



2024:DHC:9349



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on : 15<sup>th</sup> October 2024***

***Pronounced on: 2<sup>nd</sup> December 2024***

+ **W.P.(CRL) 2516/2024**

**ARVIND DHAM**

**.....Petitioner**

Through: Mr. Vikram Chaudhari and Mr. Pramod Kumar Dubey, Sr. Advs. with Mr. Avi Singh, Mr. Shambhu K. Thakur, Mr. Sumer Singh Boparai, Mr. Ayush Puri, Ms. Arveen Sekhon, Mr. Shikhar Garg, Mr. Ashutosh Jain, Mr. Vinayak Bhandari, Mr. Sirhaan Seth, Mr. Shobh Nath Maurya, Mr. Rishabh Basra, Mr. Vishal Singh, Mr. Sultan Jafri, Mr. Sidhant Saraswat, Mr. Ayush Sachan, Mr. Vaibhav Kapur, Ms. Muskan Sharma and Mr. Varun Bhati, Advocates.

versus

**UNION OF INDIA & ORS.**

**.....Respondents**

Through: Mr. Anurag Ahluwalia CGSC Mr. Tarveen Singh Nanda GP Ms. Hridyanshi Sharma Adv. for Respondent No.1/Union of India.

Mr. Zoheb Hossain, Spl. Counsel for ED, Mr. Vivek Gurnani, Panel Counsel for ED, and Mr. Pranjal Tripathi, Advocate with Mr. Rakesh Kumar, IO for ED.

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**W.P.(CRL) 2516/2024**

**Page 1 of 62**



2024:DHC:9349



**CORAM:**  
**HON'BLE MR. JUSTICE ANISH DAYAL**

**JUDGMENT**

**INDEX**

|                                                  |    |
|--------------------------------------------------|----|
| I. Proceedings before this Court.....            | 3  |
| II. Factual Background.....                      | 5  |
| III. Relevant Statutory Provisions .....         | 12 |
| IV. Judicial Precedents Cited.....               | 15 |
| V. Submissions on behalf of Petitioner .....     | 16 |
| VI. Submissions on behalf of Respondent .....    | 21 |
| VII. Analysis .....                              | 26 |
| [VII.A] Relevant Extracts from Case Laws.....    | 27 |
| [VII.A.1] Grounds of Arrest.....                 | 27 |
| [VII.A.2] Reasons to Believe .....               | 34 |
| [VII.A.3] Judicial Review .....                  | 36 |
| [VII.A.4] No merits review .....                 | 40 |
| [VII.A.5] Inclusion of exculpatory material..... | 41 |
| [VII.A.6] Need and necessity to arrest .....     | 42 |
| [VII.B] Principles Culled Out.....               | 44 |
| [VII.B.1] On Grounds of Arrest .....             | 44 |



2024:DHC:9349



|                                                           |    |
|-----------------------------------------------------------|----|
| [VII.B.2] Information to the Accused and Compliance ..... | 45 |
| [VII.B.3] Reasons to Believe.....                         | 46 |
| [VII.B.4] Need and Necessity to Arrest .....              | 47 |
| [VII.B.5] Relevance of Exculpatory Material .....         | 48 |
| [VII.B.6] Judicial Review.....                            | 48 |
| [VII.B.7] Non-Cooperation of the Petitioner .....         | 49 |
| [VII.B.8] Remand Orders .....                             | 49 |
| [VII.C] Assessment on Facts .....                         | 49 |
| [VII.C.1] Grounds of Arrest .....                         | 50 |
| [VII.C.2] The ED Investigation.....                       | 53 |
| [VII.C.3] Grounds of Arrest and the Remand Order.....     | 56 |
| [VII.C.4] Exclusion of Exculpatory Material.....          | 57 |
| [VII.C.5] Non-Cooperation of Petitioner .....             | 59 |
| [VII.C.6] Need and Necessity to Arrest .....              | 60 |
| [VII.C.7] No Merits Review.....                           | 60 |
| VIII. Conclusion.....                                     | 61 |

**ANISH DAYAL, J.**

**I. PROCEEDINGS BEFORE THIS COURT**

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10:50:53

**W.P.(CRL) 2516/2024**

**Page 3 of 62**



2024:DHC:9349



1. This petition seeks quashing of Arrest Memo and Arrest Order for arrest of petitioner on 9<sup>th</sup> July 2024 and consequent remand orders.
2. The challenge pivots on alleged violation of Section 19 of Prevention of Money Laundering Act, 2002 (“PMLA”) and of constitutional safeguards against arbitrary detention.
3. Petitioner contends *inter alia* that exculpatory material, which exonerates petitioner, was not considered in the “*grounds of arrest*”; petitioner was not provided with “*reasons to believe*”, grounds of arrest erroneously rely on “*directions to investigate*” *vide* Supreme Court’s order dated 27<sup>th</sup> February 2024 in a public interest litigation (“PIL”) being *Jaskaran Singh Chawla v. Union of India & Ors.* W.P. (Crl.) 246/2022; the arrest could not be justified on the basis of lack of cooperation by petitioner which was violative of constitutional safeguard against self-incrimination; and other related grounds.
4. To provide a brief overview of proceedings before the Court - notice, in the present petition, was issued on 20<sup>th</sup> August 2024 and counsel for respondent was directed to file the reply. On the next date of hearing, opening arguments were addressed by Senior Counsel for petitioner. Based on the reply filed by respondent, time was sought to file the rejoinder. On the next date, Senior Counsel for petitioner handed up a detailed list of dates, a note of arguments, and compilation of judgements relied upon; further arguments were addressed by Senior Counsel for petitioner on two further dates; subsequently, arguments were addressed by Special Counsel for respondent who also handed up a note of arguments; on the next date, counsel for respondent handed up another note and a compilation of judgements. Yet another compilation of judgements was handed by Senior Counsel for petitioner;



2024:DHC:9349



respondent's counsel continued arguments; thereafter final arguments were heard from both sides and judgement was reserved.

## II. FACTUAL BACKGROUND

5. Mr. Vikram Chaudhary, Senior Counsel for the petitioner, has presented a sequence of dates and events which, as per petitioner, would itself bear out that the petitioner's arrest was illegal.

6. The petitioner is a 63-year-old former promoter of M/s Amtek Auto Ltd. ("AAL") which, over a period of time, burgeoned into various subsidiary and sister companies, that are broadly referred to as the 'Amtek Group'. Post global slowdown in 2008, Amtek faced liquidity constraints, as per the petitioner, leading to delay in meeting loan payments and commitments to interest. On 15<sup>th</sup> March 2016, ACI Ltd. ("ACIL") was declared a Non-Performing Account ("NPA") by IDBI Bank (*a financial institution*). Subsequently in 2018, the Bank of Maharashtra also declared it is an NPA. In the meantime, the Corporate Insolvency Resolution Proceedings ("CIRP") was initiated against AAL and other associate companies in 2017-2018. ACIL, petitioner, and other entities were declared 'wilful defaulter' by IDBI Bank on 25<sup>th</sup> July 2018, which was subsequently stayed by the Bombay High Court by order dated 24<sup>th</sup> October 2018 in W.P. 3656/2018.

7. A preliminary Forensic Audit Report ("FAR") was prepared by M/s M.K. Agarwal and Co. ("MKA") on 30<sup>th</sup> July 2018. On 17<sup>th</sup> September 2019, by a letter, the Forensic Auditor clarified that no angle of fraud was discovered. Meanwhile, declaration of 'wilful defaulter' by Bank of Maharashtra was also stayed by the Delhi High Court in W.P.(C) 10981/2019.



2024:DHC:9349



8. An FAR was conducted in 2020 for AAL by M/s. KG Somani and Co. (“KGS”) and no finding of ‘*fraud*’ was reported. Similar was the case for Castex Technologies Ltd (“Castex”).
9. Resolution plans under the CIRP were approved of AAL and other sister companies including Castex and AGRL. ACIL was declared as a ‘*fraud account*’ by IDBI in 2021 but FAR for Metalyst Forging Ltd. (“MFL”) also did not report any finding of fraud by the auditor.
10. On 21<sup>st</sup> December 2022, a First Information Report (“FIR”) bearing RC2232022A0009 was registered by the Central Bureau of Investigation (“CBI”) against ACIL on IDBI’s complaint under sections 420, 406, 468, and 120B Indian Penal Code, 1860 (“IPC”) and Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (“PC Act”) where the petitioner was arraigned as an accused. On 29<sup>th</sup> December 2022, another FIR being RC2202022E0019 was registered by CBI against ACIL and AAL on the complaint of Bank of Maharashtra under Sections 420, 409, and 120B IPC and Section 7(c) of the PC Act; petitioner was arraigned as an accused.
11. Consequently, on the basis of these FIRs registered by the CBI, the Directorate of Enforcement (“ED”) registered two Enforcement Case Information Report (“ECIR”) being DLZO-1/24/2023 and DLZO-1/27/2023 on 21<sup>st</sup> March 2023.
12. Subsequently, on 8<sup>th</sup> May 2023, this Court set aside the ‘*fraud declaration*’ made by IDBI in W.P.(C) 1153/2023. Resolution plan of ACIL was approved by the NCLT on 22<sup>nd</sup> December 2023. The fraud declaration was rescinded and RBI de-classified the account, which was listed as ‘*fraud*’ upon directions of the Delhi High Court in January 2024.



2024:DHC:9349



13. A PIL being W.P. (Crl.) 246/2022 was filed before the Supreme Court, directing ED to carry out the investigation concerning the Amtek Group. Per directions issued on 15<sup>th</sup> March 2024, ECIRs were assigned to Gurugram Zonal Office and renumbered as ECIRs bearing nos. GNZO/13/2024 and ECIR GNZO/14/2024.

14. ED made a request to CBI seeking material i.e. chargesheet and relied upon documents in the FIR, which was rejected by the CBI by letter dated 3<sup>rd</sup> May 2024. An application was moved by the ED before Special Judge (PMLA) on 15<sup>th</sup> May 2024, seeking copy of FIR along with chargesheet and other relevant documents. On 26<sup>th</sup> July 2024, Special Judge (PMLA) rejected the application by the ED seeking copy of FIR, chargesheet, and relied upon documents.

15. Petitioner appeared before the ED, pursuant to summons under Section 50 PMLA, on 19<sup>th</sup> June 2024 and his statement was recorded. On 20<sup>th</sup> June 2024, ED carried out search and seizure proceedings at petitioner's residence and statement was recorded under Section 17 PMLA. Petitioner again appeared on 5<sup>th</sup> July 2024 pursuant to summons; he was then asked to appear on 9<sup>th</sup> July 2024, on which day he was arrested. The Arrest Order dated 09<sup>th</sup> July 2024 is reproduced as under:

2024:DHC:9349



F. No. ECIR/GNZO/14/2024

Date: 09.07 2024

ARREST ORDER

WHEREAS, I, Rakesh Kumar, Assistant Director, Directorate of Enforcement, have reasons to believe that Mr. Arvind Dham S/o Sh. Walaiti Lal Dham, aged 64 years, resident of Farm House No. 41, Prakrati Marg, Sultanpur, New Delhi 110030 has been guilty of an offence punishable under the provisions of The Prevention of Money Laundering Act, 2002 (15 of 2003);

Now, therefore, in exercise of the powers conferred on me under Sub-section (1) of Section 19 of The Prevention of Money-Laundering Act, 2002 (15 of 2003), I hereby arrest the said Mr. Arvind Dham at 11:38 PM on 09.07.2024 at Directorate of Enforcement, Gurugram Zonal Office, 22, The Green, Rajokri, New Delhi - 110038. He has been informed of the grounds for such arrest.

Dated at New Delhi on this 9th day of July, Two thousand Twenty-Four.



Assistant Director / Assistant Officer  
Rakesh Kumar  
सहायक निदेशक/अधीनस्थ अधिकारी  
एन एफ ई आर/ Directorate of Enforcement  
श्रीलंका/ Ministry of Finance  
भारत सरकार/ Govt. of India  
नई दिल्ली/ New Delhi

To:

Mr. Arvind Dham S/o Sh. Walaiti Lal Dham.  
R/o: Farm House No. 41, Prakrati Marg,  
Sultanpur, New Delhi 110030.

Signature of person arrested



**16.** Ground of arrest were served to the petitioner on 09<sup>th</sup> July 2024; the portion highlighting the role of the petitioner as well as conclusions arrived at, are extracted as under for ready reference:



2024:DHC:9349



**33. ROLE OF ARVIND DHAM IN MONEY LAUNDERING UNDER PMLA**

a. That 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.**



You have evidence in your exclusive possession and can very well tamper with the same by planting forged documents in your favor as

evidence from statement of the employees, dummy directors by abusing your influence as the promoter of Amtek group of companies.

c. That after the IBC proceedings have commenced, you have started to sell many properties beneficially held by you and your family members, with an intention to frustrate the proceedings under PMLA and under IBC.

d. You are likely to abuse your influence on the other parties such as ex-employees who have made disclosure of your criminal conspiracy.

e. 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.

f. That the continuous impediment of investigation on your part by tendering evasive replies in 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.

**CONCLUSION**

34. You have been given ample opportunities to reveal the truth and to co-operate with the investigation to unravel the complete modus and unearth proceeds of crime. You have not revealed that several assets held as proceeds of crime were transferred to your relatives and associates. This shows that you have made deliberate and conscious

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**W.P.(CRL) 2516/2024**

**Page 9 of 62**



2024:DHC:9349



attempts to frustrate the proceedings of investigation under the PMLA, 2002.

35. Analysis of material evidences in possession gathered so far and statement of various key and related persons recorded under Section 50 of PMLA, 2002, clearly establish that you are guilty of offence of



money laundering as defined under Section 3 of PMLA, 2002 punishable under Section 4 of PMLA, 2002 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:

- Deliberate Non-Compliance to terms of loans and diverting the same through criminal conspiracy.
- Knowingly siphoning off the Proceeds of Crime in the form of Investments in sister concerns, Loans and advances for acquisition of the property from Proceeds of Crime and other purposes.
- Deliberate alienation of property to known associates/family members to frustrate PMLA proceedings and evade the insolvency proceedings.
- Possession of proceeds of crime in the form of commercial, residential real estate properties

36. Thus, in view of the above and material in possession, I have reasons to believe that you, Arvind Dham have committed the offence of money laundering as defined under section 3 of the PMLA, 2002 which is punishable under section 4 of the PMLA 2002 and therefore being arrested under section 19 of the PMLA, 2002. A copy of this grounds of arrest is being supplied to you in compliance of section 19(1) of the PMLA, 2002 in addition to being informed about the grounds of your arrest.

*Read & seen in my presence*



*W1* *W2* *Keng*

*9/7/24*

*Rakesh Kumar*  
08.07.2024  
रक्षित कुमार  
Rakesh Kumar  
सहायक निदेशक/Assistant Director  
वित्त विभाग/Directorate of Enforcement  
वित्त विभाग/Ministry of Finance  
नयाँ दिल्ली/Govt. of India  
नई दिल्ली/New Delhi

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W.P.(CRL) 2516/2024

Page 10 of 62



2024:DHC:9349



17. On 10<sup>th</sup> July 2024 petitioner was remanded to ED custody for 7 days. Further orders of remand were passed on 17<sup>th</sup> July 2024, 24<sup>th</sup> July 2024, and 7<sup>th</sup> August 2024.

18. On coming to know of the PIL and orders passed by the Supreme Court in ***Jaskaran Singh Chawla*** (*supra*), petitioner filed an intervention application and a writ petition challenging the arrest. On 13<sup>th</sup> August 2024, the Supreme Court directed that petitioner may approach this Court, further clarifying that the court had only directed an investigation in the matter on 27<sup>th</sup> February 2024 and not arrest. The Supreme Court in ***Jaskaran Singh Chawla*** (*supra*) further observed as under:

*“4. Insofar as the observations made under the grounds of arrest are concerned, we clarify that, what was directed vide the order of this Court dated 27.02.2024 was only an investigation in the matter and not arrest.*

...

*6. We therefore clarify that if any petition is filed by the petitioner herein before the High Court, the same would be considered on its own merits, without being influenced by either the order of this Court dated 27.02.2024 or the observations made in paragraph 19 of the ground of arrest with respect to directions of this Court.*

*7. The Court which would be seized of the matter is always entitled to look into the facts and circumstances of the case and consider whether there was in fact a violation of the provisions of Section 19(1) of the Prevention of Money Laundering Act.”*

(emphasis added)



2024:DHC:9349



19. Supreme Court disposed of W.P. (Crl.) 246/2022 on 2<sup>nd</sup> September 2024; on 5<sup>th</sup> September 2024, prosecution's complaint was filed in the matter, petitioner being arraigned as accused no.1.

### III. RELEVANT STATUTORY PROVISIONS

20. The provisions which are relevant to the assessment and as highlighted by the counsels for the parties are as follows:

#### 20.1 Section 19, PMLA:

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

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

*(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a <sup>76</sup>[Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:*

*Provided that the period of twenty-four hours shall exclude the time necessary for the journey*



2024:DHC:9349



*from the place of arrest to the <sup>77</sup>[Special Court or] Magistrate's Court.”*

(emphasis added)

**20.2** Rule 2(g) of the Prevention of Money-Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005 (“**Arrest Rules**”):

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

**20.3** Rule 2(h), Arrest Rules:

*“(h) “order” means the order of arrest of a person and includes the grounds for such arrest under sub-section (1) of Section 19 of the Act;”*

**20.4** Rule 3, Arrest Rules:

***“3. Manner of forwarding a copy of the order of arrest and the material to the Adjudicating Authority.—***

*(1) The Arresting Officer shall prepare an index of the copy of the order and the material in possession and sign each page to such index of the copy of the order and the material and shall also write a letter while forwarding such index, order and the material to the Adjudicating Authority in a sealed envelope.*

*(2) The Arresting Officer shall place an acknowledgement slip in Form-I appended to these rules inside the envelope before sealing it.*

*(3) The Arresting Officer shall indicate a reference number and date of despatch on the sealed envelope.*



2024:DHC:9349



(4) *The sealed envelope shall be marked “Confidential” and “To be opened by the addressee only” the complete address of the Adjudicating Authority including his name shall be mentioned on the sealed envelope with the official seal.*

(5) *The Arresting Officer shall place the sealed envelope inside an outer envelope, along with an acknowledgement slip in Form-II appended to these rules.*

(6) *The outer envelope shall be sealed and complete address of the Adjudicating Authority shall be mentioned on the sealed outer envelope.*

(7) *The Arresting Officer shall maintain registers and other records such as acknowledgement slip register, dak register for the purposes of this rule and shall ensure that necessary entries are made in the register immediately as soon the copy of order and the material are forwarded to the Adjudicating Authority.”*

## **20.5 Rule 4, Arrest Rules:**

***“4. Acknowledgement of receipt of the copy of the order of arrest and the material by the Adjudicating Authority.—***

*(1) On receipt of the outer sealed envelope along with Form-II, the Adjudicating Authority or in his absence, the designated officer of the office of Adjudicating Authority shall forward Form-II duly filled in, signed and his name legibly written below his signature. The seal of the office of the Adjudicating Authority shall be affixed before forwarding the Form-II to the Arresting Officer as a token of receipt of the sealed envelope.*

*(2) The Adjudicating Authority shall, on opening of the sealed envelope, forward Form-I duly filled in, signed and his name legibly written below his signature. The seal of the office of the Adjudicating Authority shall be affixed before*



2024:DHC:9349



*forwarding the Form-I to the Arresting Officer as a token of receipt of the copy of order of the arrest and the material.*

*(3) The Adjudicating Authority shall maintain registers and other records such as acknowledgement slip register, dak register, and register showing details of receipt of the copy of the order of the arrest along with the material for the purposes of this rule and shall ensure that necessary entries are made in the registers immediately on receipt of such order and the material.”*

#### **IV. JUDICIAL PRECEDENTS CITED**

**21.** Principal case laws cited and relied upon by the Senior Counsel for petitioner are as follows:

- i. ***Vijay Madan Lal Chaudhary v. Union of India*** 2022 SCC OnLine SC 929;
- ii. ***Prem Prakash v Union of India***, 2024 INSC 637;
- iii. ***Manish Sisodia v. Directorate of Enforcement*** 2024 SCC OnLine SC 1920;
- iv. ***Arvind Kejriwal v. Directorate of Enforcement*** 2024 INSC 512;
- v. ***Arnesh Kumar v. State of Bihar*** (2014) 8 SCC 273;
- vi. ***Prabir Purkayastha v. State*** 2024 INSC 414;
- vii. ***Pankaj Bansal v Union of India*** 2023 SCC OnLine SC 1244;
- viii. ***V. Senthil Balaji v. State*** 2023 SCC OnLine SC 934;
- ix. ***Prakash Industries Ltd. Union of India*** 2023 SCC OnLine Del 336;



2024:DHC:9349



- x. ***K. Govindaraj v. Union of India*** 2024 SCC OnLine Mad 3500.

**22.** Respondent's counsel, in addition to the cases already cited by the petitioner, relied upon the following judgements:

- i. ***State of Orissa v. Debendra Nath Padhi*** (2005) 1 SCC 568;
- ii. ***H. N. Rishbud v. State of Delhi***, (1955) 1 SCR 1150;
- iii. ***State Bank of India v. Rajesh Aggarwal & Ors.***, (2023) 6 SCC 1;
- iv. ***Ram Narain Popli v CBI***, AIR 2003 SC 2748
- v. ***P Chidambaram v Directorate of Enforcement***, (2019) 9 SCC 24;
- vi. ***Naser Bin Abu Bakr Yafai v. State of Maharashtra***, (2022) 6 SCC 308.

**V. SUBMISSIONS ON BEHALF OF PETITIONER**

**23.** Submissions, by Senior Counsel for petitioner, were on various elements of arrest under Section 19 PMLA, which empowers the agencies to arrest. These elements *inter alia* are:

- i. The material in possession;
- ii. Investigating officer has reasons to believe, to be recorded in writing;
- iii. That the accused person is guilty of an offence punishable under PMLA; then
- iv. The accused person is promptly informed about the grounds of arrest; and



2024:DHC:9349



- v. Immediately after arrest of the accused person, a copy of the arrest order, along with the material in possession is forwarded to the Adjudicating Authority (“AA”).

**24.** The form and manner of forwarding copy of order of arrest is delineated in Rule 2, 3 and 4 of the Arrest Rules. Essentially the ‘*material*’ means any information or material in possession of the agency; ‘*order*’ means the arrest order including the grounds of arrest (*formulated under Form III*); an index is to be prepared of the order and the material in possession with endorsements on each page along with a covering letter which is to be forwarded to the AA; an acknowledgement slip in Form I; the sealed envelope inside an outer envelope along with the acknowledgement slip in Form II.; the AA shall acknowledge receipt in Form II and send it back; AA shall forward Form I which will be filled in, signed, and sealed.

**25.** Senior Counsel for petitioner traversed the evolution of law regarding Section 19 PMLA by the Supreme Court, through the various decisions listed above in paragraph 21.

**26.** Relying on the July 2022 decision in *Vijay Madanlal Chaudhry* (*supra*), particularly paragraphs 322 and 325, it was submitted that Section 19, PMLA provides discretion to arrest a person and there are inbuilt safeguards such as recording of reasons to believe the involvement of the person in the offence, recording in writing of grounds of arrest, and information to the person and then to the AA. This was to ensure that the authorised officers do not act arbitrarily, but are accountable for their judgment, not necessarily to arrest. If found vexatious, officers can be proceeded with and punishment can be



2024:DHC:9349



inflicted under Section 52 of the PMLA. Arrest must be made if there was ‘*necessity*’ to arrest.

27. Relying on paragraphs 21, 28, and 39 of *Pankaj Bansal* (*supra*), an October 2023 decision of the Supreme Court, it was submitted that a mandate was introduced to supply a copy of written grounds of arrest to arrested person as a matter of course and without exception. Also, failure of the accused to respond to questions put to them by ED, would not be sufficient in itself for the IO to opine that they were liable to be arrested since the provision requires reasons to believe that they were guilty and mere non-cooperation would not be enough.

28. In the May 2024 decision of *Prabir Purkayastha* (*supra*), particularly paras 29, 46 and 48, the Supreme Court adverted to Article 22 (1) and 22 (5) of the Constitution of India, 1950 noting the *pari materia* provisions under Preventive Detention Laws endorsing the requirement to communicate the grounds of arrest to be conveyed to accused, in writing, expeditiously.

29. In the July 2024 decision of *Arvind Kejriwal* (*supra*), relying on paras 36, 41, 44, 47, 56, 58, 67, 74 and 84, Senior Counsel highlighted Supreme Court’s view that *firstly*, ‘reasons to believe, as recorded in writing’ are to be furnished; *secondly*, the decision to arrest should be rational, fair and per law; *thirdly*, Section 19 (1) directs an opinion of officer for the arrest, which opinion is open to judicial review, but not merits review; *fourthly*, officer cannot selectively pick and choose material implicating the person to be arrested and material, which exculpates, also has to be accounted for; *fifthly*, the opinion of the officer may be subjective, but formation of opinion should be in accordance with law; *sixthly*, the term ‘necessity to arrest’ though not mentioned in the statute, has been judicially recognized in *Arnesh*



2024:DHC:9349



*Kumar (supra)*. The Court, therefore, referred three questions of law for consideration by a larger bench relating to the ‘*need and necessity of arrest*’.

30. The 2024 decision of *Prem Prakash (supra)* was highlighted for the Supreme Court’s reiteration of principles of Article 21 of the Constitution of India, which essentially resonated with the principle ‘*bail is rule and jail is exception*’.

31. On the basis of principles laid down by Supreme Court, as synopsisized above, Senior Counsel, on the facts and circumstances of this case, submitted as under:

31.1 Petitioner’s arrest was vitiated as ‘*reasons to believe*’ were not supplied to him till date which, as per *Arvind Kejriwal (supra)*, had to be supplied along with the grounds of arrest. Prosecution’s argument that *Arvind Kejriwal (supra)* has to be applied prospectively, is belied by principles laid down in *Union of India v. Ashok Kumar Sharma & Ors.* (2021) 12 SCC 674, *Assistant Commissioner Income Tax Rajkot v. Saurashtra Kutch Stock Exchange Limited* (2008) 14 SCC 171, and *Roop Bansal v. Union of India* 2023 SCC Online P&H 3597.

31.2 The remand application failed to disclose whether compliance under Section 19(2), PMLA to immediately forward a copy of the arrest order to the ED, along with the material, was done by the arresting officer. The ED stated that compliance was made on 10<sup>th</sup> July 2024 at 10:00 am, however, the statement appears to be a bald statement without any evidence. Further, it is not known whether the entire ‘*material in possession*’ was forwarded to the ED or not.

31.3 The arresting officer has adopted a pick-and-choose mechanism, and ignored the documents which were exculpatory in nature, *inter alia* the report of MKA, exemplified through the letter dated 17<sup>th</sup> September

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W.P.(CRL) 2516/2024

Page 19 of 62



2024:DHC:9349



2019, reports of auditors of three other group companies stating no fraud had taken place, the Delhi High Court setting aside the '*fraud*' declaration by IDBI Bank and Bank of Maharashtra, stay on declaration of '*wilful defaulter*' by the Bombay High Court and the Delhi High Court, culmination of insolvency proceedings into successive resolution plans in the companies, omission to consider the Ernst & Young transaction audit report, omission to collect the CBI charge-sheet and the '*relied upon documents*' and not completing that process.

**31.4** The reason to arrest must be coupled with the '*necessity to arrest*'. There was no necessity to arrest as CBI had not supplied documents to the ED and the ED had proceeded in haste. The alleged reason by the ED that properties were being alienated, was an afterthought. The proper recourse would be attachment under Section 5 PMLA and not to exercise arrest under Section 19.

**31.5** Non-cooperation by the petitioner, for the purpose of investigation, cannot serve as a ground for arrest, since there is a right against self-incrimination. In any event, the statement of the petitioner was recorded on four occasions, thrice under Section 50 PMLA and once under Section 17 PMLA, and documents as and when requisitioned, have been provided.

**31.6** Reliance on the Supreme Court's order of 27<sup>th</sup> February 2024, was misleading, since the Supreme Court had clarified on 13<sup>th</sup> August 2024 that the order was passed only for investigation and not for arrest.

**31.7** Remand order was vitiated, since it was mechanical in nature and had not assessed the violations under Section 19 PMLA nor ascertained whether reasons to believe and grounds for arrest had been provided to the petitioner.



2024:DHC:9349



**31.8** Consideration of the entire material should include vital material of facts as it is in preventive detention laws. Reliance was placed on *Ayya v. State of U.P.*, (1989) 1 SCC 374 and *Smt. Elsy George v. Union of India*, 2001 SCC OnLine Bom 1157, *Madhu Garg v. Union of India*, (2004) 7 SCC 625, and other similar decisions.

**30.1** There are only two predicate offences. In one of the cases even if allegations are taken on face value, the total default amount would be Rs.673 crores. The ED's reference to the proceeds of crime to the tune of Rs. 3,700 crores is, therefore, preposterous. The ED ought not to be presuming from material gathered, during investigation, that predicate offence stands committed, relying on *Prakash Industries (supra)*.

## **VI. SUBMISSIONS ON BEHALF OF RESPONDENT**

**32.** Mr. Zoheb Hossein, Special Counsel for the ED, placed *inter alia* the following submissions, in support of legality of petitioner's arrest:

**32.1** On sufficiency of grounds of arrest and meeting the threshold under Section 19 PMLA, it was submitted that, as per the Supreme Court's decision in *Arvind Kejriwal (supra)*, the purpose of furnishing 'reasons to believe' was to enable the arrestee to challenge the validity of arrest; arrest was based on opinion of the officer which is open to judicial review, not merits review; courts could not inquire into the correctness or otherwise of the facts, except where they were not supported by any evidence, or the finding was perverse, or the conclusion was illogical; all other attempts to challenge the material relied upon by the ED can be raised at the time of a bail application under Section 45 PMLA. It was highlighted that detailed grounds of arrest, running into 30 pages in 35 paragraphs, discussing the material in



2024:DHC:9349



possession, forming the reasons to believe that the petitioner was guilty, cannot be considered as insufficient.

**32.2** The allegation, that exculpatory material was not considered, has no basis. The opinion of the arresting officer is formed on the basis of ‘*material in possession*’ as on the date of arrest. It is not the case of the petitioner that the so-called exculpatory material being referred to, was ‘*in possession of the I.O*’ on the date of arrest. Notwithstanding, the letter of MKA of 17<sup>th</sup> September 2019 was of no consequence, considering that a scanned copy, given as an annexure in these proceedings, was not verified; the alleged author of the letter, since being deceased. Moreover, the said letter, spoke about replies given by the management, ‘*in respect of certain points*’ and therefore, it was unclear as to which points had been responded to. The right to seek production of documents under Section 91, Code of Criminal Procedure, 1973 (“**Cr.P.C.**”) was available only after framing of charges, at the stage of trial, as per ***Devendra Nath Padhi*** (*supra*).

**32.3** The FAR by MKA notes that they have not examined the books of accounts of the companies as it was not in the query, nor examined the expenditures or income prior to the audit period. The letter was contrary to the FAR by MKA itself, which states in its conclusions that a number of aspects could not be made available, including fixed assets registered, details could not be reconciled, and stocks of Rs.157.25 crores were written off/disposed of, out of the books, etc. The said Report gave a disclaimer that they had relied on limited physical verification and analysis of documents and third-party cross-examination. Kotak Mahindra Bank, by letter dated 26<sup>th</sup> February 2020, confronted MKA regarding the basis of this opinion of ‘*No Fraud*’.



2024:DHC:9349



**32.4** The three reports by KGS, of three other group companies, were not in the possession of the IO. Considering that the material in possession was enough to form the belief, the ED cannot conduct a mini trial of its own and gather all evidence available in the world which potentially could be exculpatory, otherwise the investigation process itself would be a dead letter. The FAR by KGS was also not relevant as it was formed only on the basis of documents provided by AAL and there could be additional irregularities and there were various disclaimers in the said report.

**32.5** The declaration of fraud account being set aside, was irrelevant to a PMLA proceeding, as had been noted by the Supreme Court in the order as follows:

*“14. In this view of the matter, we hereby direct that an exhaustive investigation of the issues raised by the petitioner in this writ petition pertaining to huge banking fraud which may run into Rs. 27,000 crores of public money shall be conducted by the ED. We request the learned ASG to issue necessary directions to the ED for compliance of this order.*

*15. However, the investigation/enquiry being carried out by the SFIO and the CBI shall continue and will not be prejudiced by this order. Both the agencies shall fully cooperate with and complement the ED in the process of collection of evidence. Copies of the enquiry reports submitted on behalf of the SFIO and the CBI shall be provided to learned Amicus Curiae as well as learned counsel for the petitioner.*

*16. We also make it clear that mere closure/settlement of the accounts by the banks concerned shall not come into the way of the ED to investigate the matter fully and also regarding the entire amounts involved in the fraud.”*



2024:DHC:9349



**32.6** The setting aside of the fraud account declaration was basis *State Bank of Indias v. Rajesh Aggarwal* (*supra*) on the grounds of natural justice and was not merely on merits. The Supreme Court in *Punjab National Bank v. Vijay Soni*, SLP (Civil) 47470/2023 while staying a decision of the Madhya Pradesh High Court in *Surendra Patwa v. Reserve Bank of India*, WP 23800/2021 stated that registration of an FIR could not be quashed for non-compliance of a circular, which was subsequently further stayed by the Supreme Court in *CBI v. Surendra Patwa* SLP (Crl) 15952/2024 order dated 17<sup>th</sup> May 2024.

**32.7** As regards the declaration of ‘wilful defaulter’ being stayed, it cannot have any bearing on the PMLA proceedings which is an independent and stand-alone offence, as stated in *Vijay Madanlal Chaudhary* (*supra*) paragraph 269. The successful resolution plans with respect to group companies shall not take away the criminality. The Supreme Court in *Ram Narain Popli* (*supra*) stated that repayment was not an indication of lack of dishonest intention. Sometimes payments were made to create confidence for future transactions where money could be dishonestly misappropriated. Factum of repayments cannot be considered in isolation. Moreover, the petitioner had submitted a resolution plan of Rs.35 crores of a 0.09% recovery to the banks, which would imply that a massive haircut of 99.91% would have to be taken by creditors.

**32.8** The case file was shown to the Court to contend that compliance with Section 19(2) PMLA had been fully done at 10:30 am on 10<sup>th</sup> July 2024 while the petitioner was arrested at 10.38 pm. The Special Court also recorded its satisfaction of this compliance in its order dated 10<sup>th</sup> July 2024. The Arrest Rules were fully complied with, including the sealing of the envelope, the acknowledgement slip, etc.

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Signing Date: 03.12.2024  
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W.P.(CRL) 2516/2024

Page 24 of 62



2024:DHC:9349



**32.9** Reference to the proceedings before the Supreme Court does not mean that the proceedings are the basis of grounds of arrest. The Supreme Court itself, in order of 13<sup>th</sup> August 2024, stated that the Court seized of the matter would be able to look into the facts and circumstances, and consider whether arrest was in violation of 19(1), PMLA.

**32.10** As per paragraph 74 of *Arvind Kejriwal (supra)*, the principles applicable to the satisfaction of grounds of arrest or necessity of arrest, would be conflated with principles in Section 41 Cr.P.C., including prevention of petitioner from committing further offence, proper investigation of offence and preventing petitioner from tampering with the evidence. Since the petitioner was trying to alienate the properties to frustrate of proceedings under IPC and PMLA, arrest was therefore necessary, as has been mentioned in paragraph 32 of grounds of arrest.

**32.11** The independent power of attachment cannot take away power to arrest a person including to prevent from committing further offences. It was not necessary that at the time of arrest an IO would be aware of all concealed properties which are ‘*proceeds of crime*’ or ‘*benami*’ and therefore, it is not necessary to exercise powers under Section 5 PMLA before Section 19 PMLA.

**32.12** In *Pankaj Bansal (supra)*, in paragraph 28, the Supreme Court highlighted that ‘mere’ non-cooperation would not be enough to arrest a person under Section 19, however, non-cooperation along with other factors, can form need and necessity to arrest. Reliance in this regard was placed on *P. Chidambaram (supra)* in paragraph 59.

**32.13** Remand order is not routine or mechanical, as is evident from bare perusal, since it has been passed after due consideration of material on record.

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Signing Date: 03.12.2024  
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W.P.(CRL) 2516/2024

Page 25 of 62



2024:DHC:9349



**32.14** The arrest itself is part of investigation, as noted in *Vijay Madanlal Chaudhary* (*supra*), as also in *V. Senthil Balaji* (*supra*), in particular paragraph 48 which notes opinion in *Vijay Madanlal Chaudhary* (*supra*).

**32.15** In *H.M. Rishbud* (*supra*), the Supreme Court notes that investigation under Cr.P.C., includes the arrest of suspected offender. It is also opined so, by the Supreme Court in *Naser Bin Abu Bakr Yafai* (*supra*).

## VII. ANALYSIS

**33.** Heard counsel for both parties and perused the voluminous material placed on record including list of dates and events, various notes of arguments, notes on relevant extracts from precedents, and compilations of judgements.

**34.** At the outset, it may be clarified that the present petition is not filed praying for enlarging the petitioner on bail, however, it is filed challenging the validity of arrest of petitioner under Section 19 of the PMLA. In context of the facts of this case and law that has developed on this subject, thus far, in recent times, issues arising for assessment before this Court are enumerated as under:

- i. Grounds of Arrest;
- ii. Information to the petitioner/accused, and compliance;
- iii. Reasons to believe;
- iv. Need and necessity to arrest;
- v. Relevance of exculpatory material;
- vi. Judicial review, and no merits review;



2024:DHC:9349



- vii. Supreme Court's decision in the PIL in *Jaskaran Singh Chawla* (*supra*);
- viii. Issue of attachment of property;
- ix. Alleged non-cooperation of petitioner; and
- x. The remand orders.

### [VII.A] Relevant Extracts from Case Laws

35. For some of these issues, relevant extracts from the latest decision in *Arvind Kejriwal* (*supra*), which has traversed the law on the subject of legality of arrest under Section 19, PMLA, are reproduced below for ready reference:

#### [VII.A.1] Grounds of Arrest

*“2. At the outset, we must clarify that this is not an appeal against refusal or grant of bail. Instead, this appeal impugns the validity of arrest under Section 19 of the PML Act. It raises a pivotal question regarding the scope and ambit of the trial court/courts to examine the legality of the arrest under Section 19. The issue is legal in nature, and with the ratio being propounded in detail, the decision becomes complex and legalistic.*

...

*9. A bare reading of the section reflects, that while the legislature has given power to the Director, Deputy Director, Assistant Director, or an authorised officer to arrest a person, it is fenced with preconditions and requirements, which must be satisfied prior to the arrest of a person. The conditions are –*

- ⇒ *The officer must have material in his possession.*
- ⇒ *On the basis of such material, the authorised officer should form and record in writing, “reasons to believe” that the person to be*



arrested, is guilty of an offence punishable under the PML Act.

⇒ The person arrested, as soon as may be, must be informed of the grounds of arrest.

*These preconditions act as stringent safeguards to protect life and liberty of individuals. We shall subsequently interpret the words “material”, “reason to believe”, and “guilty of the offence”. Before that, we will refer to some judgments of this Court on the importance of Section 19(1) and the effect on the legality of the arrest upon failure to comply with the statutory requirements.*

10. In Pankaj Bansal v. Union of India and others, 9 interpreting Section 19 of the PML Act with reference to Article 22(1) of the Constitution of India, 10 this Court has observed:

*“32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving*



2024:DHC:9349



*an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance."*

*In the Court's view, Section 19 includes inbuilt checks that designated officers must adhere to. First, the "reasons to believe" of the alleged involvement of the arrestee have to be recorded in writing. Secondly, while affecting the arrest, the reasons shall be furnished to the arrestee. Lastly, a copy of the order of arrest along with the material in possession have to be forwarded to the safe custody of the adjudicating authority. This ensures fairness, objectivity and accountability of the designated officer while forming their opinion, regarding the involvement of the arrestee in the offence of money laundering.*

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**W.P.(CRL) 2516/2024****Page 29 of 62**



...

12. V. Senthil Balaji v. State and others similarly states that the designated officer can only arrest once they record “reasons to believe” in writing, that the person being arrested is guilty of the offence punishable under the PML Act. It is mandatory to record the “reasons to believe” to arrive at the opinion that the arrestee is guilty of the offence, and to furnish the reasons to the arrestee. This ensures an element of fairness and accountability.

13. The decision in V. Senthil Balaji (supra) has also examined the interplay between Section 19 of the PML Act and Section 167 of the Code. The magistrate is expected to do a balancing act as the investigation is to be concluded within 24 hours as a matter of rule. Therefore, the investigating agency has to satisfy the magistrate with adequate material on the need for custody of the arrestee. Magistrates must bear this crucial aspect in mind while examining and passing an order on the DoE’s prayer for custodial remand. More significantly, the magistrate is under the bounden duty to ensure due compliance with Section 19(1) of the PML Act. Any failure to comply would entitle the arrestee to be released. Section 167 of the Code, therefore, enjoins upon the magistrate the necessity to satisfy due compliance of the law by perusing the order passed by the authority under Section 19(1) of the PML Act. Upon such satisfaction, the magistrate may consider the request for custodial remand.

14. Pankaj Bansal (supra) reiterates V. Senthil Balaji (supra) to hold that the magistrate/court has the duty to ensure that the conditions in Section 19(1) of the PML Act are duly satisfied and that the arrest is valid and lawful. This is in lieu of the mandate under Section 167 of the Code. If the court fails to discharge its duty in



2024:DHC:9349



right earnest and with proper perspective, the remand order would fail on the ground that the court cannot validate an unlawful arrest made under Section 19(1). The Court relied on In the matter of Madhu Limaye and others, which held that it is necessary for the State to establish that, at the stage of remand, while directing detention in custody, the magistrate has applied their mind to all relevant matters. If the arrest itself is unconstitutional viz. Article 22(1) of the Constitution, the remand would not cure the constitutional infirmities attached to such arrest. The principle stands expanded, as the violation of Section 19(1) of the PML Act will equally vitiate the arrest.

...

16. Recently, in Prabir Purkayastha v. State (NCT of Delhi), 15 this Court reiterated the aforesaid principles expounded in Pankaj Bansal (supra). The said principles were applied to the pari materia provisions of the Unlawful Activities (Prevention) Act, 1967. The Court explained that Section 19(1) of the PML Act is meant to serve a higher purpose, and also to enforce the mandate of Article 22(1) of the Constitution. The right to life and personal liberty is sacrosanct, a fundamental right guaranteed under Article 21 and protected by Articles 20 and 22 of the Constitution. Reference was made to the observations of this Court in Roy V.D. v. State of Kerala that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution and any infringement of this fundamental right vitiates the process of arrest and remand. The fact that the chargesheet has been filed in the matter would not validate the otherwise illegality and unconstitutionality committed at the time of arrest and grant of remand custody of the accused. Reference is also made to the principle behind Article 22(5) of the



2024:DHC:9349



*Constitution. Thus, this Court held that not complying with the constitutional mandate under Article 22(1) and the statutory mandate of the UAPA, on the requirement to communicate grounds of arrest or grounds of detention, would lead to the custody or detention being rendered illegal.*

...

*18. Vijay Madanlal Choudhary (supra) affirms the aforesaid ratio, and states that the safeguards provided as preconditions in Section 19(1) of the PML Act have to be fulfilled by the designated officer before affecting arrest. The safeguards are of a higher standard. They ensure that the designated officer does not act arbitrarily, and is made accountable for their judgment about the ‘necessity to arrest’ the person alleged to be involved in the offence of money laundering, at the stage before the complaint is filed. Paragraph 89 reads as under:*

*“89...The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under section 62 of the 2002 Act. The*



2024:DHC:9349



*safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in Premium Granites (supra), wherein the court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in Sukhwinder Pal Bipan Kumar (supra), the court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti (supra), this court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the*



2024:DHC:9349



*power may abuse his authority. (Also see Manzoor Ali Khan (supra).”*

*We respectfully agree with the ratio of the decisions in Pankaj Bansal (supra) and Prabir Purkayastha (supra), which enrich and strengthen the view taken in Vijay Madanlal Choudhary (supra), on the interpretation of Section 19 of the PML Act. Power to arrest a person without a warrant from the court and without instituting a criminal case is a drastic and extreme power. Therefore, the legislature has prescribed safeguards in the form of exacting conditions as to how and when the power is exercisable. The conditions are salutary and serve as a check against the exercise of an otherwise harsh and pernicious power.”*

(emphasis added)

**[VII.A.2] Reasons to Believe**

*“24. In the present case, we are examining Section 19(1) of the PML Act and the rights of the accused. We are not concerned with the ECIR. The relevant question arising is – whether the arrestee is entitled to be supplied with a copy of the “reasons to believe”? Paragraph 89 in Vijay Madanlal Choudhary (supra) refers to the importance of recording the “reasons to believe” in writing, and states this is mandatory. Further, both Pankaj Bansal (supra) and Prabir Purkayastha (supra) hold that the failure to record “reasons to believe” in writing will result in the arrest being rendered illegal and invalid. Paragraph 131 of Vijay Madanlal Choudhary (supra), which has been quoted subsequently, states that Section 19(1) requires in-depth scrutiny by the designated officer. A higher threshold is required for making an arrest, necessitating a review of the material available to demonstrate the person’s guilt. Production of the “reasons to believe” before the Special Court/magistrate, cannot be construed and is not*

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Signing Date: 03.12.2024  
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**W.P.(CRL) 2516/2024**

**Page 34 of 62**



2024:DHC:9349



the same as furnishing or providing the “reasons to believe” to the arrestee who has a right to challenge his arrest in violation of Section 19(1) of the PML Act.

...

28. Providing the written “grounds of arrest”, though a must, does not in itself satisfy the compliance requirement. The authorized officer’s genuine belief and reasoning based on the evidence that establishes the arrestee’s guilt is also the legal necessity. As the “reasons to believe” are accorded by the authorised officer, the onus to establish satisfaction of the said condition will be on the DoE and not on the arrestee.

...

36. Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the existence and soundness of the “reasons to believe”, based upon the material available with the authorised officer. It is difficult to accept that the “reasons to believe”, as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the “reasons to believe”. In reality, this would effectively prevent the accused from challenging their arrest, questioning the “reasons to believe”. We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the “reasons to believe” should be furnished to the arrestee to enable him



2024:DHC:9349



to exercise his right to challenge the validity of arrest.”

(emphasis added)

[VII.A.3] **Judicial Review**

“39. We now turn to the scope and ambit of judicial review to be exercised by the court. Judicial review does not amount to a mini-trial or a merit review. The exercise is confined to ascertain whether the “reasons to believe” are based upon material which ‘establish’ that the arrestee is guilty of an offence under the PML Act. The exercise is to ensure that the DoE has acted in accordance with the law. The courts scrutinize the validity of the arrest in exercise of power of judicial review. If adequate and due care is taken by the DoE to ensure that the “reasons to believe” justify the arrest in terms of Section 19(1) of the PML Act, the exercise of power of judicial review would not be a cause of concern. Doubts will only arise when the reasons recorded by the authority are not clear and lucid, and therefore a deeper and in-depth scrutiny is required. Arrest, after all, cannot be made arbitrarily and on the whims and fancies of the authorities. It is to be made on the basis of the valid “reasons to believe”, meeting the parameters prescribed by the law. In fact, not to undertake judicial scrutiny when justified and necessary, would be an abdication and failure of constitutional and statutory duty placed on the court to ensure that the fundamental right to life and liberty is not violated.

...

**41.** DoE has drawn our attention to the use of the expression ‘material in possession’ in Section 19(1) of the PML Act instead of ‘evidence in possession’. Though etymologically correct, this argument overlooks the requirement that the designated officer should and must, based on the material, reach and form an opinion that the



2024:DHC:9349



*arrestee is guilty of the offence under the PML Act. Guilt can only be established on admissible evidence to be led before the court, and cannot be based on inadmissible evidence. While there is an element of hypothesis, as oral evidence has not been led and the documents are to be proven, the decision to arrest should be rational, fair and as per law. Power to arrest under Section 19(1) is not for the purpose of investigation. Arrest can and should wait, and the power in terms of Section 19(1) of the PML Act can be exercised only when the material with the designated officer enables them to form an opinion, by recording reasons in writing that the arrestee is guilty.*

...

***44.** In our opinion, the key distinction between Section 19(1) and Section 45 is the authority undertaking the exercise, in each case. Under Section 19(1), it is the designated/authorised officer who records in writing, their “reasons to believe” that the arrestee is ‘guilty’ of an offence under the PML Act. Thus, the arrest is based on the opinion of such officer, which opinion is open to judicial review, however not merits review, in terms of the well-settled principles of law. Contrastingly, under Section 45, it is the Special Court which undertakes the exercise. The Special Court independently examines pleas and contentions of both the accused and the DoE, and arrives at an objective opinion. The Special Court is not bound by the opinion of the designated/authorised officer recorded in the “reasons to believe”. A court’s opinion is different and cannot be equated to an officer’s opinion. While the Special Court’s opinion is determinative, and is only subject to appeal before the higher courts, the DoE’s opinion is not in the same category as it is open to judicial review.*



2024:DHC:9349



...

46. Two more legal aspects need to be addressed. Section 45 of the PML Act does not stipulate the stage when the accused may move an application for bail. A bail application can be submitted at any stage, either before or after the complaint is filed. Whether the charge is framed or evidence is recorded or not recorded, is immaterial. Clearly, the fact that the prosecution complaint has not been filed, the charge has not been framed, or evidence is either not recorded or partly recorded, will not prevent the court from examining the application for bail within the parameters of Section 45 of the PML Act. As the issue would relate to grant or denial of bail, the parameters or the stipulation in State of Orissa v. Debendra Nath Padhi, which states that evidence or material not relied by the prosecution cannot be examined at the stage of charge, will not apply. The reason is simple and straightforward. Right to bail under Section 45 of the PML Act is not dependant on the stage of the proceedings. The power of the court under Section 45 is unrestricted with reference to the stage of the proceedings. All material and evidence that can be led in the trial and admissible, whether relied on by the prosecution or not, and can be examined. 43 On the question of burden of proof, Section 24 of the PML Act can be relied on by the prosecution. However, at the same time, the observations of this Court in Vijay Madanlal Choudhary (supra) with reference to clauses (a) and (b) of Section 24, as well as the burden of proof placed on the prosecution to the extent indicated in paragraph 57 refer to at least three foundational facts. These foundational facts are – criminal activity relating to the scheduled offence has been committed; property in question has been derived or obtained directly or indirectly by any person as a result of that criminal activity; and the person concerned is directly or indirectly



*involved in any process or activity connected with the said property being proceeds of crime, have to be established. It is only on establishing the three facts that the offence of money laundering is committed. When the foundational facts of Section 24 are met, a legal presumption would arise that the proceeds of crime are involved in money laundering. The person concerned who has no causal connection with such proceeds of crime can disprove their involvement in the process or activity connected therewith by producing evidence or material in that regard. In that event, the legal presumption would be rebutted.*

...

*59. Having said so, we accept that a question would arise – does judicial review mean a detailed merits review? We have already referred to the contours of judicial review expounded in Padam Narain Aggarwal (supra), and Dr. Pratap Singh (supra). We have also referred to the principles of Wednesbury reasonableness.*

*60. In Amarendra Kumar Pandey v. Union of India and others, this Court elaborated on the different facets of judicial review regarding subjective opinion or satisfaction. It was held that the courts should not inquire into correctness or otherwise of the facts found except where the facts found existing are not supported by any evidence at all or the finding is so perverse that no reasonable man would say that the facts and circumstances exist. Secondly, it is permissible to inquire whether the facts and circumstances so found to exist have a reasonable nexus with the purpose for which the power is to be exercised. In simple words, the conclusion has to logically flow from the facts. If it does not, then the courts can interfere, treating the lack of reasonable nexus as an error of law. Thirdly, jurisdictional review permits review of errors of law when*



2024:DHC:9349



*constitutional or statutory terms, essential for the exercise of power, are misapplied or misconstrued. Fourthly, judicial review is permissible to check improper exercise of power. For instance, it is an improper exercise of power when the power is not exercised genuinely, but rather to avoid embarrassment or for wreaking personal vengeance. Lastly, judicial review can be exercised when the authorities have not considered grounds which are relevant or has accounted for grounds which are not relevant.*

*61. Error in decision making process can vitiate a judgment/decision of a statutory authority. In terms of Section 19(1) of the PML Act, a decision-making error can lead to the arrest and deprivation of liberty of the arrestee. Though not akin to preventive detention cases, but given the nature of the order entailing arrest – it requires careful scrutiny and consideration. Yet, at the same time, the courts should not go into the correctness of the opinion formed or sufficiency of the material on which it is based, albeit if a vital ground or fact is not considered or the ground or reason is found to be non-existent, the order of detention may fail.*

(emphasis added)

**[VII.A.4] No merits review**

*“65. Arguments raised on behalf of Arvind Kejriwal, which tend to dent the statements and material relied upon by the DoE in the “reasons to believe”, though worthy of consideration, are in the nature of propositions or deductions. They are a matter of discussion as they intend to support or establish a point of view on the basis of inferences drawn from the material. It is contended that the statements relied upon by the DoE have been extracted under coercion, a fact that is contested and has to be examined and decided. This argument does not persuade us, given the limited power of judicial review, to set*



aside and quash the “reasons to believe”. Accepting this argument would be equivalent to undertaking a merits review.

66. Arvind Kejriwal can raise these arguments at the time when his application for bail is taken up for hearing. In bail hearings, the court’s jurisdiction is wider, though the fetters in terms of Section 45 of the PML Act have to be met. Special Court would have to independently apply its mind, without being influenced by the opinion recorded in the “reasons to believe”. To adjudicate on a bail application, pleas and arguments of Arvind Kejriwal and the DoE, including the material that can be relied on and the inferences possible shall be examined. The court will have to undertake the balancing exercise.”

**[VII.A.5] Inclusion of exculpatory material**

“51. Arvind Kejriwal submits that the “reasons to believe” selectively refer to the implicating material, and ignore the exculpatory material. Thus, there is no attempt to evaluate the entire material and evidence on record. The coaccused, in view of prolonged incarceration, strong-arm tactics and threats have been coerced to accept the DoE’s version of facts. In support, it is highlighted that the DoE changed their position, viz. the co-accused conspirators, who were granted bail post the statements implicating Arvind Kejriwal. This establishes and shows prejudice and malicious intent.

...

53. At this juncture, we would like to reiterate and clarify that we are not deciding an appeal against an order rejecting the prayer/application for grant of bail under Section 45 of the PML Act. We are examining the question of the legality of arrest of Arvind Kejriwal on 21.03.2024. While doing so, we would be exercising the power of judicial review and not merit based review.

...



55. *The legality of the “reasons to believe” have to be examined based on what is mentioned and recorded therein and the material on record. However, the officer acting under Section 19(1) of the PML Act cannot ignore or not consider the material which exonerates the arrestee. Any such non-consideration would lead to difficult and unacceptable results. First, it would negate the legislative intent which imposes stringent conditions. As a general rule of interpretation, penal provisions must be interpreted strictly. Secondly, any undue indulgence and latitude to the DoE will be deleterious to the constitutional values of rule of law and life and liberty of persons. An officer cannot be allowed to selectively pick and choose material implicating the person to be arrested. They have to equally apply their mind to other material which absolves and exculpates the arrestee. The power to arrest under Section 19(1) of the PML Act cannot be exercised as per the whims and fancies of the officer.*

56. *Undoubtedly, the opinion of the officer is subjective, but formation of opinion should be in accordance with the law. Subjectivity of the opinion is not a carte blanche to ignore relevant absolving material without an explanation. In such a situation, the officer commits an error in law which goes to the root of the decision making process, and amounts to legal malice.”*

(emphasis added)

**[VII.A.6] Need and necessity to arrest**

“74. Therefore, the issue which arises for consideration is whether the court while examining the validity of arrest in terms of Section 19(1) of the PML Act will also go into and examine the necessity and need to arrest. In other words, is the mere satisfaction of the formal parameters to arrest sufficient? Or is the



*satisfaction of necessity and need to arrest, beyond mere formal parameters, required? We would concede that such review might be conflated with stipulations in Section 41 of the Code which lays down certain conditions for the police to arrest without warrant:*

*o Section 41(1)(ii)(a) – preventing a person from committing further offence.*

*o Section 41(1)(ii)(b) – proper investigation of the offence.*

*o Section 41(1)(ii)(c) – preventing a person from disappearing or tampering with evidence in any manner.*

*o Section 41(1)(ii)(d) – preventing the person from making any inducement or threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or police.*

*o Section 41(1)(ii)(e) – to ensure presence of the person in the Court, whenever required, which without arresting cannot be ensured.*

*However, Section 19(1) of the PML Act does not permit arrest only to conduct investigation. Conditions of Section 19(1) have to be satisfied. Clauses (a), (c), (d) and (e) to Section 41(1)(ii) of the Code, apart from other considerations, may be relevant.*

*75. In Vijay Madanlal Choudhary (supra), this Court has held that when a person applies for bail or anticipatory bail under the PML Act, the conditions stipulated in Section 437/438/439 of the Code would equally apply, in addition to Section 45 of the PML Act. Therefore, it is urged that necessity to arrest, in the case of arrest under Section 19(1), would be an additional factor required to be considered beyond the conditions and factors stipulated in Section 19(1) of the PML Act.*



2024:DHC:9349



(emphasis added)

**[VII.B] Principles Culled Out**

**36.** There has been significant evolution in the jurisprudence relating to legality of arrest under Section 19 of the PMLA, in the last few years. Relevant judgments by the Supreme Court are *inter alia* as under:

- i. ***Vijay Madanlal Choudhary*** (*supra*) – 2022,
- ii. ***V. Senthil Balaji*** (*supra*) – 2023,
- iii. ***Pankaj Bansal*** (*supra*) – 2023,
- iv. ***Ram Kishore Arora*** (*supra*) – 2023,
- v. ***Prabir Purkayastha*** (*supra*) – 2024, and finally
- vi. ***Arvind Kejriwal*** (*supra*) – 2024.

**37.** Though the parties have referred to relevant extracts of these decisions for appreciation of the evolution of law, the principles finally got crystallised and converged in the decision of ***Arvind Kejriwal*** (*supra*). In ***Arvind Kejriwal*** (*supra*), the Supreme Court traversed all the aforementioned decisions, placed them in context, and culled out certain principles. This would form the law as is applicable today. This Court does not consider it necessary to advert to all the prior judgments in their isolated contexts, particularly since the issue concerned in the matter at hand, which challenges the legality of arrest, was the issue before the Court in ***Arvind Kejriwal*** (*supra*) as well. The relevant extracts from ***Arvind Kejriwal*** (*supra*), segmented as per relevant issues involved, have already been reproduced above in paragraph [VII.A]. From this, the principles that flow are delineated as under:

**[VII.B.1] Grounds of Arrest**



2024:DHC:9349



38. Power to arrest a person without a warrant from the Court is a drastic and extreme power and has been rightly circumscribed with strict safeguards by the legislature to prevent abuse. The ratio of decisions in *Pankaj Bansal* (*supra*) and *Prabir Purkayastha* (*supra*) that strengthened the view in *Vijay Madanlal Choudhary* (*supra*) were agreed to by the Supreme Court in *Arvind Kejriwal* (*supra*). The grounds of arrest are, therefore, to be communicated to the accused, in writing.

**[VII.B.2] Information to the Accused and Compliance**

39. The arrested person is to be informed the grounds of arrest within 24 hours, which is also the period within which the person is to be produced before the Special Court. Non-compliance of the same will render it as illegal detention. Section 19 of the PMLA uses the phrase “as soon as may be” for the accused to be informed of the grounds of arrest; the said phrase was not interpreted in *Vijay Madanlal Choudhary* (*supra*), *V. Senthil Balaji* (*supra*), or in *Pankaj Bansal* (*supra*), and was crystalised as being within 24 hours of arrest in *Ram Kishore Arora* (*supra*), particularly in paragraph 21 of the decision, extracted as under:

*“21. In view of the above, the expression “as soon as may be” contained in Section 19 PMLA is required to be construed as — “as early as possible without avoidable delay” or “within reasonably convenient” or “reasonably requisite” period of time. Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform*



2024:DHC:9349



*the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.”*

(emphasis added)

**[VII.B.3] Reasons to Believe**

40. ‘Reasons to believe’, as per Section 19 of the PMLA, has to be recorded in writing by the competent officer, based on the genuine belief and reasoning, basis the material in possession, to establish the arrestee’s guilt. The onus to establish satisfaction of the said condition will be on the ED, and not the arrestee. Reasons to believe should be furnished to the arrestee to enable him to exercise his right to challenge the validity of the arrest. An issue arose relating to whether this condition imposed by the Supreme Court in *Arvind Kejriwal* (*supra*) ought to be applied prospectively or retrospectively. For lack of any direction by the Supreme Court, counsel for the parties put forward their respective arguments. Suffice it to say, aside from any detailed interpretative assessment, while challenging the legality of arrest, the position to be assessed is at the time when the arrest was originally made and what the authorities, as per law crystallised at that time, were obligated to do. In this case, the arrest was made on 09<sup>th</sup> July 2024, whereas the decision in *Arvind Kejriwal* (*supra*) was pronounced on 12<sup>th</sup> July 2024. It would be difficult to assume that on 09<sup>th</sup> July 2024 the ED could have foreseen that this additional requirement would be stipulated by the Supreme Court in the coming week. To hold the ED to have complied with that requirement of supplying the reasons to believe would defy logic. In any event, as argued by Special Counsel for ED, the grounds of arrest itself contain the substance of reasons to believe, being detailed in its narrative; same is evident from a perusal of the case file requisitioned from the ED.

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W.P.(CRL) 2516/2024

Page 46 of 62



[VII.B.4] **Need and Necessity to Arrest**

41. In *Vijay Madanlal Choudhary* (*supra*), the Court held that a person applies for bail, the conditions stipulated in Sections 437, 438 and 439 of the Cr.P.C. would equally apply in addition to Section 45 of the PMLA. An argument was made by Senior Counsel for petitioner that “*necessity to arrest*” would also be an additional factor required to be considered beyond the conditions laid down in Section 19 of the PMLA. Since *Vijay Madanlal Choudhary* (*supra*) was a decision rendered by a three-Judges’ Bench, the Supreme Court in *Arvind Kejriwal* (*supra*) referred the questions of law relating to “*need and necessity to arrest*” as a separate ground to challenge the order of arrest to a larger Bench. Paragraph 84 of *Arvind Kejriwal* (*supra*) is extracted as under:

*“84. In view of the aforesaid discussion, and as Vijay Madanlal Choudhary (supra) is a decision rendered by a three Judge Bench, we deem it appropriate to refer the following questions of law for consideration by a larger Bench:*

*(a) Whether the “need and necessity to arrest” is a separate ground to challenge the order of arrest passed in terms of Section 19(1) of the PML Act?*

*(b) Whether the “need and necessity to arrest” refers to the satisfaction of formal parameters to arrest and take a person into custody, or it relates to other personal grounds and reasons regarding necessity to arrest a person in the facts and circumstances of the said case?*

*(c) If questions (a) and (b) are answered in the affirmative, what are the parameters and facts that are to be taken into consideration by the court while examining the question of “need and necessity to arrest”?”*



2024:DHC:9349



**[VII.B.5] Relevance of Exculpatory Material**

**42.** Section 19(1) of the PMLA refers to “*all*” or “*entire*” material in possession of the ED. Since “*legality of reasons to believe*” have to be examined on what is the material on record, an officer cannot ignore or not consider the material which exonerates the arrestee. Any such non-consideration would negate the legislative intent and give undue latitude to the ED. Formation of opinion of the officer should include assessment of absolving material.

**[VII.B.6] Judicial Review**

**43.** Exercise of power and satisfaction of conditions under Section 19 of the PMLA should be put to judicial scrutiny and examination, if challenged. However, judicial review entails that the Special Court/Magistrate is required to examine that the exercise of power to arrest meets statutory conditions; judicial review cannot amount to a mini trial or merits review. The exercise of judicial review is confined to ascertain whether “*reasons to believe*” are based upon material which establish the arrestee’s guilt for an offence under PMLA. If reasons recorded by the authority are not clear and lucid, a deeper scrutiny is required. The opinion of the arresting officer is open to judicial review, however, is not open to a ‘*merits review*’. Courts cannot inquire into the correctness and otherwise, of the facts found, except to see if the findings are perverse, and whether they have a reasonable nexus with the power (*of arrest*) exercised; the conclusion has to logically flow from the facts. Review of errors of law *inter alia* of mis-supplied or mis-construed constitutional and statutory terms or checking improper exercise of power is permitted. Judicial review may also be exercised when authorities have not considered grounds which are relevant or has accounted for grounds which are not relevant for arrest of the individual.



**[VII.B.7] Non-Cooperation of the Petitioner**

**44.** The ‘*right against self-incrimination*’ is a constitutional principle crystallised in Article 20(3) of the Constitution of India, 1950. In *Pankaj Bansal* (*supra*), the Supreme Court held that ‘*mere non-cooperation*’ could not be enough to arrest a person under Section 19, PMLA. However, it has also been observed by the Supreme Court in *CBI v. Anil Sharma*, AIR 1997 SC 3806 that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is ensconced with a favourable order under Section 438 Cr.P.C.

**[VII.B.8] Remand Orders**

**45.** In *Madhu Limaye* (*supra*), the Supreme Court held that the Magistrate, at the stage of remand, has to apply its mind to all relevant matters, and that the remand would not cure constitutional infirmities attached to arrest if the arrest itself is unconstitutional. Therefore, violation of Section 19(1) of the PMLA would vitiate the arrest and a subsequent remand order, however, detailed, could not cure the same. This was recognised in *Pankaj Bansal* (*supra*) as well as in *Arvind Kejriwal* (*supra*).

**[VII.C] Assessment on Facts**

**46.** Having considered the submissions of the respective counsels as well as having perused documents on record, this Court notes the following:

- a.** The petitioner was arrested on 09<sup>th</sup> July, 2024 at 10:38 p.m. An arrest order was issued on 09<sup>th</sup> July, 2024 which notes the timing as 10:38 p.m., and that the arrestee was informed of the grounds of arrest.
- b.** The grounds of arrest which accompanied the arrest order were substantially detailed, running into 36 paragraphs. It is not the case of



2024:DHC:9349



the petitioner that they were not supplied with the grounds of arrest at the time of the arrest and prior to the remand being sought.

c. The remand application was detailed, and contained, effectively the same set of facts as were stated in the grounds of arrest.

d. The “*reasons to believe*” were not provided by the ED as a separate document since, as discussed above, the ED was not obligated to do so since the arrest was in the pre-*Arvind Kejriwal* (*supra*) period which introduced this additional condition.

e. Compliance of Section 19(2) of the PMLA regarding forwarding a copy of the order along with material in possession to the AA, immediately after ED made the arrest at 10:38 a.m. was done on 10<sup>th</sup> July 2024 i.e. the morning after the arrest. The Court had been shown the case file and this was evident from the records.

**[VII.C.1] Grounds of Arrest**

47. The issue in question is whether the grounds of arrest which, as per the ED, contain the reasons to believe, though based on a subjective opinion of the arresting officer is to be judged on the following – *firstly*, whether the said opinion was based on the entire material in possession of the arresting officer; *secondly*, whether the said decision is perverse and logically flows from the facts; *thirdly*, whether there are any errors of law i.e. mis-application or mis-construction of constitutional or statutory terms; and *fourthly*, whether there is an improper exercise of power.

48. As clarified and reiterated consistently in *Arvind Kejriwal* (*supra*), this Court is not considering the correctness of the opinion or the sufficiency of the material, except if a vital ground is not considered or any reason found to be non-existent [*see paragraph 60 and 61 of Arvind*



2024:DHC:9349



*Kejriwal (supra)*]. For this purpose, a detail examination of the grounds of arrest dated 09<sup>th</sup> July 2024 bears out the following:

**48.1** Bank of Maharashtra's Stressed Assets Management Branch ("SAMB") submitted a complaint to the CBI on 21<sup>st</sup> October 2022 alleging that a wrongful loss of Rs.289 Crores was caused to the Bank by ACIL, Arvind Dham, AAL (Corporate Guarantor), Alliance Integrated Metaliks Limited (Corporate Guarantor), and unknown public servants/persons.

**48.2** Basis the above information, the CBI registered FIR RC2202022E0019 on 29<sup>th</sup> December 2022 under Section 120B read with Sections 420 and 409 of the IPC, and Section 7(c) of the PC Act.

**48.3** IDBI Bank, through the NPA Management Group ("NMG") submitted a complaint on 28<sup>th</sup> June 2022 alleging criminal conspiracy, cheating, criminal breach of trust forgery for the purpose of cheating, and abuse of official position, resulting in a wrongful loss of Rs.384.35 Crores to a consortium of banks led by IDBI Bank (*including Karur Vysya Bank*), accusing ACIL, Arvind Dham, Aditya Malhotra, and Arvind Suraj.

**48.4** On receipt of above complaint, the CBI registered another FIR bearing no. RC2232022A0009 on 21<sup>st</sup> December 2022 under Section 120B read with Sections 420, 406, and 468 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act.

**48.5** ACIL, which specialised in manufacturing high precision engineering automotive components, utilised Term Loan facilities under Multiple Banking Arrangements and Working facilities through a consortium led by Canara Bank. Bank of Maharashtra approved a Term Loan of Rs.200 Crores, funds were disbursed on 31<sup>st</sup> October 2012, but the accused company continued to default. In 2015, a Corrective Action

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W.P.(CRL) 2516/2024

Page 51 of 62



2024:DHC:9349



Plan (“CAP”) was approved to bolster the working capital. Despite efforts of lenders, the company defaulted, and in 2016, the Joint Lending Forum (“JLF”) implemented the Strategic Debt Restructuring (“SDR”) to change the ownership of the company to ensure its viability. The attempt was unsuccessful, and the account became an NPA as on 30<sup>th</sup> June 2015.

**48.6** The loan from the consortium led by Karur Vysya Bank, the working capital facilities from Kotak Mahindra Bank, State Bank of India (“SBI”), and Canara Bank and Term Loan facilities from Bank of Maharashtra, Union Bank of India, and SBI under various arrangements were all in default of repayment.

**48.7** IDBI Bank initiated insolvency proceedings before the National Company Law Tribunal (“NCLT”), Delhi; the case was admitted for Corporate Insolvency Resolution Process (“CIRP”) on 08<sup>th</sup> February 2018, resolution plan was submitted and was filed for approval on 16<sup>th</sup> August 2019.

**48.8** SBI appointed MKA as forensic auditor in May 2018 for forensic audit of the financial years from April 2013 to March 2018. The FAR was submitted on 30<sup>th</sup> July 2018. The FAR effectively noted that there were frequent changes in directors from 2014 to 2018 which were unexplained; payments for the acquisition of plant and machinery were made through group companies and were repetitive in nature; sale of assets of about 10% or more of net worth or Rs.100 Crores, whichever is lower, were made without approval from lenders; plant and machinery installed in the plant could not be reconciled with the register; stocks worth Rs.157.25 Crores were written off or disposed without being recorded in the books of accounts, and the sale realisation was not accounted for; stocks worth Rs.119.80 Crores were shown as sold for



2024:DHC:9349



only Rs.12.55 Crores; related party transactions with group companies or associate companies were not disclosed in annual financial statements; amounts received from the promoters' company were credited to bank accounts maintained with banks other than the consortium of banks.

**48.9** The directions of the Supreme Court for further investigation in *Jaskaran Singh Chawla (supra)* on 27<sup>th</sup> February 2024 noted allegations of huge money laundering pursuant to which, the PMLA investigation ensued.

**[VII.C.2] The ED Investigation**

**49.** The following were the results of the ED investigation:

**49.1** The loan exposure to various banks when the CAP was initiated was Rs.1,456.98 Crores. Despite the CAP, the loan funds were diverted to other companies totalling to Rs.356.98 Crores. The said amounts were shown for purchase of fixed assets/inventories which were neither physically available nor part of the record.

**49.2** Loan exposure for the Amtek Group of Companies before entering CIRP was Rs.30,269.59 Crores. The Group continued to default despite best efforts of lenders led by the Reserve Bank of India.

**49.3** The initial directors of the company were the petitioner, his wife Anita Dham, and his mother Late Smt. Manorma Dham. Petitioner was the key person in negotiating terms for raising finances and provided personal guarantees against the loans raised. A sample money trail made of ACIL as per the two FIRs reveals systematic diversion of loan funds and has been provided as part of the grounds of arrest in paragraph 31. Investigation of the money trail led to a bank account of WLD Investments Pvt. Ltd., an investment company which did not have a



2024:DHC:9349



business, but its beneficial ownership was with the petitioner and his family.

**49.4** Preliminary investigation revealed that the Amtek group used the WLD bank account to siphon off funds between 2007 till the time of the CIRP, which was to the tune of Rs.2,378.27 Crores. These funds were further diverted in other group companies including real estate companies to the tune of Rs.3743.87 Crores.

**49.5** The fixed assets declared by five main defaulting companies at the time of the CIRP (*AAL, Castex, MFL, ARGL Limited, and ACIL*) were Rs.16,578.76 Crores.

**49.6** Audit of these companies by Chartered Accountants revealed that they have not adhered to the auditing standards and shell companies were created to acquire and hold properties by diverting funds. The details of the Chartered Accountants are given in paragraph 31(k) of the grounds of arrest.

**49.7** More than 500 unlisted companies were unearthed which were used to route funds and acquire multiple real estate properties valued over Rs.1,000/- Crores, without declaring these as related parties.

**49.8** Lower rung employees of Amtek stated in disclosure under Section 50 of the PMLA that they were asked to sign documents and become dummy directors while the beneficial ownership was always with the petitioner and his family. They have stated that the Chartered Accountants of Amtek Group made them sign papers using their Aadhar and PAN details. The list of such employees is provided in paragraph 31(o) of the grounds of arrest, which bears out that peons, mechanics, office boys who were 7<sup>th</sup>, 8<sup>th</sup> or 10<sup>th</sup> class pass, were made directors.



2024:DHC:9349



**49.9** During investigation, petitioner did not provide any details of his assets/properties which were held beneficially by him, allegedly *benami*, and gave details of only 6 immovable properties.

**49.10** Search and seizure action under Section 17(1) of the PMLA was initiated at more than 40 locations on 20<sup>th</sup> June 2024. Statements recorded under Section 17 of the PMLA of various individuals from the company who corroborated would have been ascertained during the investigation including the 500 registered companies, the opacity of the shareholders, 200 odd properties being beneficially owned by petitioner and other family members, fraudulent diversions, etc.

**49.11** Petitioner had provided an overall personal guarantee of Rs.15,560 Crores against the loans taken for which personal insolvency proceedings have also been invoked.

**49.12** 23 creditors have submitted a claim of Rs.38,760 Crores before the resolution professional. Against this, petitioner submitted a resolution plan of Rs.35 Crores suggesting a 0.09% recovery to the banks and a 99.91% haircut by the creditors.

**49.13** Seizure of cash of nearly Rs.2 Crores from the lockers held by a peon and few more individuals who stated that the cash belonged to the petitioner's family were also recorded.

**50.** The petitioner has apparently transferred properties to his relatives to conceal them from insolvency proceedings e.g. land of 6.17 acres with residential house of 18,000 square feet built at Sultanpur, New Delhi were sold for Rs.6 Crores to Nischara Reality Pvt. Ltd. as agricultural land despite circle rate being 70.94 Crores. Petitioner continues to live at the residence by paying rent at A-212, Shivalik, New Delhi which has been sold to Anjali Malhotra, his sister who was living with the accused at undervalued rates.

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**W.P.(CRL) 2516/2024****Page 55 of 62**



2024:DHC:9349



51. Based on the above, the ED concluded that there was sufficient evidence that offences involving proceeds of crime were being indulged in by the petitioner; evidence in exclusive possession could be tampered with including statement from employees and associates; transfer of properties held by petitioner and his family in order to frustrate the proceedings under PMLA and IBC; likelihood of abuse of influence on parties who have made disclosures.

52. Further investigation was stated to be required for unearthing various assets which have been held by petitioner or his family or beneficially in their names.

**[VII.C.3] Grounds of Arrest and the Remand Order**

53. Having perused the grounds of arrest as well as the remand order (*which does make an assessment of the grounds of arrest as well*), this Court is of the view that the assessment of the arresting officer that there was a necessity to arrest in July 2024 cannot be faulted. Not only are there substantial reasons encapsulated in the grounds of arrest which *prima facie* point to a large-scale diversion of public money through complex corporate transactions, intra-group financial management, potentially *benami* properties, lower-rung employees being appointed as directors, numerous shell companies, centralisation of control with the petitioner and his family, the inability to shore up the huge amounts of loan even during the insolvency proceedings despite personal guarantees.

54. The data on financial exposure of the petitioner's group of companies is about Rs.30,000/- odd Crores and the lenders including many public banks have been struggling since 2015 in order to somehow recover the said liabilities, the process for which has now culminated into insolvency proceedings where a haircut of 99.91% of the amount



2024:DHC:9349



has been proposed by petitioner. All this has potentially led to the ED to conclude that public money has been utilised for unscheduled and illegal purposes, not sanctioned by the financing arrangements, the trail of which is yet to be unearthed completely.

**55.** At the stage of framing the grounds of arrest, some investigation had already been conducted by the ED significantly pursuant to directions by the Supreme Court in *Jaskaran Singh Chawla* (*supra*) and, at the stage of arrest, it was evident that more investigation was required, and there was a potential of tampering of evidence and dissuading persons who are associated with the company (*being lower in hierarchy to the petitioner*) to give proper disclosures, as also to prevent committing further offences in terms of further diversion of funds and dissipating, obscuring, and obfuscating the money trail. The material which was in possession of the ED seems to have been relied on.

**[VII.C.4] Exclusion of Exculpatory Material**

**56.** Petitioner's contention that exculpatory materials were not considered also needs to be assessed by the Court as under:

**56.1** The letter dated 17<sup>th</sup> September 2019 of MKA cannot be considered as a conclusive finding of all forensic audit as rightly contended by Special Counsel for ED. It is merely a scanned and not a verified document and, in any event, the FAR itself has notable observations as mentioned in paragraph 32.3 above. The author of the said letter has since deceased and the letter is limited in its scope. The letter was based on '*certain points*' and not with respect to the entire financial exposure.



2024:DHC:9349



**56.2** Further, as far as the FAR by MKA is concerned, it has significant disclaimers which are noted in paragraph 32.3 above, and the solitary observation in the letter did not sit well with the larger conclusions of the forensic audit.

**56.3** Moreover, the arresting officer had in his possession a letter from Kotak Mahindra Bank dated 26<sup>th</sup> February 2020 which had confronted MKA regarding the basis of the ‘no fraud’ opinion and, though it did not form part of the material in possession at that stage, supplied in September 2024 to the ED, raises serious questions on the FAR.

**56.4** The three reports by KGS regarding three companies were also not in possession of the IO and, therefore, could not be considered as part of the material in possession. Moreover, as submitted by Special Counsel for ED in paragraph 32.4 above, the said FAR by KGS itself has serious disclaimers and did not conclude that there was ‘no fraud’ but that they had not come across ‘definitive evidence’. Further, the FAR itself had serious observations including that there were variations in related party sales, the underlying transaction documents requested but not provided, adjustments made were merely book entries and the auditor did not comment on the genuineness of the transaction, no reliable document was provided for analysis of loans and advancements, list of machinery was provided but items were not properly identified. The KGS report was limited in its scope but was not an independent evaluation since they were appointed to give observations on the report of S.P. Chopra & Co.

**56.5** As regards the declaration of ‘fraud’ account by IDBI and Bank of Maharashtra, which has been set aside by the Court, it was based on the decision of the Supreme Court in *Rajesh Aggarwal* (*supra*) on grounds of natural justice. Special Counsel for ED significantly relied upon on the decision in *Surendra Patwa* (*supra*) which had quashed the FIR



2024:DHC:9349



setting aside the '*fraud*' declaration of an entity. The Supreme Court had not only stayed the said order of the Madhya Pradesh High Court, but also specifically stated that it will not be read as a precedent that the registration of an FIR would be quashed or non-compliance of an RBI circular and that the quashing of FIR would remain stayed. Essentially, the aspect of '*no fraud*' declaration being set aside and quashing of FIR were essentially separate issues in principle and benefit of the same cannot be given to the petitioner.

**56.6** The declaration of '*wilful defaulter*' being set aside cannot be used to completely subsume what seems to be a large-scale diversion of funds of public money since issues of '*wilful defaulter*' are based on technical grounds, while offence of money laundering involves use, utilisation, possession, concealment, and projection as untainted property of the proceeds of crime. It would be difficult, at this stage, for the IO to conclude that basis the letter by MKA, the KGS report, setting aside of the fraud declaration, and stay on the '*wilful defaulter*' status could be exculpatory to the exclusion of all other inculpatory material. The assertion that there was a successful resolution plan is belied by the extent of the haircut that the resolution plan proposes above 99%, essentially leading to a possibility that these monies have been mis-utilised.

**[VII.C.5] Non-Cooperation of Petitioner**

**56.7** The aspect of non-cooperation of petitioner, as correctly pointed out by Senior Counsel for petitioner, may not be relevant considering that as stated above there is a right against self-incrimination provided by the Constitution of India.



2024:DHC:9349



**[VII.C.6] Need and Necessity to Arrest**

57. Regarding the need and necessity of arrest while having finally referred the matter to a larger Bench, the Supreme Court in *Arvind Kejriwal* (*supra*) noted that such a parameter could be conflated with the parameters in Section 41 Cr.P.C. laying down additions for the police to arrest without warrant. Section 41 Cr.P.C. parameters include preventing a person from committing further offence, proper investigation of offence, preventing a person from disappearing or tampering with the evidence, preventing person making an inducement or threat of promise to dissuade from disclosing facts, to ensure presence of the person in Court whenever required. The Supreme Court notes that an arrest under Section 19(1) of the PMLA is not only to conduct investigation but other parameters of Section 41 Cr.P.C. would be relevant to assess whether there was a need and necessity to arrest. In this regard, paragraph 74 of the decision is referred to, as extracted in [VII.A.6] above.

**[VII.C.7] No Merits Review**

58. This Court notes the observations by the Supreme Court in *Arvind Kejriwal* (*supra*) regarding arguments raised to drive a wedge into the ‘reasons to believe’. The Supreme Court notes that, given the limited power of judicial review, the argument would not be acceptable since it would amount to undertaking a merits review. The Supreme Court further notes that these arguments can be taken up at the time of application for bail since the Court’s jurisdiction is wider when considering bail under Section 45 of the PMLA. The Court can then independently apply its mind without being influenced by the ‘reasons to believe’. Essentially, the Court is circumscribing the scope of judicial



2024:DHC:9349



review at the stage when legality of the arrest is challenged. In this regard, the following paragraphs are being extracted for ready reference:

*“65. Arguments raised on behalf of Arvind Kejriwal, which tend to dent the statements and material relied upon by the DoE in the “reasons to believe”, though worthy of consideration, are in the nature of propositions or deductions. They are a matter of discussion as they intend to support or establish a point of view on the basis of inferences drawn from the material. It is contended that the statements relied upon by the DoE have been extracted under coercion, a fact that is contested and has to be examined and decided. This argument does not persuade us, given the limited power of judicial review, to set aside and quash the “reasons to believe”. Accepting this argument would be equivalent to undertaking a merits review.*

*66. Arvind Kejriwal can raise these arguments at the time when his application for bail is taken up for hearing. In bail hearings, the court’s jurisdiction is wider, though the fetters in terms of Section 45 of the PML Act have to be met. Special Court would have to independently apply its mind, without being influenced by the opinion recorded in the “reasons to believe”. To adjudicate on a bail application, pleas and arguments of Arvind Kejriwal and the DoE, including the material that can be relied on and the inferences possible shall be examined. The court will have to undertake the balancing exercise.”*

(emphasis added)

## VIII. CONCLUSION

**59.** The sum total of the above analysis is that the arrest of the petitioner did not fall foul of provision of Section 19 of the PMLA, and that judicial review (*not merits review*) of the grounds for arrest (*which*



2024:DHC:9349



*subsume the reasons to believe, as per the ED)* does not invite an adverse inference from this Court.

**60.** Needless to state that, as pointed out by the Supreme Court itself in *Arvind Kejriwal (supra)*, all grounds can be agitated by the petitioner/accused at the stage of plea of bail, and the Court may have a larger canvas before itself to consider the petitioner's plea, if and when taken up.

**61.** Needless to state, any observation by this Court in this judgement is only for the purposes of assessing the challenge to the legality of arrest of the petitioner, and may not be construed as a conclusive opinion on the merits of the case.

**62.** In light of the above discussion and analysis, present petition is dismissed.

**63.** Judgment be uploaded on the website of this Court.

**ANISH DAYAL, J.**

**DECEMBER 02, 2024/MK/sm/sc**