. Ltd.		50,00,000
7/27/2017	JSM Foods Pvt. Ltd.		30,00,000
5/18/2018	JSM Foods Pvt. Ltd.	30,00,000	
7/13/2017	Mubarikpur Royalty Company		25,00,000
5/31/2018	Mubarikpur Royalty Company	25,00,000	
7/14/2015	Yamuna Infradevelopers Pvt. Ltd.	50,00,000	
6/6/2017	Yamuna Infradevelopers Pvt. Ltd.		1,40,00,000
6/7/2017	Yamuna Infradevelopers Pvt. Ltd.		10,00,000
5/21/2018	Yamuna Infradevelopers Pvt. Ltd.	1,00,00,000	
5/29/2018	Yamuna Infradevelopers Pvt. Ltd.	50,00,000	
7/14/2015	Yamuna Infradevelopers Pvt. Ltd.	50,00,000	

22. On being enquired with your sons, who are presently directors of HIPL, they submitted that all these companies are of their father's known (Known to Surender Panwar) and that these payments were done on the instructions of their father, Sh. Surender Kumar Panwar and only you deal with all the financial matters. Further, on being asked about these transactions, you stated that only after seeing his bank account, you can tell whether these transactions pertain to any loan given by him or anything else.

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23. *During investigation, it is also revealed that you and your family members had transactions with Delhi Royalty Co., Ganga Yamuna Mining Co., JSM Foods Pvt. Ltd., Mubarikpur Royalty Co., Northern Royalty Co.,. On being asked in statement u/s. 50 of PMLA on 11.03.2024, you submitted that these are unsecured loans which you and your family members had given to these mining companies without any interest and you do not have any loan agreement with them.*

24. *The above-mentioned transactions clearly depict that you were actively involved in the mining business in Yamuna Nagar and were part of the mining syndicate under which Delhi Royalty Company, JSM Foods Pvt. Ltd., Mubarikpur Royalty Company, Yamuna Infradevelopers and Routes & Journeys etc. were functioning. It also shows that you were associated with these firms and were actively involved in their business activities in the guise of unsecured loans. Further, you could not produce any documentary proof to substantiate your claim that these amounts were given as loan and not as an investment. Further, you tried to mislead the investigation by giving false and evasive answers.*

25. *Thus, you have been given ample opportunities to reveal the truth and to assist the investigation to unravel the complete modus and unearth proceeds of crime which you have generated from illegal mining activities.*

26. *There is sufficient evidence on record which clearly brings out that the above specified offence is being perpetually committed with full disregard to the process of law with an intention to launder proceeds of crime. You have actively involved yourself in acquiring Proceeds of Crime as submitted above.*



27. *You have evidence in your exclusive possession and can very well tamper with the same by abusing your power and influence.*

28. *You, Surender Panwarare likely to abuse your influence on the other key members who have made disclosure of your criminal conspiracy.*

29. *That the investigation about other properties generated out of proceeds of crime is going on and if let free, you can very well tamper with evidence regarding proceeds of crime at this crucial juncture.*

30. *That the continuous evasive replies on your part in an ongoing investigation under provisions of the Prevention of Money Laundering Act, 2002 in this Directorate has made the process of investigation arduous and time- consuming.*

31. *In view of the above and material placed on record, I have reasons to believe that you, Surender Panwarare guilty of the offence of money laundering as defined under Section 3 and punishable under Section 4 of PMLA, 2002. You are directly attempted to indulge, knowingly assisted, knowingly are a party and are actually involved in process or activities connected with the proceeds of crime and projecting it as untainted property. You have been in fact direct beneficiary of this illegal mining. Above act of your, leaves no other option but to invoke the provision of Section 19 of PMLA, 2002 for taking investigation to a logical conclusion and to unearth the further proceeds of crime.*



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32. *Your custody is required for custodial interrogation, cross examination in with other persons, for identification of Proceeds of Crime.”*

It is note-worthy that the gist of the “reasons to believe” dated 20.07.2024 is also on similar lines as that of the “grounds of arrest”.

3. CONTENTIONS

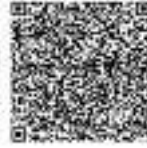
ON BEHALF OF THE PETITIONER

3.1 Learned Senior Counsel contends that petitioner was neither named in the alleged 08 FIRs on the basis of which present ECIR is registered; nor is he named in the subsequent 09th FIR No. 0021 (*ibid*).

3.2 Also contends that there was no specific role attributed to the petitioner in dealing with proceeds of crime while seeking remand by E.D before learned Special Judge.

3.3 Further contends that E.D has adopted pick-and-choose policy while arresting the petitioner in ECIR No.19, as there are various accused in the present case. However, the E.D has chosen to arrest the petitioner as well as co-accused Dilbag Singh and one Kulwinder Singh. The remaining co-accused are at large and the E.D is just after the petitioner only due to the reason that he is a sitting member of Legislative Assembly from Sonipat Constituency and the elections for the same are forthcoming; therefore the timing of arrest is nothing, but an outcome of political vendetta.

3.4 While emphasizing on the word “may” occurring in Section 19(1) of the PMLA, learned Senior counsel contends that the officer authorized under the PMLA, on the basis of “material in his possession” and “reasons to believe”



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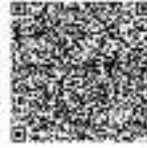
(recorded in writing) that any person is guilty of an offence punishable under PMLA, “**may**” arrest such person and shall as soon as may be, inform him the grounds for such arrest. In other words, the arrest under the PMLA is not mandatory; the word ‘**may**’ includes may not also. So, it should not be interpreted as “shall”; therefore, under the PMLA, arrest is not mandatory in every case. The arrest under the PMLA has been kept at a very high pedestal and it has to be treated as a last resort and not at the whims and fancies of E.D.

In the present case, there was no occasion for arrest of the petitioner as he was fully cooperating and appearing on each and every occasion pursuant to the summons issued under Section 50 of PMLA.

3.5 That the satisfaction of the officer, arresting the person, alleged to be guilty of an offence under Section 3, punishable under Section 4 of PMLA, should not be merely on a suspicion; rather there should be concrete evidence in the form of “reasons to believe” to justify the standard that arrestee is guilty of the offence.

3.6 Further contends that a search under Section 17 of PMLA was conducted at the residence of petitioner from 04.01.2024 to 08.01.2024 and no incriminating material was found at that time, but after 07 months, petitioner has been arrested at the very nick of Haryana Legislative Assembly elections just to restrain him from contesting the same.

3.7 Also contends that nothing incriminating has been obtained from the remand, so it shows that arrest is for some extraneous reasons. Specifically contended that petitioner ceased to be a Director of Development Strategies (India) Pvt. Ltd. (for short “DSPL”)w.e.f07.11.2013(P-8) and as such, no



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liability can be fastened upon him with regard to the affairs of said company after 07.11.2013.

3.8 Vehemently contended that whole case of the E.D is based on “illegal mining” which is not a scheduled offence under the PMLA; nor any offence under Sections 15 or 16 of Environment Protection Act, 1986 (for short “Act, 1986”) is made out against the petitioner.

3.9 Specifically contends that petitioner was interrogated constantly for 14 hours and 40 minutes, but nothing incriminating was elicited by the E.D.

3.10 Lastly contends that third application dated 01.08.2024 (P-6) was moved by E.D seeking remand of petitioner, however the same was declined, vide order 01.08.2024 (P-7) and this fact demolishes the case of E.D. Learned Special Judge observed that there has not been any extraordinary investigation after the arrest of the petitioner and detention for 09 days at a stretch which was extended for 03 days thereafter; shows that the arrest of the petitioner is actually with *malafide* intentions to ruin his prospects of contesting and winning the upcoming State Assembly Elections.

3.11 In support of the above contentions, learned Senior counsel has also relied upon the following judicial pronouncements:- ***(i) V. Senthil Balaji Versus State Represented by Deputy Director and others, 2023 SCC Online SC 934; (ii) Pankaj Bansal Versus Union of India and others, 2023 SCC Online SC 1244; (iii) Ram Kishore Versus Directorate of Enforcement, 2023 SCC Online SC 1682; (iv) Arvind Kejriwal Versus Directorate of Enforcement, 2024 INSC 512 and; (v) Vijay Madanlal Choudhary and others Versus Union of India and others, 2022 SCC Online SC 929.***

**ON BEHALF OF RESPONDENT**

4. *Per contra*, learned counsel for E.D submits that present petition is not a bail application under Section 45 of the PMLA; rather petitioner lays challenge to his arrest as well as the remand orders passed by the Special Court; therefore, this Court has very limited power of judicial review to quash arrest and remand order.

4.1 Further submits that there is sufficient material in the form of documents and statements recorded under Section 50 of the PMLA which shows the reasonable nexus between the petitioner and other co-accused companies making a syndicate, being indulged in the “illegal mining” leading to proceeds of crime.

4.2 There is sufficient compliance of Section 19 of the PMLA as there was material in possession of the E.D along with “reasons to believe” as well as “grounds of arrest”. The arrest order along with “grounds of arrest” were duly supplied to the petitioner at the time of his arrest. The material in possession was duly sent to the Adjudicating Authority within the stipulated time. The petitioner was produced before the Special Judge within 24 hours from his arrest; thus, the provisions of Section 19 of the PMLA were meticulously complied with.

4.3 Also submits that though, searches were made in January, 2024 at various places of petitioner as well as other co-accused; investigation was being carried out and when incriminating material was collected by the E.D, petitioner was arrested in the intervening night of 19/20.07.2024.



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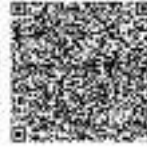
4.4 Vehemently submits that remand order cannot be interfered with unless there is violation of Section 19 of PMLA; or Article 22 of the Constitution.

4.5 While justifying the timing of arrest, it is submitted that petitioner was arrested on 20.07.2024; notification for Assembly elections in the State of Haryana was made on 01.08.2024 and present petition was filed on 20.08.2024; thus petitioner cannot take any benefit on that count.

Also submitted that prior to the declaration of legislative elections, the process for 18th Lok Sabha Elections commenced on 16.03.2024 and ended in June, 2024. If petitioner had been arrested during the said period, in that case also, he would have taken the similar argument.

4.6 Also submits that a large number of fake *e-rawana* bills were being generated by Syndicate formed by many companies on the portal of Mining Department showing purchase from other States and the electronic purchase was given to various stone crushers and screening plants. On the basis of the same, “illegal mining” was being done in large quantities from the surrounding areas of Yamuna Nagar, causing huge revenue loss to the State exchequer.

4.7 Further relied upon the NGT order dated 18.11.2022 whereby fine of Rs.2.5 crore was imposed upon DSPL for violating the provisions of Sections 7 & 15 of the Act, 1986 which is a scheduled offence under the PMLA.



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4.8 Still further submits that from the material on record and investigation done so far, it transpires that petitioner received proceeds of crime to the tune of Rs.26 crore (approximately).

4.9 Lastly submitted that as per the observations made in *Arvind Kejriwal's case (supra)*, arrest of a person can be made for preventing him from committing further offence; or for restraining him from tampering with the evidence as envisaged under Section 41(1)(ii) (a), (c), (d) and (e) of Cr.P.C. In the present case, petitioner was perpetually committing the offence of “illegal mining” in the disguise of his company DSPL and there were high chances of tampering with the evidence by the petitioner being the member of Legislative Assembly; thus, his arrest is fully justified.

4.10 In support of his contentions, learned counsel for the respondent 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) *Ram Kishore (supra)*; (vi) *Y. Balaji Versus Karthik Desari (2023) SCC Online SC 645*; (vii) *Pragyna Singh Thakur Versus State of Maharashtra, (2011) 10 SCC 445*; (viii) *Pranab Chatterjee Versus State of Bihar (1970) 3 SCC 926*; (ix) *Tarun Kumar Versus Assistant Directorate of Enforcement (SLP(Crl.) No. 9431 of 2023)*; (x) *Serious Fraud Investigation Office Versus Rahul Modi (2019) 5 SCC 266*; (xi) *State of Maharashtra Versus Tasneem Rizwan Siddiquee (2018) 9 SCC 745*; (xii) *Directorate of Enforcement Versus Sunil Godhwani 2019 SCC Online Del 11386*; (xiii) *State of Bihar Versus J.A.C. Saldanha (1980) 1 SCC 554*; (xiv) *State of Bihar Versus P.P.*



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Sharma 1992 Supp (1) SCC 222; (xv) Prakash Singh Badal Versus State of Punjab (2007) 1 SCC 1; (xvi) Monica Kumar (Dr.) Versus state of U.P. (2008) 8 SCC 781; (xvii) Umesh Kumar Versus State of A.P. (2013) 10 SCC 591; (xviii) Daxaben Versus State of Gujarat 2022 SCC Online SC 936; (xix) Ramveer Upadhyay Versus State of U.P. 2022 SCC Online SC 484; (xx) Amanatullah Khan Versus Directorate of Enforcement (Bail Appl. 795/2024); (xxi) Pavana Dibbur Versus Directorate of Enforcement 2023 LiveLaw (SC) 1021; (xxii) Directorate of Enforcement Versus Aditya Tripathi 2023 SCC Online SC 619; (xxiii) P. Rajendran Versus Directorate of Enforcement (Criminal Original Petition No. 19880/2022) Madras; (xiv) H.N.Rishbud Versus State of Delhi (1955) 1 SCR 1150; (xxv) P. Chidambaram Versus Directorate of Enforcement (2019) 9 SCC 24; (xxvi) Naser Bin Abu Bakr Yafai Versus State of Maharashtra (2022) 6 SCC 308; (xxvii) State Versus Anil Sharma (1997) 7 SCC 187; and (xxviii) State of Maharashtra Versus Ishwar PirajiKalpatri (1996) 1 SCC 542;

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

6. A bare perusal of the “grounds of arrest” as well as “reasons to believe” reveals that the entire case of E.D is based on “illegal mining” by fabricating *e-rawana* bills. In first eight FIRs, petitioner was not an accused. In 9th FIR also, he has not been named; rather E.D has tried to implicate him on the premise that he is the Director of DSPL, but there is no material to substantiate that petitioner is either the Director of said company; or a person in-charge of the affairs of the company; rather the information obtained from the website of Ministry of Corporate Affairs clearly indicates that petitioner

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ceased to be the Director of DSPL w.e.f. 07.11.2013. It is specifically observed that E.D has not placed on record any material to the contrary in this regard. As the Director Master Information (P-8) is a public document, therefore, it would be *per se* admissible, unless proved otherwise. As already observed, E.D has failed to show any material to the contrary in this regard; thus, there is no hesitation to observe that w.e.f 07.11.2013, petitioner has ceased to be the Director of DSPL.

7. Of course, the NGT had imposed a penalty of Rs.2.5 crore against DSPL, vide order dated 18.11.2022, but that will not hold the petitioner liable under the PMLA for the reasons that: -

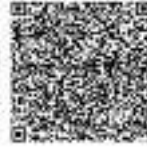
- i. As already observed, there is no material produced on record by the E.D; or disclosed in the “grounds of arrest” that petitioner is the Director or a person in-charge of the affairs of DSPL; rather the information gathered from the website of Ministry of Corporate Affairs (P-8) clearly proves that petitioner ceased to be the Director w.e.f 07.11.2013 of the said company and having no role in its affairs.
- ii. Apart that, the order of NGT was challenged before Hon’ble the Supreme Court and that has already been stayed, subject to payment of 60% of the penalty amount vide order dated 13.03.2023. For reference, the interim stay order granted by Hon’ble the Supreme Court reads as under:-

“Delay condoned.

Issue notice.

Notices would be served by all modes, including dasti.

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Tag with Civil Appeal No.319 of 2023 titled “M/s Delhi Royalty Company Vs. Union of India and ors.”

Notice is accepted on behalf of respondent No.13, who is at liberty to file a counter affidavit/reply within a period of six weeks.

In the meanwhile, subject to the appellant-M/s Development Strategies India P. Ltd. depositing 60% of the penalty amount of Rs.2.5 Crores, and M/s Mubarikpur Royalty Company depositing Rs.4 crores with the authorities within a period of six weeks’ from today, there would be a stay on the recovery of the further amount.”

- iii. Still further, Hon’ble the Supreme Court vide subsequent order dated 04.12.2023 specifically directed that no mining activities are being carried out on the site; the matter is still pending and the order reads as under:-

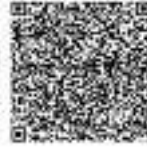
“As there is no appearance on behalf of the State of Haryana, Court notice be issued to the Standing/nominated counsel for the State, who will obtain instructions and enter appearance.

Rejoinder affidavit to the counter affidavit/reply already filed, may be filed within three weeks from today.

Steps for service of the unserved respondents will be taken within seven days from today. Notice will be served by all modes, including dasti. In addition, notice can be served on the standing/nominated counsel for the concerned department of the State.

In case deposit in terms of interim order dated 16.01.2023 is not made, the respondents/authorities will proceed to enforce and execute the impugned judgment.

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The Haryana State Pollution Control Board and the concerned authorities for the State of Haryana will carry out site inspection and ensure that no mining activities are being carried. Photographs of the site can be taken and filed. If required, satellite images will also be filed.

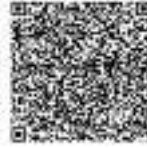
Re-list in the month of February, 2024.”

8. Although, E.D tried to justify the arrest on the premise that petitioner is a beneficiary of the syndicate running “illegal mining” as well as of G.M. Co., but again there is no material to substantiate that petitioner is having any relationship and/or concern as Director, Promoter or share-holder of the so-called G.M. Co. Even, the E.D has failed to show that such a company is in existence and/or registered with the Registrar of Companies; or there is any such legal entity in operation under any law?

9. Primarily, as per the “grounds of arrest”, the allegation(s) against the petitioner is/are of “illegal mining” and/or supplying the “illegally mined” material vide fake *e-rawana* bills; therefore, the foundation of case is “illegal mining” and rest of the allegations in all the nine FIRs are peripheral, relatable to “illegal mining”. Of course, “illegal mining” is an offence under Section 21 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short “MMDR Act”), but neither “illegal mining”; nor the MMDR Act has been included under the Schedule attached with the PMLA. In other words, “illegal mining” is not a scheduled offence under the PMLA; hence, *prima facie*, petitioner cannot be prosecuted on that count.

10. As per the case of E.D itself, petitioner was issued notice/summons under Section 50 of PMLA and in pursuance thereof, he duly appeared in the

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Zonal Office of E.D at Gurugram on 19.07.2024 at 11:00 a.m and he was constantly interrogated uptill 1:40 a.m (20.07.2024) for 14 hours and 40 minutes, which is not heroic on the part of E.D; rather it is against the dignity of a human being. For future, in view of the mandate under Article 21 of the Constitution, this Court is observing that Directorate of Enforcement shall take remedial measures and sensitize the officers to follow some reasonable time limit for investigation in one go against the suspect(s) in such like cases. To be precise, , it would be appreciated if some necessary mechanism is put in place for fair investigation of the accused as per basic human rights laid down by the United Nations Organization (UNO), instead of meting out unnecessary harassment, for such a longer duration at one stretch for a given day.

11. Also noteworthy that two co-accused (Dilbag Singh and Kulwinder Singh), who were specifically named in FIR No.21 dated 19.01.2024, challenged their order of arrest in the High Court and a Coordinate Bench of this Court quashed the same, vide order dated 08.02.2024 passed in CRM-M-2191 of 2024, being in violation of the provisions of Section 19 of the PMLA.

Aggrieved against the above order, E.D approached Hon'ble the Supreme Court, but remained unsuccessful as the SLP was withdrawn by them on 01.08.2024.

12. As far as the allegation for violation of the provisions of Sections 15 and 16 of the Act, 1986 is concerned, the same would also be not sustainable for the reasons that Paragraph No.25 of Schedule attached under PMLA has already been deleted by way of an Amendment dated 11.08.2023 (Act No.18 of 2023) and which came into force w.e.f 13.08.2024 (vide Gazette notification



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dated 13.08.2024). For reference, Paragraph No.25 of the Schedule under PMLA, Amendment dated 11.08.2023 (Act No.18 of 2023); and the Notification dated 13.08.2024 are extracted here under as A, B & C, respectively:-

(A)

PARAGRAPH 25 <i>Offences under the Environment Protection Act, 1986</i> <i>(29 of 1986)</i>	
<i>Section</i>	<i>Description of offence</i>
<i>15 read with Section 7</i>	<i>Penalty for discharging environmental pollutants etc., in excess of prescribed standards.</i>
<i>15 read with Section 8</i>	<i>Penalty for handling hazardous substances without complying with procedural safeguards.”</i>

(B)

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 11th, August, 2023/SRAVANA 20, 1945 (Saka)

The following Act of Parliament received the assent of the President on the 11th August, 2023 and is hereby published for general information:-

THE JAN VISHWAS (AMENDMENT OF PROVISIONS)

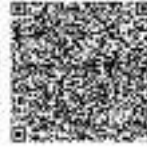
ACT, 2023No. 18 of 2023

(11thAugust, 2023)

An Act to amend certain enactments for decriminalizing and rationalizing offences to further enhance trust-based governance for ease of living and doing business.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

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1. *(1) This Act may be called the Jan Vishwas (Amendment of Provisions) Act, 2023.*
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for amendments relating to different enactments mentioned in the Schedule.
2. *The enactments mentioned in column (4) of the Schedule are hereby amended to the extent and in the manner mentioned in column (5) thereof.*
3. *The fines and penalties provided under various provisions in the enactments mentioned in the Schedule shall be increased by ten per cent. of the minimum amount of fine or penalty, as the case may be, prescribed therefor, after the expiry of every three years from the date of commencement of this Act.*
4. *The amendment or repeal by this Act of any enactment shall not affect any other enactment in which the amended or repealed enactment has been applied, incorporated or referred to; and this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred or any remedy or proceeding in respect thereof, or any release or discharge of, or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing; nor shall this Act affect any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure, or existing usage, custom, privilege, restriction, exemption, office or appointment, notwithstanding that the same respectively may have been in any manner affirmed, or recognized or derived by, in or from any enactment hereby amended or repealed; nor shall the amendment or repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not now existing or in force.*



THE SCHEDULE
(See section 2)

Sr. No.	Year	No.	Short title	Amendments
1 to 33	-----	-----	-----	-----
34	2003	15	The Prevention of Money Laundering Act, 2002	IN THE SCHEDULE, in PART A— (i) to (ii)..... (iii) PARAGRAPH 25 shall be omitted

(C)

“MINISTRY OF FINANCE
(Department of Revenue)
NOTIFICATION

New Delhi, the 13th August, 2024

S.O. 3453(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Jan Vishwas (Amendment of Provisions) Act, 2023 (18 of 2023), hereinafter referred to as the said Act, the Central Government hereby appoints the 13th day of August, 2024 as the date on which the amendments to the Prevention of Money laundering Act, 2002 (15 of 2003) as specified in column (5) against serial number 34 of the Schedule to the said Act, shall come into force.”

12.1 Thus, there remains no doubt that Paragraph No.25 of the Schedule under the PMLA which relates to the offences under the Act of 1986, is no longer in existence; hence, prosecution on that count also would be unwarranted.

13. In view of the above, as on today, *prima facie*, there is no material with the E.D to substantiate that petitioner has directly or indirectly, indulged in any process or activity connected with the proceeds of crime, in any manner whatsoever and/or projected the same as untainted by any means; hence there



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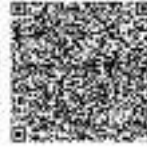
was/is no reason to believe; nor any ground of arrest is made out against him on the premise that petitioner is guilty of an offence under the PMLA.

14. No doubt, learned counsel for E.D raised a plea that once the initial arrest has been sanctified by the judicial orders dated 20.07.2024 & 29.07.2024 (P-2 & P-4, respectively), petitioner cannot challenge the legality of the arrest later on. However, the contention is liable to be rejected in view of the old legal maxim, i.e. “*Sublato Fundamento Cadit Opus*”; which means that once foundation is removed, the superstructure will also fall.

15. In the present case, initial arrest as well as grounds of arrest have been found to be unsustainable in law; hence in view of the law laid down by Hon’ble the Supreme Court in ***Chairman-cum-Managing Director Coal India Limited and others Versus Ananta Saha and others (2011) 5 SCC 142***, impugned orders passed by learned Special Judge shall not validate the arrest of the petitioner. For reference, the relevant paragraphs 32 & 33 thereof are reproduced as under:-

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact situation, the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

33. In *Badrinath vs. Govt. of T.N* this Court observed that once the basis of a proceedings is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders.”



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15.1 In such a scenario, the argument raised on behalf of the E.D is not convincing; hence rejected.

16. Although, aftermath of the irresistible conclusion recorded here-in-above, judicial precedents cited by both sides would be of not much relevance; but for their satisfaction, the same are discussed as under:-

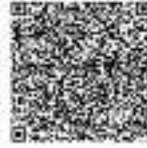
JUDICIAL PRONOUNCEMENTS FROM PETITIONER SIDE:-

17. Learned Senior counsel referred to *Senthil Balaji; Pankaj Bansal; Ram Kishore; Arvind Kejriwal and Vijay Madanlal Chouhdary's cases (supra)* in which it was held 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". The provisions of Section 19 of PMLA have to be duly complied with. The Court while granting remand under Section 167 Cr.P.C has to see if there is meticulous compliance of the provisions of Section 19 (*ibid*). The non-compliance thereof would ensure to the benefit of the person arrested.

JUDICIAL PRONOUNCEMENTS FROM RESPONDENT SIDE:-

17.1 Learned counsel for E.D while citing various judicial precedents tried to justify the arrest of petitioner, but the same are not helpful for the following reasons:-

(i) 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.

(ii) ***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.

(iii) 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”.

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

(v) In ***Ram Kishore (supra)***; while relying upon ***Pankaj Bansal and Vijay Madanlal Choudhary’s cases (supra)***, it was held that “as soon as may be” contained in Section 19 of PMLA is required to be construed as “as early as possible without avoidable



delay” or “within reasonably convenient or “reasonably requisite” period of time.

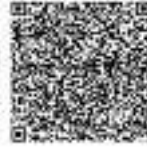
(vi) In *Y. Balaji’s case (ibid)*, the term “*money laundering*” occurring in Section 3 of PMLA was explained. However, in the instant case, E.D has not produced any material to show that petitioner was Director or associated with either DSPL or G.M. Co. in any manner.

(vii) In *Pragyna Singh Thakur’s case (supra)*, it was held that an accused may be entitled to be set at liberty if it is shown that at relevant point of time, he was illegally detained by the Police, but such a right is not available after the Magistrate remands the accused to custody. Right under Article 22(2) of the Constitution is available only against illegal detention by the police. It is not available against custody in jail of a person pursuant to a judicial order. Article 22(2) does not operate against the judicial order.

(viii) In *Pranab Chatterjee’s case (supra)*, again the controversy pertained to illegal detention and the issue of remand by the Magistrate.

(ix) In *Tarun Kumar’s case(supra)*, it was held that statements of witnesses/accused are admissible in evidence in view of Section 50 PMLA and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering.

(x) *Rahul Modi’s case (supra)*,lays down that infirmity in the initial detention of accused cannot invalidate his subsequent detention. The case in hand does not entail this issue for the reason that as on today, petitioner is not found indulged in any illegal activity under the PMLA.



(xi) In ***Tasneem Rizwan Siddiquee's case (supra)***, it was held that police custody in pursuance to judicial order cannot be challenged by way of petition of *habeas corpus*. Here, the issue is entirely different as this is not a *habeas corpus* petition.

(xii) In ***Sunil Godhwani's case (supra)***, the order passed by Special Court refusing custody of accused to E.D was challenged before Delhi High Court. The Court, on facts of the case, dealt with the same and allowed the application of E.D.

(xiii) In ***J.A.C. Saldanha; P.P. Sharma; Ishwar Piraji Kalpatri; Prakash Singh Badal; Monica Kumar (Dr.); Umesh Kumar; Daxaben and; Rameer Upadhyay's cases (supra)***, it was held that if an information is lodged at the Police Station and an offence is registered, the *mala fide* of the informant would be of secondary importance if the investigation produces unimpeachable evidence disclosing the offence.

(xiv) In ***Amanatullah Khan's case (supra)***, Delhi High Court held that an MLA or a public figure is not above the law of the land. There is no quarrel with this proposition.

(xv) In ***Pavana Dibbur; Vijay Madan Lal Choudhary; Aditya Tripathi; P. Rajendran's cases (supra)***, it was held that even if a person is not named in the FIR forming scheduled offence, that will not affect proceedings against him under the PMLA. The proposition of law is not disputed by any one.

(xvi) ***H.N. Rishbud's case; P. Chidambaram and Naser Bin Abu Bakr Yafai's cases (supra)*** were cited to emphasize the fact that arrest is part of the investigation. In other words, arrest has to be mandatorily made for doing proper investigation. However, the issue with regard to “need and necessity to arrest” has been referred to a larger Bench by Hon’ble the Supreme Court in ***Arvind Kejriwal's case (supra)***.



(xvii) In *Anil Sharma's case (supra)*, Hon'ble the Supreme Court agreed with the submission of CBI that custodial interrogation is qualitatively more elucidation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. However, in the present case, despite custodial interrogation of the petitioner, no incriminating material has been recovered, much less to say "the qualitative material".

As already observed, these judicial precedents are distinguishable on facts; hence, not applicable; as *prima facie*, the petitioner has not been found involved in any illegal activity, in any manner whatsoever, attracting the offence of money laundering under PMLA.

18. In view of the above, there is no option, except to allow the petition.

19. Ordered accordingly.

20. Consequently, arrest order as well as "grounds of arrest" dated 20.07.2024 issued by E.D; remand orders dated 20.07.2024; & 29.07.2024 (P-2 & P-4, respectively), passed by learned Special Judge, Ambala against the petitioner, are hereby quashed and set aside being indefensible in law.

21. Resultantly, the petitioner be released forthwith, if not required in any other case.

22. Needless to say that observations, made here-in-above, be not construed as an expression of opinion on merits of the complaint filed by the E.D under Section 44 read with Section 45 of the PMLA before learned Special Court, Ambala.

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23. A copy of this order be sent by the Registry to learned Special Judge, Ambala and Superintendent, Central Jail, Ambala for information and compliance.

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

23.09.2024

SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable: Yes/No