



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

269(1)

CRWP-5261-2025(O&M)
Pronounced on: 11.09.2025

DHARAM SINGH CHHOKER

...Petitioner(s)

Versus**DIRECTORATE OF ENFORCEMENT AND OTHERS**

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Vikram Chaudhri, Senior Advocate with
Ms. Hargun Sandhu, Advocate
for the petitioner.

Mr. Zoheb Hossain, Special Counsel
(Through Video Conferencing)
Mr. Lokesh Narang, Senior Panel Counsel
for the respondents/ED.

TRIBHUVAN DAHIYA, J.

The petition has been filed, *inter alia*, for setting aside the petitioner's arrest order dated 05.05.2025, Annexure P-46, and all consequential proceedings, including the remand orders dated 05.05.2025, 09.05.2025, 13.05.2025 and 17.05.2025, Annexures P-56, P-67, P-69 and P-72, respectively, passed by the Special Judge-cum-Sessions Judge, Gurugram, under the Prevention of Money Laundering Act, 2002 (for short, 'PMLA').

2. Briefly, the case of the prosecution is that M/s Sai Aaina Farms Private Limited, presently known as M/s Mahira Infratech Private Limited (hereinafter referred to as 'SAFPL') is controlled by family of the present petitioner and his sons, Sikander Singh and Vikas Chhoker. The companies of Chhoker family are known as 'Mahira Group' which primarily deal with real estate, and SAFPL is also one of several such companies under the Group which started affordable group housing project at Sector 68, Gurugram.



SAFPL applied for licences/permissions to the Department of Town and Country Planning, Haryana, and was granted licence no.106/2017 to build around 1500 flats in an area of about 10 acres; the project was required to be completed by 2021-22.

2.1. SAFPL started bookings of flats and collected about ₹363 crores from the home buyers. The construction work remained slow-paced and the promised deadlines were missed. This resulted into filing a complaint before the Magisterial Court at Gurugram and pursuant to directions issued by the Magistrate under Section 156(3) Cr.P.C., on 07.01.2021, FIR no. 11, dated 14.01.2021, was registered. The petitioner was not arrayed as an accused in the FIR.

2.2. The order passed by the Magistrate was challenged by the affected persons before this Court by filing, CRM-M-3823-2021, wherein vide interim order dated 27.01.2021, Annexure P-3, operation of the order dated 07.01.2021 and further proceedings in the said consequential FIR no.11, dated 14.01.2021, under Sections 120-B, 406, 420, 467, 468 and 471 IPC, registered at Police Station Sushant Lok, Gurugram, were stayed *qua* the petitioners therein.

2.3. Despite the pending proceedings, the respondent/Enforcement Directorate (ED) proceeded to register the inquiry, ECIR/GNZO/20/2021 dated 16.11.2021, by treating the offences in FIR no.11 of 2021 as the scheduled/predicate offences. Finally, the aforementioned petition was allowed, vide order dated 05.07.2023, Annexure P-5, and the Magistrate was directed to pass a fresh order.

2.4. The petitioner challenged the ECIR and the consequential proceedings before this Court by filing, CRM-M-37710-2023, wherein vide order dated 07.08.2023, Annexure P-6, the petitioner was allowed to appear



before the ED and give documents as per the requirement of Section 50 of the PMLA. The petition was filed primarily on the ground that there was no basis for the inquiry to continue as the scheduled offences under the PMLA had ceased to exist after the Magistrate's order was set aside by this Court on 05.07.2023.

2.5. The ED added four more FIRs to the aforementioned ECIR, which are (i) FIR no.175, dated 18.05.2022, under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975, registered at Police Station Rajendra Park, Gurugram; (ii) FIR no.151, dated 31.05.2023, under Sections 420, 467, 468, 471 of IPC, registered at Police Station Rajendra Park, Gurugram; (iii) FIR no.152, dated 01.06.2023, under Sections 420, 467, 468, 471 of IPC, registered at Police Station Rajendra Park, Gurugram; and (iv) FIR no.151, dated 05.07.2023, under Sections 120-B, 420, 467, 468, 471 of IPC, registered at Police Station Sushant Lok, Gurugram.

2.6. Pursuant thereto, the ED moved an application before the Special Judge, PMLA, seeking open-ended non-bailable warrants of arrest against the petitioner. The petitioner approached this Court seeking stay of execution of warrants, and this Court vide order dated 05.10.2023, Annexure P-8, directed that the warrants shall not be executed till the next date of hearing. The petitioner was directed to appear before the ED everyday till 08.10.2023.

2.7. Pursuant to the interim order dated 09.10.2023, Annexure P-9, passed by this Court in CRM-M-37710-2023, the petitioner and his sons submitted an affidavit, which was verified by the Deputy Commissioner, Gurugram, to the effect that physical progress in about 800 flats falling in Tower-A to Tower-G is approximately 80-95 per cent, and physical progress in balance 200 flats with respect to Tower-H to Tower-N is approximately 75-80 per cent.



2.8. During pendency of proceedings before this Court, the Chief Judicial Magistrate, Gurugram, in proceeding under Section 156(3) Cr.P.C., passed a fresh order, dated 26.10.2023, Annexure P-14, directing investigation in the aforementioned FIR no.11 of 2021. The said order was challenged by the petitioner before this Court by filing, CRM-M-56495-2023, which was allowed vide order dated 16.01.2024, Annexure P-15, wherein the CJM's order, dated 26.10.2023, was set aside and the FIR was declared a nullity. Further, directions were issued to the Magistrate to decide the application made by the complainant under Section 156(3) Cr.P.C., afresh in the light of observations made in the judgment. Later, the complainant withdrew his complaint, and the same was dismissed as withdrawn vide order dated 09.02.2024, Annexure P-16.

2.9. The petitioner thereafter filed another petition, CRM-M-37710-2023, and his son, Sikander Singh, also filed a connected petition, CRM-M-51250-2023, *inter alia*, praying for quashing the ECIR in question with all consequential proceedings arising therefrom, including non-bailable warrants of arrest dated 29.09.2023. These petitions were dismissed by a common judgment dated 26.02.2024, Annexure P-17, by the Division Bench. The order was assailed by the petitioner before the Supreme Court by filing SLP (Criminal) no.3867 of 2024.

2.10. Before listing of the SLP, the ED approached the Special Judge for initiation of proclamation proceedings under Section 82 Cr.P.C. against the petitioner and his family members. The proclamation was not issued, but the Special Judge issued fresh non-bailable warrants of arrest which could not be executed, and were again issued against the petitioner and his family members vide order dated 06.04.2024, Annexure P-20. On the direction of the Supreme Court in the aforementioned SLP issued vide order dated



10.04.2024, the petitioner appeared before the ED on 12.04.2024, but he was not arrested. Fresh warrants of arrest were issued only against the petitioner's sons, Sikander Singh and Vikas Chhoker, on 29.04.2024, Annexure P-22. Pursuant thereto, the petitioner's son, Sikander Singh, was arrested on 30.04.2024 by the ED and finally released on regular bail by this Court vide order dated 31.01.2025.

2.11. The petitioner withdrew his aforementioned SLP against the Division Bench judgment dated 26.02.2024, which was dismissed as such by the Supreme Court vide order dated 06.05.2024, Annexure P-23, with a direction that *'the observations made in the impugned judgment will not be treated as binding findings on merits.'*

2.12. The petitioner, thereafter, filed pre-arrest bail petition before the Special Judge, which was dismissed vide order dated 20.05.2024, Annexure P-24. The same was challenged by him before this Court by filing, CRM-M-26190-2024, which was also dismissed by vide order dated 28.05.2024, Annexure P-25. The order was challenged by the petitioner before the Supreme Court by filing SLP (Criminal) Diary no.30375 of 2024, but withdrew the same from the Registry before it could be listed for hearing.

2.13. On another application, dated 28.05.2024, filed by the ED under Section 82 Cr.P.C. seeking issuance of proclamation against the petitioner, the Special Judge again issued warrants of arrest against the petitioner vide order dated 30.05.2024, Annexure P-28. The ED's request for issuance of proclamation against the petitioner and his son (Vikas Chokkar) was, however, declined by the Special Judge by taking into consideration the material on the file, that showed after the order, dated 29.04.2024, no efforts had been made to secure the presence of the accused through warrants of arrest.



2.14. The ED filed a prosecution complaint, Annexure P-27, against the petitioner on 27.06.2024 before the Special Judge for commission of offence of Money Laundering as defined under Section 3 read with Section 70 and punishable under Section 4 of the PMLA.

2.15. Another petition, CWP-25140-2024, was filed before this Court by one Virender Singh son of Bharat Singh Chhoker, who was aspiring to contest election to the Haryana Legislative Assembly from the constituency from where the petitioner had been contesting the election, seeking the latter's arrest. The petition was allowed by the Division Bench vide judgment and order dated 23.10.2024, by observing as under:

35. For all the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed to the extent that the Enforcement Directorate is directed to, unless the order passed by this Court on 28.05.2024 upon CRM-M-26190-2024, thus is either stayed or quashed by the Apex Court, thus forthwith arrest respondent No.5-Dharam Singh Chhoker.

The judgment was challenged by the petitioner before the Supreme Court by filing SLP (Civil) Diary no.25567 of 2025.

2.16. After the judgment by the Division Bench, on an application filed by the ED seeking issuance of open-ended non-bailable warrants against the petitioner, the Special Judge, vide order dated 09.01.2025, Annexure P-41, again issued fresh open-ended non-bailable warrants against the petitioner, vide order dated 24.01.2025, Annexure P-42, by observing as under:

However, keeping in view the observations of the Hon'ble High Court in the matter in hand in CWP No.25140 of 2024(O&M) titled as Virender Singh Versus State of Haryana and another, date of decision 23.10.2024, to facilitate the officers of applicant-Directorate of Enforcement to arrest the respondents from other State, fresh open-ended non-bailable warrants against



respondents-Dharam Singh Chhoker and Vikas Chhoker be issued, if so desired.

2.17. In these circumstances, the ED officials apprehended the petitioner while he was at Shangri-La Hotel, New Delhi, on the evening of 04.05.2025. It has been alleged that he was accosted by Mr. Navneet Aggarwal, Joint Director, ED, while he was sitting in a restaurant there. He was dragged outside to open space of the hotel, where another ED officer, Mr. Gautam Barai, Assistant Director, was present. The officer tore his shirt/collar, twisted his arm and repeatedly pushed him which led to fracture of his elbow. Despite the petitioner being in severe pain and unable to remain conscious, he was pulled inside a private vehicle/car, was hit on the head against the door pillar and suffered further injury. Instead of providing him first aid, he was taken to the ED's Central Office at Delhi and thereafter to its Gurugram Zonal Office.

2.18. On 05.05.2025 at 12:10 am in the Gurugram Zonal Office, the petitioner was formally arrested by passing the impugned arrest order, dated 05.05.2025, around 02:37 am. At the time of arrest, he was provided a copy of 'reasons to believe' as well as 'grounds of arrest'. The petitioner duly recorded his protest against his illegal arrest effected by the ED without showing him warrants, and assaulting him physically. He was produced before the Special Judge for the purpose of remand on 05.05.2025 at 11:00 am, and was remanded to ED's custody till 09.05.2025, vide impugned order dated 05.05.2025. His custody to the ED was further extended till 13.05.2025, vide impugned order dated 09.05.2025. The ED again sought his remand for ten days and his custody was given upto 17.05.2025, vide impugned order dated 13.05.2025. On 17.05.2025, the petitioner was again produced before the Special Judge, when the ED made another application to send him to



judicial custody, which was allowed vide impugned order dated 17.05.2025.

The petitioner, accordingly, remains in judicial custody to date.

2.19. Thereafter, the petitioner withdrew his SLP (Civil) Diary no.25567 of 2025, which was disposed of vide order dated 16.05.2025, with the following observations:

We have been informed by the learned senior counsel appearing for the petitioner that the order of the High Court has been given effect to and the petitioner has been arrested.

In such view of the matter, nothing survives for consideration. However, the observations made by the High Court in the impugned judgment will not stand in the way of the further remedy which the petitioner might seek by way of filing of a regular bail application.

3. In this factual background, Mr. Vikram Chaudhri, learned senior counsel for the petitioner has contended that the petitioner is a senior citizen, aged about sixty-four years, and is a former member of Haryana Legislative Assembly. He has been treated in a high-handed and most arbitrary manner by arresting him from a Hotel around 09:30 pm on 04.05.2025, after being manhandled and brutally assaulted by the ED officials leading to grievous injuries, and a fractured left elbow. This is despite the fact he had joined the investigation and appeared before the ED on 12.04.2024, pursuant to the directions issued by the Supreme Court in SLP (Criminal) no. 3867 of 2024, and had not been arrested. The petitioner was actually taken in custody from a Hotel in Delhi on 04.05.2025, whereas he was shown to have been arrested the next day in the ED Zonal Office, Gurugram, at 02:37 am. The procedure followed in arresting him is in violation of law and provisions of Section 19 of the PMLA, whereunder the arrest can only be made by an authorised officer on the basis of material in his possession, and 'reasons to believe' to be recorded in writing that the person is guilty of an offence punishable under the



Act; and immediately after the arrest a copy of the order of arrest along with the material has to be forwarded to the adjudicating authority under a sealed cover. The mandatory procedure was not followed by the ED officials, and the petitioner was arrested on 04.05.2025 around 09:30 pm, but compliance of Section 19 of the PMLA was statedly made only on the following day, i.e., on 05.05.2025 around 02:37 am, as claimed by the ED itself. Besides, there was no material with the authorised officer to arrest the petitioner, nor have any 'reasons to believe' on the basis of admissible material been recorded in writing. As per the settled law in *Arvind Kejriwal v. Directorate of Enforcement*, 2025 2 SCC 248, the material, i.e., documents and statements have to be admissible in evidence. In arresting the petitioner the mandate of Section 19 PMLA has been totally ignored which renders the petitioner's detention illegal. The legal parameters laid down in *Vijay Madanlal Choudhary and others v. Union of India and others*, 2022 SCC Online SC 929 have also been violated with impunity by the ED.

3.1. Secondly, learned senior counsel has contended that in terms of law laid down in *V. Senthil Balaji v. State and others*, 2023 SCC Online SC 934, the ED was required to satisfy the Special Judge with adequate material regarding the need for petitioner's custody which was not done, nor did the Special Judge took this important aspect into consideration while granting the petitioner's remand/custody. This non-compliance entitles the petitioner to release from custody. Besides, the 'reasons to believe' and 'grounds of arrest' are sham documents as its many paragraphs are identical to the prosecution complaint that was filed against the petitioner's sons on 27.06.2024. Also, violation of Section 19(2) PMLA has been established as the authorised officer failed to forward copies of the 'grounds of arrest', 'reasons to believe',



arrest order and arrest memo to the adjudicating authority/Special Judge, vide memo dated 05.05.2025, Annexure P-49.

3.2. Thirdly, it has been contended that there was no necessity to arrest the petitioner as the ED had itself stated before the Special Judge on 29.04.2024 that he had already joined the investigation. There has been no material change in circumstances since then requiring the ED to arrest the petitioner after one year of making the statement, nor has such justification been given in the 'grounds of arrest' and 'reasons to believe'; therefore, there has been no satisfaction about the petitioner's guilt, and his arrest becomes untenable. Besides, the investigations are already over in the case where entire allegations relate back to 2019 to 2021, and the prosecution complaint has already been filed in Court.

3.3. Fourthly, it has been contended, though there are earlier judgments/orders passed by this Court against the petitioner -(i) by the Division Bench dated 26.02.2024, dismissing the petition seeking quashing of the ECIR in question; (ii) another judgment by the Division Bench dated 23.10.2024, directing the petitioner's arrest; (iii) the order dated 28.05.2024, rejecting the petitioner's pre-arrest bail petition, the same cannot adversely affect merits of this case. The observations made in the first two judgments and orders cannot be read against the petitioner in view of directions by the Supreme Court to that effect in the SLPs filed against the same; and the third one rejecting the petitioner's pre-arrest bail petition can also not be a ground to arrest him, as in view of the settled law in *M. C. Abraham and another v. State of Maharashtra and others*, (2003) 2 SCC 649, arrest is always discretion of the officer concerned, who is not expected to act in a mechanical manner without looking into the necessity of such an action.



3.4. Lastly, it has been contended that the petitioner was not even shown a copy of the non-bailable warrants of arrest, nor has the fact been disputed in the 'grounds of arrest' and 'reasons to believe' or the remand application. Besides, the petitioner cannot be said to have been arrested in execution of warrants of arrest as the mandatory procedure for execution of the warrants laid down under Sections 75 and 76 Cr.P.C. has not been followed. It is required thereunder that substance of the warrants shall be notified to a person sought to be arrested, and if so required the warrants shall be shown to him. It is also required that the person so arrested has to be brought before the Court without unnecessary delay. These mandatory procedures have not been followed.

4. *Per contra*, Mr. Zoheb Hossain, learned counsel for the ED, firstly submitted that there was sufficient material with the ED to arrest the petitioner and the same had already been examined by two Division Benches vide judgments dated 26.02.2024 and 23.10.2024, and also by learned Single Judge while dismissing the petitioner's application for anticipatory bail vide order dated 28.05.2024. The petitioner's complicity in the crime alleged against him already stands established before this Court, therefore, it cannot be said that there was no material with the ED to arrest him.

4.1. Secondly, it has been contended by learned counsel for the ED that the arrest was strictly in compliance with the procedure laid down in law. The petitioner was first arrested from the Hotel on 04.05.2025 at 09:30 pm by executing the non-bailable warrants issued against him by the Special Judge, pursuant to the directions issued by the Division Bench vide order dated 23.10.2024. He was duly shown a copy of the warrants, as admitted by the petitioner himself. However, instead of reading the warrants he tried to escape and ran out of the hotel bar with full force. It was with a great difficulty that



he could be apprehended in execution of the warrants from the hotel compound and brought to the ED Zonal Office in Gurugram. There he was arrested under Section 19 of the PMLA by complying with all the requirements mandated therein. The order of arrest, dated 05.05.2025, duly records that he has been informed about the 'grounds of arrest' and has been given a copy of the same in writing. It is wrong to state that objections etc. against his arrest have been recorded by the petitioner on the arrest order. A copy of the order dated 05.05.2025, Annexure R-1, itself establishes that no such recording is there, and he has duly signed thereupon without any protest. The copy of the arrest order appended with the petition as Annexure P-46 is only a second copy given to the petitioner at the time of arrest, upon which the objection was later written by him.

4.2. Thirdly, learned counsel contended that the compliance of Section 19(2) PMLA was duly made as the copy of the 'reasons to believe' consisting of 39 pages; a copy of arrest order, dated 05.05.2025, along with copies of arrest memo, intimation of arrest and personal search memo, 'grounds of arrest', both in Hindi and English of the same date, consisting of 22 pages; and material in possession based upon which 'reasons to believe' were drawn consisting of 309 pages were duly appended to the intimation of arrest letter, dated 05.05.2025, given to the Special Judge. A true photocopy of the same has been shown to the Court, which is taken on record as Annexure 'A'. The typed copy of this annexure placed on record as Annexure P-49 is not correct. Accordingly, it is wrong to submit that mandatory provisions under Section 19 of the PMLA were not complied with. Besides, as has been laid down by the Supreme Court in *Arvind Kejriwal* case (*supra*) that at the stage of examining the legality of arrest, this Court is not to take a merit



review of the 'reasons to believe' and 'grounds of arrest' recorded by the authorised officer.

4.3. Lastly, it has been contended that the petitioner's custody is required to recover money from him. The proceeds of crime which have been siphoned off for personal gains or to other persons/entities are yet to be unearthed. The Mahira Group companies were already under the petitioner's control and he had been taking vital decisions regarding the financial transactions and funds from the home buyers meant for construction of this project which were deviated in different forms clandestinely. And as held by Supreme Court in *V. Senthil Balaji* case (*supra*), the arrest can be in aid of investigation, as it is in the petitioner's case.

5. Submissions made by learned counsel for the parties have been considered.

6. The petitioner is accused of committing the offence under Section 3, read with Section 70, and punishable under Section 4 of the PMLA, and an inquiry ECIR/GNZO/20/2021, dated 16.11.2021, has been registered against him on the basis of four FIRs mentioned in para 2.5 hereinbefore. He statedly controls the company, SAFPL, along with his sons which started an affordable an group housing project in Sector 68, Gurugram, and was granted the licence to build around 1500 flats. The home buyers' money received by the Company is alleged to have been siphoned off by the petitioner in the form of loans and acquisition of properties, apart from making personal expenses out of it. Despite issuing of non-bailable warrants (NBWs), by the Special Judge against him atleast six times between 04.10.2023 to 19.03.2025, as detailed in the reply filed by the ED, he could not be arrested. Some of these NBWs were challenged by him before a Division Bench also; however, the petition was dismissed vide judgment dated 26.02.2024. Finally, the



Division Bench in another matter, CWP-25140-2024, directed the ED to arrest the petitioner forthwith, vide order dated 23.10.2024. Pursuant thereto, fresh open-ended NBWs were issued against him by the Special Judge vide order dated 24.01.2025, and he was apprehended from a Hotel in New Delhi around 09:30 pm on 04.05.2025. He was, thereafter, taken to the ED's Office at Gurugram and arrested under Section 19(1) PMLA.

7. Learned senior counsel for the petitioner took objection to the petitioner's arrest by the ED on three counts; firstly, that he was manhandled and assaulted at the time of arrest; secondly, the arrest was not in execution of the warrants issued by the Special Judge, since the petitioner was not shown a copy of the warrants; and, thirdly, mandatory requirements under Section 19 PMLA were not complied with at the time of his arrest. These contentions are misconceived and stand rejected accordingly. The allegations regarding the petitioner's manhandling and assault cannot be believed to be true merely on the basis of averments and documents in the petition, as facts in that regard are disputed. There are counter allegations by the ED to the effect that the moment arresting officer introduced himself to the petitioner, showed him a soft copy of the warrants on mobile phone asking him to accompany peacefully, he tried to flee from the spot and sprinted out of the hotel bar. It was with great difficulty that he could be apprehended at the hotel gate with the help of other officers and staff. It is also alleged that during this entire episode, the petitioner tried to resist the arrest and assaulted the officers who were performing their official duties. This version and counter-version regarding the alleged assault is a matter of trial as FIRs have been lodged by both the sides against each other, and facts are still to be established. Therefore, the petitioner's allegations cannot be believed at this stage, nor can the arrest be termed illegal on that account.



8. So far as not showing the NBWs to the petitioner is concerned, it is an admitted fact that he was shown a soft copy of the warrants on mobile phone by the arresting officer. The requirements under Section 75 Cr.P.C. is that *'the police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.'* Concededly, the petitioner was shown a soft copy of the warrants, which means substance thereof was notified to him by the officer. Also, it is not the petitioner's case that he ever asked the officer to show him a hard copy of the warrants. Accordingly, there is no violation of procedure in execution of NBWs issued against him by the Special Judge, and the arrest cannot be said to be vitiated on that account.

9. Section 19 PMLA reads as under:

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

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

(3) xxx xxx xxx

After his arrest from the hotel in Delhi on 04.05.2025, the petitioner was taken to the ED office at Gurugram and was arrested there under Section 19 PMLA



at 02:37 am on 05.05.2025, vide the impugned arrest order. Undisputedly, the petitioner was arrested by an authorised officer. He was also informed about the 'grounds of arrest' by furnishing a copy of the same, as recorded in the arrest order. The 'reasons to believe' have also been recorded on the basis of material with the authorised officer that the petitioner is guilty of offences punishable under the PMLA. It is apparent from the intimation of arrest letter dated 05.05.2025, Annexure 'A', that a copy of arrest order of the same date along with copies of arrest memo, intimation of arrest, personal search memo, 'grounds of arrest' and material in possession, based upon which the 'reasons to believe' have been recorded, were forwarded to the Special Judge.

9.1. The Supreme Court in *Arvind Kejriwal* case (*supra*), after considering earlier cases on the issue including *Vijay Madanlal Choudhary* (*supra*), has laid down the scope of judicial review while examining legality of arrest under the PMLA; it is not to be a review on merits. In this regard, it is apt to refer to the following observations by the Court:

44. 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 DoE has acted in accordance with the law. The courts scrutinise the validity of the arrest in exercise of power of judicial review. If adequate and due care is taken by 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.

45 and 46 xxx xxx xxx

47. 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 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.

9.2. Apparently, while exercising jurisdiction to examine validity of arrest the Court is to see whether 'reasons to believe' are based upon material in possession which establishes, in the opinion of the designated officer, that the arrestee is guilty of an offence under the PMLA. The adequacy or sufficiency of material is not to be reviewed, nor the officer's subjective satisfaction. Also, since evidentiary value of the material is a matter of trial, the Court is only to examine whether the decision to arrest is rational, fair and as per law. In the instant case, however, it could not be pointed out that the material based upon which the 'reasons to believe' have been recorded by the



ED are invalid and do not justify the petitioner's arrest, or are based upon material which is *prima facie* inadmissible in evidence and resultantly the decision to arrest cannot be termed rational and as per law. Merely because some of the reasons recorded are the same as recorded for the co-accused, is no ground in itself to declare them inadmissible or invalid, especially when the petitioner and the co-accused, who are his sons, are accused of illegalities with respect to funds of a company which is controlled by all of them. Therefore, it cannot be said that provisions of Section 19 PMLA have not been followed.

10. Lastly, the contention that there was no requirement to arrest the petitioner as he had joined investigation and the ED itself did not press for his custody before the Special Judge on 29.04.2024, also did not cut much ice. Merely because on 12.04.2024 the petitioner appeared before the ED in compliance of directions by the Supreme Court in a pending SLP or, because at that stage he was not taken in custody, it could not be a ground to contend that there was no requirement of his arrest ever after. Evidently, on ED's application atleast six NBWs were issued against the petitioner, and three of these, dated 30.05.2024, 09.01.2025 and 19.03.2025, were after his appearance/joining investigation. Some of the NBWs were unsuccessfully challenged by him also before this Court. He remained non-cooperative throughout and none of the six NBWs could be executed. Besides, the ED is on record stating that he is accused of concealing true nature of the proceeds of crime and using the same for personal and family members' expenses, apart from siphoning off the proceeds in the form of loans and by acquiring properties. To unearth this money trail custodial interrogation was required, and this Court has no reason to disbelieve the same at this stage.



11. In view of the discussion, there is no merit in the petition and it stands dismissed.
12. Pending miscellaneous application(s), if any, shall also stand(s) disposed of.

(TRIBHUVAN DAHIYA)
JUDGE

11.09.2025
Ad

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>