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IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO.39 OF 2025

NEWTON MUTHURI KIMANI,
Aged 25 years, Kenyan National,
s/o James Kimani Mautai, r/o 38,
3rd Cross, New Shanthi Nagar,
Bangalore Karnataka, presently in
Judicial Custody. ... Applicant.

Versus

1. DIRECTORATE OF ENFORCEMENT
Government of India,
Panaji Zonal Office, 1st Floor,
Jeevan Vishwas, LIC Building, EDC
Complex, Patto Plaza, 403001

2. THE STATE OF GOA,
Thr. PP, High Court of Bombay at Goa,
Porvorim, Goa. ... Respondents.

Mr. Vibhav Amonkar with Mr. Omkar Bhave, Mr. Raj Chodankar and Mr. Shaish Naik, Advocates for the Petitioner.

Mr. Siddharth Samant, Special Public Prosecutor for the Respondent.

CORAM: VALMIKI MENEZES, J.

RESERVED ON: 29th August, 2025

PRONOUNCED ON: 25th November, 2025

ORDER:

1. This is an Application for bail, filed by the Applicant, who is arrayed as Accused No.3, in Case no. PMLA 02/2024, registered pursuant to Prosecution Complaint dated 06.02.2024, filed by the Assistant Director, Directorate of Enforcement, Panaji under Section 45 of the Prevention of Money Laundering Act, 2002 ("PMLA" for short) in compliance with F.I.R No.129/2023, dated 07.09.2023, registered by Anjuna Police Station under Sections 370, 370(A) r/w 34 IPC and 4, 5 and 8 of the Immoral Traffic (Prevention) Act, 1956, based on complaint filed by the complainant, Ashleen Kerubo.

2. According to the Complaint, dated 06.02.2024 , under Section 45 of the PMLA, Ms. Dorcasta Maria and Ms. Wilkista Achista, arrayed as Accused Nos. 1 and 2, brought victims to India on the pretext of employment in hospitality sector in Goa and on their landing, seized all their travel documents, forcing them into prostitution activities; the customers for the same were solicited through a website "www.massagerepublic.com", and the payment for the same was done after a deal was struck, between the customers and traffickers, and only then customers were allowed to meet the victims, pursuant to the victims sharing a QR Code with the customers and the payment being transferred to the account of the traffickers. In this manner the Accused Nos. 1 and 2, made profits on the earnings of the victims.

3. Subsequent to the F.I.R No.129/2023 being registered at Anjuna Police Station, Charge-sheet No.114/2023, dated 04.11.2023, came to be filed, which revealed that the said QR code, being used for such transactions, belonged to the Applicant and Accused No.4, who had the knowledge that Accused Nos. 1 and 2, were involved in sex trafficking and hence allowed their accounts to be used for receiving payments, and in return earned commission. The Applicant further, facilitated overseas money transfers for the Accused Nos. 1 and 2 whenever demanded. As a result, Enforcement Case Information Report (ECIR) bearing No. ECIR/PJZO/19/2023 dated 23.11.2023, was recorded by the Enforcement Directorate, Panaji, Zonal Office, and Look Out Circulars were issued against the Applicant and the Accused No.4.

4. It is further stated in the Complaint that the Applicant was intercepted at the Delhi Airport on 08.12.2023 and summons were issued upon him, for appearance on 09.12.2023, and the Accused No.4 was intercepted on the same day at Mumbai Airport and was also served summons to appear on 08.12.2023, pursuant to which the Applicant was brought to Goa on 09.12.2023 and was served the grounds of arrest at 18:00 hours and was produced before the Magistrate at 7:30 p.m.

5. Thereafter, the statements of the Applicant, Accused No.4 and the statements of the victim girls under Section 50 of the PMLA were recorded; further investigation disclosed that approximately an amount of Rs.21.2 crores was credited to the bank accounts of the Applicant and the Accused No.4 through 43,000 UPI/IMPS transactions excluding intra-account transfers between the co-Accused; amount of Rs.3.4 crores has been sent by the Applicant to Kenya through Hawala Channels. Thus, the present complaint was filed, and cognizance of the same was taken on 21.02.2024 by the Special Court at Mapusa in PMLA Case No.02/2024.

6. The Applicant filed bail application dated 13.08.2024 (Exh-32) in the Special Court at Mapusa, which was rejected vide order dated 16.01.2025.

SUBMISSIONS

7. The Advocate for the Applicant Mr. Vibhav Amonkar made the following submissions that;

i. The arrest of the Applicant is illegal for not producing the Applicant before the nearest Magistrate within 24 hours and by not adhering to the mandate provided under Article 22 of the Constitution of India, instead bringing the Applicant to Goa by detaining him. It was submitted that the Applicant was detained at the Delhi Airport on 08.12.2023, by the Immigration Authorities, when he was boarding a flight to Nairobi at 13:25 hours. The Applicant was detained by the

Immigration Authorities around 11:30 a.m., on that day and held in a room until 2:30 am on 09.12.2023, until the IO flew from Goa to Delhi and took the Applicant into custody and brought the Applicant to Goa by a flight. It was contended that, the Applicant was throughout this period, in detention and custody of the IO, and was produced before the Magistrate only around 7:30 p.m. on 09.12.2023, after the expiration of 24 hours, since he was detained by the Immigration Authorities.

ii. There is no prima facie case made against the Applicant; there is no material on record which alleges the commission of the said act by the Applicant. It was contended that, since the first statement under section 50 of the PMLA of the Applicant was taken during his illegal detention on 09.12.2023 itself, the contents of the same could not be relied upon by the Prosecution.

iii. The Applicant, not being an Accused, in charge-sheet filed against Accused Nos. 1 and 2, is not arrayed as an Accused in the charge-sheet filed in the predicate offence; consequently, he cannot be charged under the PMLA.

iv. The three other statements take under Section 50 on 10.12.2023, 11.12.2023 and 12.12.2023 were when the Applicant was in custody and ought not to be looked into as held in ***Vijay Madanlal Choudhary and Ors v. Union of India and Ors*** reported in **2022 SCC OnLine SC 929**; even assuming that the first statement taken on 09.12.2023 was considered as one given voluntarily, its contents do not in any manner, implicate the Applicant in an offence under PMLA. It was contended that an offence, if at all could be said to have been committed under FEMA, which is the allegation, that the Applicant, transferred money illegally, to a foreign account, contrary to the provisions of FEMA. However, an offence under PMLA would not be attracted on a reading of the first statement.

v. It was further submitted that the charges, if sustained in a conviction, would attract punishment of imprisonment of not less than three years, which may be extended to seven years. It was further contended that the Applicant has been incarcerated since 09.12.2023, which is a period of almost two years, being more than half the period of minimum sentence, which he would face. Considering the long incarceration and the trial having not made much headway, the delay in trial would directly affect the fundamental right of the Accused guaranteed under Article 22 of the Constitution of India.

8. The Advocate for the Applicant in furtherance of his submissions has relied upon the following case laws:

a. ***Manish Sisodia v. Directorate of Enforcement*** reported in **2024 SCC OnLine SC 1920**.

b. ***V. Senthil Balaji v. Deputy Director, Directorate of Enforcement*** reported in **2024 SCC OnLine SC 2626**.

c. ***Union of India through the Assistant Director v. Kanhaiya Prasad*** reported in **2025 SCC OnLine SC 306**.

d. ***Vijay Madanlal Choudhary and Ors v. Union of India and Ors*** reported in **2022 SCC OnLine SC 929**.

e. ***Directorate of Enforcement v. Subhash Sharma*** reported in **2025 SC OnLine SC 240**.

f. ***Vikrant Balkrishna Shetty v. Enforcement Directorate and Anr***, in order dated 02.12.2024 passed by the High Court of Bombay at Goa in **CRMAB No.802 of 2024 (F)**.

g. ***Hem Prabhakar Shah v. The State of Maharashtra***, in order dated 05.09.2024 passed by the High Court of Bombay in **WPCR No.17757 of 2024**.

h. ***Obineri Sopuru Isaiah v. State Police Inspector and Anr*** in order dated 30.11.2021 passed by the High Court of Bombay at Goa in **CRMAB Nos.31, 349 and 478 of 2021. (F)**

i. ***Okoro Emanuel Chimeuecheya @ Eze v. Union Of India and 2 Ors*** in order dated 04.08.2025 passed by the High Court of Bombay at Goa in **WPCR No.796, 980, 994 of 2024 (F) and WPCR No. 538,554,2,15,66,606 of 2025 (F)**.

9. Advocate Siddharth Samant, Special Public Prosecutor for the Respondent No.1 advanced the following submissions, that;

i. The Applicant was, prima facie, involved in the process of laundering proceeds of crime, and concealing these illicit funds and, therefore, he is rightly charged with the said offences as he had knowledge of the crime being carried out by the Accused Nos. 1 and 2, as stated in his statement and the statement of Accused No.4. However, the existence of a prima facie case under PMLA does not require absolute proof but rather reasonable basis to believe that the person is guilty of an offence under Act. The twin conditions in Section 45 of the PMLA have not been complied with in the light of the material against the Applicant. Reliance has been placed on the following case laws;

A. ***The Union of India through the Assistant Director v. Kanhaiya Prasad***, **SPECIAL LEAVE PETITION (Crl.) No. 7140 OF 2024** in its paragraph 21.

B. ***Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439** in its paragraph 34 and 35.

C. ***Saumya Chaurasia v. Directorate of Enforcement*, Criminal Appeal No. 3840 of 2023**, the Supreme Court reiterated the objective of the PMLA in paragraph 19.

D. ***Goutam Kundu v. Directorate of Enforcement* (2015) 16 SCC 1** wherein the same is observed in paragraph 30.

E. ***Anil Kumar Yadav v. State (NCT of Delhi)*, (2018) 12 SCC 129**, as held in its paragraph 18.

F. ***Rohit Tandon v. Directorate of Enforcement*, (2018) 11 SCC 46**, in paragraph 21.

G. ***Tarun Kumar v. Assistant Director Directorate of Enforcement*, 2023 SCC OnLine SC 1486**, as held in paragraph 22.

H. ***Vijay Madan Lal Choudhary & Ors. v. Union of India & Ors*., [SLP (Crl.) No. 4634 OF 2014]** in paragraph 126, 129 and 140.

I. ***Kumari Suman Pandey v. State Of Uttar Pradesh And Another*, (2007) 12 SCC 364**, in paragraph 9, 10.

J. ***Kalyan Chandra Sarkar v. Rajesh Ranjan*, (2004) 7 SCC 528**, in paragraph 11.

ii. The Applicant, despite having knowledge of the criminal proceedings against his accomplices, Accused Nos. 1 and 2, chose to flee from the country, which according to him was an innocent holiday trip but was intercepted at the Delhi Airport. If the Applicant is released on bail, there is a likelihood of him evading the criminal proceedings.

iii. The arrest of the Applicant is lawful, as his liability under the PMLA is independent of whether he is named in the scheduled offence or not, which can be corroborated from the documentary evidence such as Bank transactions and statements, the statements of the witnesses and co-accused and admissions made by the Applicant in his own statement recorded under Section 50 of the PMLA, which is admissible in the eyes of the Court as they are deemed to be judicial proceedings. Reliance is placed on ***Rohit Tandon v. The Enforcement Directorate*** reported in **(2018) 11 SCC 46**.

CONSIDERATION OF THE SUBMISSIONS

10. Before proceeding with the considerations on specific facts of the case, it would be advantageous to examine certain judgments passed by the Supreme Court and the Bombay High Court dealing with the submission that the Applicant was in illegal detention, having not been produced within 24 hours of the first point of detention, (being contrary to Section 57 CrPC) was in violation of Article 22 of the Constitution of India.

11. In ***Director of Enforcement (DE) v. Subhash Sharma*** (supra), the Supreme Court was dealing with an appeal against an order of the Chhattisgarh High Court, granting bail to an accused, in connection with offence under Section 4 of the PMLA, the Judgment of the High Court, found that the arrest of the accused was illegal. In that case, the facts are somewhat similar to the facts of the present case, in that the accused there was detained and taken into custody at the IGI Airport, New Delhi when the Bureau of Immigration executed an LOC (Look Out Circular) issued against the accused, and held him in custody on behalf of the Enforcement Directorate until Enforcement Directorate took physical custody of the applicant from the Bureau of Immigration, and brought the accused to Raipur, from Delhi where he was ultimately remanded by the Magistrate. These particular facts were considered by the Supreme Court in the light of the submissions made by the Enforcement Directorate that pursuant to the LOC issued by Enforcement Directorate, the accused was already detained, but was arrested only on the next day and produced before the Magistrate within 24 hours of the arrest. The Supreme Court addressed the contention that the contention of the Enforcement

Directorate that the detention by the Bureau of Immigration could not be considered as part of the period of arrest for computing this period of 24 hours as envisaged under Section 57 of CrPC.

What was ultimately held by the Supreme Court was that the physical custody of the applicant by the Bureau of Immigration, in execution of the LOC and on behalf of the Enforcement Directorate and the time spent in physical custody of the Enforcement Directorate, hereafter until a formal arrest was effected is to be considered for the purpose of Section 57 CrPC. In this context, the following observations were made:

> "*6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022 Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of*

Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

7. The requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C). There is no inconsistency between the provisions of the PMLA and Section 57 of Cr.P.C. Hence, by virtue of Section 65 of the PMLA, Section 57 of the Cr.P.C applies to the proceedings under the PMLA.

8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution."

12. The Bombay High Court in ***Hem Prabhakar Shah*** (supra), in similar facts, has considered whether the detention by any agency, on behalf of the Enforcement Directorate, such as the Bureau of Immigration, pursuant to an LOC should be considered as part of the period of detention and the commencement point for reckoning the period of 24 hours specified in Section 57 CrPC. The relevant facts of the case are quoted in para 3 of the Judgment, which are as under:

"*3. The background facts leading to the arrest of the petitioner, as set out in the petition disclose the following events:-*

(A) The petitioner was flying to India (Ahmedabad, Gujarat) from Singapore on 13/8/2024. Upon landing in Ahmedabad, he was intercepted detained by the Immigration officers around 10.00p.m. allegedly based on a Look Out Circular ("LOC") issued at insistence of the respondent no.1.

(B) Without giving any further information, he was transferred

to the custody of Sardar Vallabhbhai Patel International Airport police station.

(C) From 10.00 p.m on 13/8/2024 till 10.00 pm 14/8/2024, the petitioner was detained in the police lock-up at Airport police station at Ahmedabad.

(D) The officer of respondent no 1 arrived in Ahmedabad ate about 3.00 pm and the petitioner was brought to Mumbai by Air.

(E) The petitioner was shown to be arrested at 23.08 p.m on 14/8/2024 by Azad Maidan police station.

(F) On 15/8/2024, at around 12.30 p.m, the petitioner was produced before the Vacation Court i.e. 37th Metropolitan Magistrate and the respondent sought remand of five days.

(G) The Magistrate authorized remand of the petitioner to two days police custody, till 17/8/2024.

(H) On the request of the Azad Maidan police station, the remand was granted until 21/8/2024."

13. This Court after considering the provisions of Section 44, 46 and 57 of the CrPC and making reference to certain earlier decisions of the Supreme Court on the subject as observed as under:

"*15. In Niranjan Singh (supra), the issue arose as to what did the term 'in custody convey, as in reference to Section 439 of the Code, a High Court or Court of Sessions was empowered to release on bail any person accused of an offence and in custody.*

When the respondents who were accused of offences but were not in custody, it was urged that the basic condition of being in jail is not fulfilled. The Court postulated a situation, where the accused were not absconding, but appeared and surrendered before the Sessions Judge and whether he can be said to be in custody

Assigning a meaning to the term 'custody' in the context of Section 439, Justice Krishna Iyer, concluded it to be physical Control or at least physical presence of the accused in court coupled with submission of the jurisdiction and the orders of the court.

While answering a question as to when a person is in custody within the *meaning of Section 439 of the Code, it was answered by stating that, when he is in duress, either because he is held by the investigating agency or other police or allied authority or is under the control of the Court having been remanded by the judicial order, or having offered himself to the court jurisdiction and has submitted to its orders by physical presence.*

In his inimitable style, Justice Krishna Iyer, paraphrased the term as below

"No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439 his word is of elastic semanites but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose."

16. While the word 'Arrest' as distinguished from 'Custody' received further expansion in Dinesh Kumar (Supra), when the appeals placed before the Apex Court raised a seminal question as to what constitutes 'Arrest' and 'Custody', in relation to criminal proceedings.

In first of the two appeals, the respondent did not surrender, but appeared before the Magistrate with his lawyer and was granted bail and it was urged that he was not taken into custody or arrested at any point of time.

In the other set of appeals, the appellants answered the query in column (14), 'Have you ever being convicted by court of any offence in the application forms for appointment as Constable Drivers in Haryana Police, since they have been acquitted of the charges and in column 13(A), as to whether they have been ever arrested, it was disclosed that they appeared before the Magistrate and they are released on personal bond without being arrested or taken into custody.

By referring to Section 46, when it was urged before the Court that 'arrest' is to legally restrain a person's movement, or it is detention of a person in custody by authority of law, while opposing the arguments reliance was placed upon the full bench decision of Madras High Court, in case of Roshan Beevi vs. Joint Secretary to the Government of Tamil Nadu (1984) Criminal Law Journal, 134 (Mad). which had held that 'Custody' and 'Arrest' are not synonymous and it is true that in every arrest there is a custody, but not vice a versa and a custody may amount to arrest in certain cases, but not in all cases. The decision in Niranjan Singh was distinguished by the Full Bench, *when it concluded that mere taking of a person in custody would amount to arrest.*

17. Expressing that the Apex Court was unable to appreciate the views of the full bench of Madras High Court, and reiterating the decision in Niranjan Singh, paragraph no.7 and 8 of the law report was reproduced with a specific observation that Section 107 and 108 of the Customs Act, do not contemplate immediate arrest of a person. being summoned in connection with an enquiry, but only contemplate surrendering to the custody of the customs officer, which could subsequently lead to arrest and detention.

The most pertinent observation in the law report thus:

"27. The interpretation of "arrest" and "custody" rendered by the Full Bench in Roshan Beevi case may be relevant in the context of Sections 107 and 108 of the Customs Act where summons in respect of an enquiry may amount to "custody" but not to "arrest", but such custody could subsequently materialise into arrest. The position is different as far as proceedings in the court are concerned in relation to enquiry into offences under the Penal Code and other criminal enactments. In the latter set of cases, in order to obtain the benefit of bail an accused has to surrender to the custody of the court or the police authorities before he can be granted the benefit thereunder. In Vol. 11 of the 4th Edn. of Halsbury's Laws of England the term "arrest has been defined in Para 99 in the following terms:

"99. Meaning of arrest. Arrest consists in the seizure or touching of a person's body with a view to his restraint, words may, however, amount to an arrest if, in the circumstances of the case, they are calculated to bring, and do bring, to a person's notice that he is under compulsion and he thereafter submits to the compulsion"

28. The aforesaid definition is similar in spirit to what is incorporated in Section 46 of the Code of Criminal Procedure. The concept was expanded by this Court in State of U.P. v. Deoman Upadhyaya wherein it was inter alia observed as follows: (AIR p. 1131, para 12)

"12 Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient. A person directly giving to a police officer by word of mouth information which may be used as evidence against him, may be deemed to have submitted himself to the 'custody' of the police officer

29. The sequitur of the above is that when a person, who is not in custody, approaches the police officer and provides information, which leads to the discovery of a fact, which could be used against him, it would be deemed that he had surrendered to the authority of the investigating agency

30. It must, therefore, be held that the views expressed by the High Court in Dinesh Kumar's writ petition regarding arrest were incorrect, while the *views expressed in the writ petitions filed by Lalit Kumar and Bhupinder correctly interpreted the meaning of the expressions "arrest" and "custody" However, how far the same would apply in the ultimate analysis relating to the filling up of Column 13(A) is another matter altogether"*

As per Halsbury's Laws of England (4th Edn) Volume 11.para 99 'Arrest consist of the actual seizure or touching of a persons body with a view to his detention.

The mere pronouncing of word "Arrest" is not an arrest, unless the person sought to be arrested, submits to the process and goes with the arresting officer.

In all contingencies, arrest amounts to detention of a person in contrast to the state of affairs, when he is a free man.

18. In this background, we had applied our mind to the facts placed before us in the wake of an argument advanced to the effect that from the moment the petitioner was intercepted by the Immigration officers around 10:00 pm, on 13/08/2024, allegedly based on a Look Out Circular, he was deprived of his liberty and he ceased to be free. Thereafter, he was send to the custody of SVPI Airport Police station, where he was detained until 1:00 pm. on 14/08/2024, and therefore, his custody after almost 15 hours was handed over to Azad Maidan Police Station, but his production before the Magistrate is only after he was brought to Mumbai on 14/08/2024, at 7:00 p.m.

22. On reading of the above portion of the affidavit, the intention of the investigating officer has surfaced on record, since he has deposed that the 'applicant was detained as per the Lookout Notice and a specific statement that from 13/08/2024, at 22:0 0p.m.until the custody was received by Azad Maidan Police Station on 14/08/2024, the procedure was part of the arrest process".

At one point of time, the deponent has attempted to suggest that there was no arrest effected, but he was also detained to complete the procedure.

23. The process adopted by the respondent clearly falls foul of Section 57 of the Code, which has prescribed that no police officer shall detain in custody a person arrested without warrant for a period more than 24 hours.

We had specifically directed the papers to be called from the SVPI Airport and we have received the necessary document from AFRRO, BOI Ahmedabad, which has made an entry in respect of 'Detection of LOC subject in reference to the file No.13/Ahd/Bol/LOC-LOP/SVPIA/2024-2442, dated 13/08/2024.

The aforesaid document placed before us has clearly recorded as under-

Type of LOC *(Discreet/Detention/BL/Prevention)*	*Detain and Handover to Police and Inform Originator*

Originator Reference No. with date	*3699/DCP/Zone 1/2019 dated 11/12/2019*
Action to be taken as per LOC-	*Detain and handover intercepted person to local Police and inform Originator*
Remarks in LOC	*Other Ph. No. of Originator 9923139999,02223010032 02222623050,*
Action Taken Today on 13.08.2024, a Singapore national namely Shah Hem Prabhakar (Male), arrived from Singapore Airlines flight No.SQ-504. approached for arrival immigration clearance and was found to be an LOC subject originated by Deputy Commissioner of Police, Zone I, Mumbai, Walchand, Hirachand Marg, Fort Mumbai-400001. As per remarks in the LOC, "Detain and Handover Intercepted Person to Local Police and Inform Originator The subject was detained and handed over to SVPI Airport Police Station The originator was informed telephonically +91-9870114485 (Sh Pawale, Pl, Azad Maidan PS, Mumbai) and +91-8976953139 (Sh. Parkhe, PSI).	

24. From reading of the above, we find substance in the statement of Mr. Ponda that from 13/08/2024, when the petition was intercepted at around 10:00 p.m. on 13/08/2024, he was detained firstly at SVPI Airport, in pursuance of the lookout notice issued against him on his detection and though the information was submitted to the originator (the police which has registered the FIR), he was detained and his custody was handed over to SVPI Airport Police Station. Thereafter, his custody was transferred to Azad Maidan Police Station, who brought him to Mumbai, where he is shown to be arrested at 23:08 p.m. on 14/08/2024. His remand in custody is beyond the statutory period of 24 hours, as he was produced on 15/08/2024, at around 12:30 p.m. before the Metropolitan Magistrate.

In totality, it can be seen that he has been detained for almost 30 hours till his production before the concerned Magistrate

The production of the petitioner before the Magistrate after 24 hours is thus in the teeth of Section 57 of Code of Criminal Procedure, which clearly amounts to violation of the fundamental right of the petitioner guaranteed under clause (2) of Article 22 of the Constitution.

Despite the vehement argument of the intervenor Mr. Kadam, attempting to justify the action of the respondent, after we have heard Mr. Yagnik and perused the affidavit filed on behalf of the respondent, we are not impressed by his argument that the petitioner was not arrested, but he was in a formal custody as he was put behind lockup, as there was no place to keep him way."

14. Thus, considering the view taken by the Supreme Court and this Court in the aforementioned judgments, one would have to appreciate the submissions made by the Counsel for the Applicant, that the detention by the Immigration Authorities and the subsequent act of the Investigating Officer of the Enforcement Directorate in whose custody the Applicant was required to travel to Goa, amounts to an 'arrest' under Section 57 of the CrPC and consequently whether the non-production of the Applicant with in the period of 24 hours from his first detention by the Immigration Authorities, constitutes a breach of his rights under Article 22 of the Constitution of India. For this purpose, reference would have to be made to certain undisputed facts, which are part of the records and affidavit of the Petitioner and of the Enforcement Directorate.

15. An FIR bearing No. 129 of 2023 dated 07.09.2023 was registered by the Anjuna Police Station under Sections 370, 370(A) r/w 34 IPC and 4, 5 and 8 of the Immoral Traffic (Prevention) Act, 1956 against Ms. Dorcast Maria, Ms. Wilkista Achista, Mr. Idumwonyl, Mr. Sebastia Lazarus, Mr Michael Almeida and Mr. Olokpa. This was treated as the predicate offence, pursuant to which Charge-sheet No.114 of 2023 dated 04.11.2023 was filed before the JMFC, Mapusa. According to the Charge-sheet in that case, accounts were opened in the name of the Applicant (Newton) and Accused No.4 (Hellen), in which the proceeds of prostitution, from trafficking of the victims in the Charge-sheet were deposited through UPI/ IMPS transactions against the phone number held by the

Applicant. Statements of the victims were recorded in that investigation.

16. Based on the material contained in the said FIR, the Enforcement Directorate, considered the fact that the scheduled offences are under the PLMLA and commenced the investigation into the same around 11.12.2023. According to the complaint filed by the Enforcement Directorate before the PMLA Court, the modus operandi adopted for receiving the alleged proceeds from prostitution, were investigated into and it was alleged that the proceeds received in the bank accounts of the Applicant, from the illicit trades, were transferred illegally through Hawala channels to Kenya. The Enforcement Directorate claims that the four statements made by the Applicant, disclosed the entire modus operandi of the manner in which the monies which are allegedly black money, are collected and syphoned out to foreign accounts.

17. According to the reply filed under affidavit dated 17.03.2025 of Rahul Gupta the Assistant Director of the Enforcement Directorate, who was also the Investigating Officer during investigation, the financial details of the Bank Accounts and PAN numbers were obtained from the Accused, from the Goa Police; further investigation reveals that some of the Bank Accounts at Phagwara Branch Punjab were in the name of Hellen Kimaro, and that five additional Bank Accounts were opened by the same person, where crores of Rupees were deposited in transactions ranging from Rs.5000/- to Rs.10000/- each, and a large number of these transactions were following to and from the account of the Applicant Newton.

The reply further states that as both these individuals are Foreign Nationals, Hellen being from Tanzania and Newton from Kenya and since they were a flight risk, a Look Out Circular (LOC) was issued by the Enforcement Directorate against both of them. Thus, it is established that the Immigration Authorities, had been issued an LOC, requiring the Accused to be detained, in the event he decided to leave India.

18. Subsequently, and during the course of the hearing of the application, the Applicant filed an additional affidavit on 09th June, 2025 wherein he has made the following specific allegations:

A. That he was scheduled to depart to Nairobi Kenya, on 08.12.2023 from New Delhi, for which purpose he took a flight from Bangalore at 07.20am and arrived in New Delhi at 10:10 am; his flight from Delhi to Nairobi was scheduled at 13:25 hours on 08.12.2023.

B. When he proceeded for immigration clearance, at Delhi airport, he was stopped at the immigration somewhere between 10:30 a.m. and 11:30 a.m. and after his passport was punched, he was informed by immigration that he could not travel, and was taken to a room where the Immigration Officer confiscated both his mobile phones, his laptop, and his watch and he was not informed why he was detained. He further states that, an officer in uniform was posted outside the room to ensure he did not step out.

C. The Applicant further states on affidavit that, around 3:00 a.m. on 09.12.2023, two officers came to the room and told him to follow them. The two officers told the Applicant to board along with them, an Air India Express flight, which was not booked by him, which flight, according to the Applicant was booked by the Enforcement Directorate. He further states that during this entire time his passport was in custody of the officers, as the Immigration Officers had handed it over to them. He states that he was not informed about the purpose of his detention, or his travel to Goa, with the two officers.

D. He further states that after arriving in Goa, they were received by the official driver of the Enforcement Directorate and taken to their office at Panaji, in an official car. He alleges that one of the officers Mr. Sachin, who had accompanied him from Delhi to Goa escorted him to a cell. He was asked to share the passcodes of all his devices and then asked to wait in the cell till the superior officer arrived.

E. He then states that Mr. Rahul Gupta (IO) arrived and interrogated him till 6:30 p.m. on 09.12.2023 and thereafter informed him that he would be taken to GMC for medical check-up. After returning from medical check-up Rahul Gupta (ID) informed him that he was arrested after which he was taken to the Magistrate and remanded to 7 days police custody. The Applicant also states that, he had not voluntarily come from Delhi to Goa, and that he had not booked any of the flight tickets; he states that he was in detention and custody from 10:30 a.m. on 08.12.2023 without being informed the reasons for his detention and claims that he was produced before the Magistrate after 24 hours of such detention, in contravention of the provisions of Section 57 of the CrPC and in breach of his fundamental rights under Article 22 of the Constitution of India.

19. Supplementary reply came to be filed by the Enforcement Directorate through its Assistant Director, Soumitra Mishra on 01.07.2025, which deals with the specific allegations in the Affidavit dated 09.06.2025 of the Applicant, with the following statements:

a. The Applicant was intercepted at Delhi on 08.12.2023, by the Immigration Authorities, since he was a flight risk. The

Immigration Officer intercepted the Applicant under the LOC and promptly informed the IO of the Enforcement Directorate, that the Applicant was attempting to flee the Country and was being detained.

b. That at the point the Applicant was detained, the IO was placed in Goa, and on being informed by the immigration authorities, took the first available flight from Goa to Delhi, without any delay, and met the Immigration Officer and the Applicant at 2:30 a.m. on 9.12.2023, when he appraised the Accused/Applicant of the LOC. Simultaneously, summons under Section 50 were served on the Applicant.

c. The Applicant voluntarily travelled to Goa in answer to the summons under Section 50 of the PMLA, to record his statement at Panaji, Goa, which is contrary to the Applicant's suggestion that the journey from Delhi to Goa was entirely facilitated by the Enforcement Directorate. At no point of time, the Applicant, was handcuffed, restrained or driven against his will.

d. That the Applicant attempted to flee the Country. The Enforcement Directorate, clarifies that when a person is identified as flight risk, the department initiates an LOC requisition and it is only the Immigration Authorities, and not the Enforcement Directorate or CBI or any other agency, which is empowered to detain such individual and prevent their departure. The reply further states that the Immigration Officer lack arrest powers, hence, the allegations made by the Applicant are baseless.

20. The upshot of the affidavit and reply of the Enforcement Directorate, is that the LOC was issued by the Enforcement Directorate, clearly as a direction to the Immigration Authorities, to detain the Applicant, in the event that he decides to leave India. The Immigration Authorities, pursuant to the LOC, had in fact, detained the Applicant at around 10:30 a.m. and held him in a room under guard until the arrival of the officers of the Enforcement Directorate at around 3:00 a.m., when the officers of the Enforcement Directorate, admittedly served summons under Section 50 on the Applicant at Delhi airport. A categorical allegation had been made by the Applicant, that he was forced to accompany the two officers of Enforcement Directorate, on a flight to Goa at 3:30 a.m. and that the Applicant had not booked any ticket on that flight, which he claims, was booked by the Enforcement Directorate. There is no specific statement made, on behalf of the Enforcement Directorate that the ticket of the Applicant was not booked by the Enforcement Directorate, and the reply filed by the Enforcement Directorate is silent on this count. Though the Enforcement Directorate does admit that the Applicant took the same flight that the officer did, to Goa from Delhi, however, they claimed that the Applicant travelled to Goa voluntarily.

21. The facts on the basis of which Court in ***Hem Prabhakar Shah*** (supra) has held that detention of a person by the Immigration Authorities on behalf of the Enforcement Directorate and in pursuance to an LOC amounts to "an arrest" within the meaning of Section 57 CrPC, are identical to the facts in the present case. In the present case, merely playing with words and stating that Immigration Authority did detain the Applicant, pursuant to the LOC, but lacked powers to effect an "arrest", would not absolve the Enforcement Directorate of the fact that detention effected at their behest, commenced at 10:30 a.m. on 08.12.2023. Once the Enforcement Directorate admits that the detention by the Immigration Officer, was at their behest, on an LOC issued by the department, the detention in effect, is an "arrest" at the directions of the Enforcement Directorate, and must be considered to have commenced at 10:30 a.m. The very fact that the two officers of the Enforcement Directorate immediately flew from Goa, on being informed of the detention of the Applicant, at Delhi itself, clearly points to the fact that the Applicant was held from 10:30 a.m. until 2:30 a.m. or 3:00 a.m. on 09.12.2023, when he was handed over to the officers of the Enforcement Directorate.

22. Though the Enforcement Directorate claims that the Applicant travelled voluntarily, there is absolutely no material produced on record, or even a denial to the specific statement, made by the Applicant, that his ticket was booked and arranged by Enforcement Directorate to travel from Delhi to Goa, that he was taken in a vehicle of the Department from the Airport of Goa to the office of the Enforcement Directorate at Panaji, driven by the driver of the Department.

23. Strangely, the supplementary affidavit/reply dated 01.07.2025, has not been filed by the IO, or any of the officers, who travelled to and from Delhi, but by one Soumitra Mishra, an Assistant Director who does not even claim that the he is a witness to the entire incident alleged on 08.12.2023 and 09.12.2023; the signatory of the reply dated 01.07.2025, has also not made the statements on the basis of record or information given by the IO or the other two officers who travelled; atleast there is no statement to this effect in the reply, leading me to conclude that the reply is vague and evasive and does not deal with specific facts alleged by the applicant. This leads me, from the material on record to hold that the applicant was in fact detained by the Immigration Authorities at 10.30am on 08.12.2023, held in their custody on behalf of the Enforcement Directorate , and was taken into custody of the Enforcement Directorate at 2.30 or 3.00 am at Delhi airport on 09.12.2023 and brought to Goa, after which he was produced from the custody of the Enforcement Directorate before the Magistrate of Goa only at 7.30pm, after completing his medical examination.

24. The Enforcement Directorate may not have recorded a formal "arrest" as is required under Section 57 of CrPC but has clearly kept the Applicant under their control and restraint, either through the Immigration Authorities, through whom the Applicant was physically held in a room at Delhi airport and thereafter, brought to Goa, under custody of the officers of the Enforcement Directorate. The entire facts commencing from 10:30 a.m. on 08.12.2023, with the formal arrest effected by the Enforcement Directorate on 09.12.2023, at 6:30 p.m. and on subsequent remand of the Applicant, clearly demonstrate that during this entire period, which is in excess of the 24 hours permissible for seeking a remand, under Sections 57 of CrPC, the Applicant was not a free man. The entire dentition for this period, without the order of a Magistrate, has therefore to be considered in contravention of provisions of Section 57 of CrPC and consequently in breach of the provisions of Article 22 of the Constitution of India. The judgment of this Court in ***Hem Prabhakar Shah*** (supra) and of the supreme Court in ***Director of Enforcement (DE) v. Subhash Sharma*** (supra) apply in all force to the facts of the present case.

25. In ***Director of Enforcement (DE) v. Subhash Sharma*** (supra), at para 5 thereof, it was argued for the Enforcement Directorate that the Respondent therein was detained pursuant to the LOC but was formally arrested by the Enforcement Directorate much later, and therefore, cannot be considered to be in custody of the Enforcement Directorate until his formal arrest. This argument was rejected in para 6 of the judgment holding that the LOC was issued at the instance of the Enforcement Directorate and execution of the LOC by the Bureau of Immigration at IGI Airport, was on behalf of the ED. It was further held, on these facts that the physical custody of the Respondent therein was taken over by the Enforcement Directorate from the Bureau of Immigration and, the Respondent not having been produced before the nearest Magistrate within 24 hours, renders the arrest completely illegal and in violation of clause 2 of Article 23. It was further held that his arrest gets further vitiated on completion of 24 hours in custody. The judgment further holds that there is no inconsistency between the provisions of the PMLA and Section 57 of the CrPC, which would apply to proceedings under PMLA. The judgment then holds that the consequence of the violation of the Applicant's fundamental rights, the Court would have a duty to release the Accused on bail for the reason that the arrest in such cases stands vitiated.

26. Having considered that the arrest of the Applicant having stood vitiated by the fact that he was in custody from 08.12.2023 at 10:30 a.m. to 6:30 p.m. on 09.12.2023, the Applicant would have to be released on bail, on the principle laid down by the Supreme Court in ***Director of Enforcement (DE) v. Subhash Sharma*** (supra).

Considering that the application for bail must be allowed on this ground itself, I need not be detained by the other submissions made by the Applicant.

27. Consequently, I proceed to pass the following order:

i. The Applicant shall be released on bail in connection with PMLA No.2/2024 filed by the Enforcement Directorate before the Special Court at Mapusa on furnishing a PR Bond of Rs.2,00,000/- with one surety of the like amount.

ii. The release of the Applicant shall be subject to production of valid passport and visa. Such passport and visa shall be surrendered to the Trial Court during the course of the trial; the Applicant shall not travel outside the State of Goa without permission of the Trial Court.

iii. The Applicant shall register himself on the basis of such valid passport and visa, with the Foreigners Regional Registration Office (FRRO) at Goa, within two weeks of his release.

iv. The Applicant shall use a SIM card for his mobile phone that is obtained on the basis of such valid passport issued in his favour and he shall give the details of such contact numbers before the Trial Court.

v. The Applicant shall inform the place of his residence to the Trial Court with valid proof thereof and report any changes in the same immediately with appropriate proof, each time before the Trial Court. If the Applicant fails to provide such details, he shall be kept in detention centre(s) established by the Respondent State.

vi. The Applicant shall file affidavit before the Trial Court within two weeks of his release on bail, stating the source of his funds and source of his income in this Country, giving the details of legal channels including Bank accounts through which he would be operating his finances.

vii. The Applicant shall report to the Enforcement Directorate on the first Monday of every month between 10:00 a.m. and 12:00 noon, till the completion of trial.

viii. The Applicant shall not indulge in any activity that would amount to tampering with evidence and influencing witnesses.

ix. The Applicant shall remain present before the Trial Court on each and every date of the proceeding and he shall cooperate with such proceedings.

28. Needless to say, the violation of any of the aforesaid conditions would make the Applicant liable for cancellation of bail.

VALMIKI MENEZES, J.

Signed by: JOSE FRANCISCO DSOUZA
Designation: Personal Assistant
Date: 25/11/2025 13:43:32