

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

WPA 8323 of 2025

With

CAN 1 of 2025

Yogesh Dua

v/s.

Directorate of Enforcement through its Assistant Director

For the Petitioner:

Mr. Vikram Chaudhury, Sr. Adv.
Mr. Kaustav Lal Mukherjee, Adv.
Mr. Abhijit Singh, Adv.
Mr. Koustav Bhattacharya, Adv.

For the E.D.:

Mr. Arijit Chakraborty.
Mr. Debsoumya Basak, Adv.
Ms. S.K. Singh, Adv.

Hearing concluded on:

12.12.2025

Judgment delivered on:

07.01.2026

SUVRA GHOSH, J. :-

1. The petitioner who is in custody since April 4, 2025 in connection with the present case has challenged the legality of his arrest and remand on the following grounds:-

- i. The arrest is violative of the safeguards contained in Section 19(1) and 19(2) of the Prevention of Money Laundering Act, (hereinafter referred to as the PMLA).

- ii. Both “reasons to believe” and “grounds of arrest” are a mere sham and pretence lacking the spirit, substance and sanctity.
 - iii. “Material in possession” on the basis of which the arresting officer has arrived at a subjective satisfaction of guilt of the petitioner is incomplete, inchoate and inconclusive as extraneous material has been taken into consideration and the relevant has been eschewed.
 - iv. Alleged non-cooperation could not be the basis of arrest under Section 19(1) of the PMLA which contemplates arrest only if the arresting officer is in possession of the “material” on the basis of which he may “record reasons in writing” that the person to be arrested is guilty of an offence.
 - v. It is not clear when, what and how material in possession was sent to the Adjudicating Authority in compliance with Section 19(2).
2. Seeking release of the petitioner forthwith, learned counsel for the petitioner has submitted as hereunder:-

FIR No. 60 dated June 17, 2024 was registered at Cyber P.S., Kolkata, under Section 66C/66D of the I.T. Act read with Sections 120B/170/384/419/420/465/467/468/471 of the Indian Penal Code and eight accused persons were arrested. The FIR relates to an alleged financial fraud of Rs. 47,00,000/-. The petitioner was neither named in

the FIR, nor has any nexus with the accused persons arrested. The petitioner was arrested on February 23, 2025. The FIR was treated as a predicate offence and ECIR KLZO-I/06/2025 was registered by the Enforcement Directorate (for short the E.D.) on March 24, 2025. On prayer of the E.D. the petitioner was produced before the learned Chief Judge, City Sessions Court, Calcutta on April 4, 2025 and was arrested on the same day by the E.D. upon being permitted by the Court. The “grounds of arrest” and “reasons to believe” were furnished to the petitioner on the same date. The learned Court did not satisfy itself regarding compliance of Section 19(1) of the PMLA before directing issuance of production warrant or arrest. The E.D. primarily relied upon the investigation conducted by the cyber team and from March 24, 2025 when the ECIR was registered till April 4, 2025 when the petitioner was arrested, no investigation appears to have been held. The incriminating material referred to in the grounds of arrest and reasons to believe are borrowed from the investigation of the scheduled offence.

3. The material was forwarded to the Adjudicating Authority by the E.D. by a letter dated April 7, 2025, i.e., three days after the arrest. There are several inconsistencies and contradictory representations in the grounds of arrest which indicate that accusations against the petitioner therein are speculative and unsupported by investigation. The predicate offence consistently identifies Chirag Kapoor as the individual responsible for the alleged activities without implicating the petitioner in the said role.
4. The details of the petitioner’s ICICI Bank account are with the E.D. and reflects a total cash deposit of Rs. 5,44,100/- in the last five financial

years. These deposits were made by the petitioner himself at the ATM cash machine located near his residence and pertains to his declared income received in cash which is disclosed in the relevant income tax returns. There has been no concealment of income and all deposits have a lawful source. The petitioner has not transferred any amount into the account of any other individual or co-accused involved in the case. No financial transaction has taken place between the petitioner and Chirag Kapoor or any other co-accused.

5. The petitioner has been released on regular bail in the predicate offence and seeks release in the present case too.
6. Learned counsel has placed reliance on the following authorities in support of his contention.

1. Khudiram Das v/s. State of West Bengal & Others reported in (1975) 2 Supreme Court Cases 81;
2. Radhika Agarwal v/s. Union of India and Others reported in 2025 Supreme Court Cases OnLine SC 449;
3. K.T.M.S. Mohd. & Another v/s. Union of India reported in (1992) 3 Supreme Court Cases 178;
4. Vijay Madanlal Choudhary & Others v/s. Union of India & Others reported in 2022 Supreme Court Cases OnLine SC 929;

5. V. Senthil Balaji v/s. State reported in 2023 Supreme Court Cases OnLine SC 934;
6. Pankaj Bansal v/s. Union of India & Others reported in 2023 Supreme Court Cases OnLine SC 1244;
7. Ram Kishor Arora v/s. Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine SC 1682;
8. Prabhir Purkayastha v/s. State (NCT of Delhi) reported in (2024) 8 Supreme Court Cases 254;
9. Arvind Kejriwal v/s. Directorate of Enforcement reported in 2024 Supreme Court Cases OnLine SC 1703;
10. Dilbag Singh @ Dilbag Sandhu v/s. Union of India and Another in CRM-M-2191-2024 (O&M);
11. Directorate of Enforcement & Anr. v/s. Dilbag Singh @ Dilbag Sandhu in SLP (CRL) 4044/2024;
12. Arnesh Kumar v/s. State of Bihar reported in (2014) 8 Supreme Court Cases 273;
13. Deepak Appasaheb Deshmukh v/s. Directorate of Enforcement in Criminal Writ Petition (stamp) No. 20120 of 2024;

14. Vihaan Kumar v/s. State of Haryana reported in 2025 Supreme Court Cases OnLine SC 269;
15. Ashish Kakkar v/s. UT of Chandigarh in SLP [CRL.] No. 1662/2025;
16. Gurkaran Singh Dhaliwal v/s. State of Punjab and Another in CRWP No. 2396 of 2025 (O&M);
17. Thokchom Shyamjai Singh & Others v/s. Union of India in W.P. (CRL) 1929/2024;
18. State of Punjab v/s. Davinder Pal Singh Bhullar reported in (2011) 14 Supreme Court Cases 770;
19. State of Punjab v/s. Baldev Singh reported in (1999) 6 Supreme Court Cases 172;
20. Madhu Limaye and Others v/s. State of Bihar reported in 1968 Supreme Court Cases OnLine SC 374; and
21. Enforcement Directorate v/s. Subhash Sharma reported in 2025 Supreme Court Cases OnLine SC 240.

7. Vehemently opposing such prayer, learned counsel for the E.D. has submitted as follows:-

The petitioner has sought quashing of the PMLA proceeding pending against him which needs to be dealt with by the

appropriate forum and not by the Writ Court. The order dated April 4, 2025 has not been assailed. The “grounds of arrest” and “reasons to believe” were furnished to the petitioner at the time of his arrest in terms of Section 19(1) of the PMLA and cannot be said to be incomplete, inchoate or inconclusive for the reason that the said documents reflect that the arresting officer duly recorded his “reasons to believe” on the basis of the material collected in course of investigation prior to arrest of the petitioner. 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 alongwith The Material to the Adjudicating Authority and its Period of Retention) Rules, 2005 provides that “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 Section 19(1) of the Act. Apart from the contents of the complaint in the predicate offence, the Assistant Director had “material” in the form of various bank statements including that of the petitioner which reflected huge unexplained cash transactions and maintenance of numerous numbers of vague bank accounts by him in connivance with other accomplices. The petitioner was found to be in possession of various pan cards, debit/credit cards of different banks. Investigation revealed non-existence of several account holders and various bank accounts were found in the names of several firms/companies where employees of the petitioner/ his accomplices were found to be proprietors/partners/directors. The said bank accounts were used in transferring amounts involved in at least 100

numbers of complaints pertaining to digital arrest/cyber fraud throughout the country and the total transaction amount is more than Rs. 1271 crores. Observation and finding of the Hon'ble High Court of Delhi in the order dated February 25, 2025 in WP (CRL) 673 of 2025 was also duly considered by the arresting officer.

8. The petitioner was arrested on April 4, 2025 and the relevant documents made over to him in the evening on the same day. Since working hours were over by that time and April 5, 2025 and April 6, 2025 were holidays, the material was sent to the Adjudicating Authority on April 7, 2025 in compliance with Section 19(2) of the Act. The provisions of Section 19 of the Act having been duly complied with, the petitioner is not entitled to release on the ground of non-compliance of the same.
9. Learned counsel has relied upon on the following authorities in support of his contention.
 1. The Commr. of Sales Tax, UP v/s. M/s. Mangal Sen Shyam Lal reported in AIR 1975 SC 1106;
 2. Dr. Baliram Waman Hiray v/s. Mr. Justice B. Lentin & Others reported in AIR 1988 SC 2267;
 3. Supreme Paper Mills Ltd. v/s. Assistant Commissioner, Commercial Taxes, Calcutta & Others reported in (2010) 11 Supreme Court Cases 593;
 4. Abdul Jabar Butt & Another v/s. State of Jammu & Kashmir reported in (1956) 2 Supreme Court Cases 525;

5. Veerayee Ammal v/s. Seeni Ammal reported in (2002) 1 Supreme Court Cases 134;
6. Sanjay Surekha @ Sanjay Kumar Surekha v/s. The Directorate of Enforcement in CRM (R) 84 of 2025;
7. Arvind Kejriwal v/s. Directorate of Enforcement reported in (2025) 2 Supreme Court Cases 248;
8. Radhika Agarwal v/s. Union of India reported in 2025 Supreme Court Cases OnLine SC 449;
9. Amarendra Kumar Pandey v/s. Union of India reported in (2024) 15 Supreme Court Cases 401; and
10. Suhail v/s. State of Haryana in CRM-M-22968-2025.

10. I have considered the rival contention of the parties and material on record.

11. The petitioner seeks release solely on the ground of non-compliance of Section 19 of the PMLA. Section 19 of the Act is set out:-

“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.”

12. The Hon’ble Supreme Court, in the authorities in Arvind Kejriwal (supra), Pankaj Bansal (supra), Prabir Purkayshtha (supra) and Vijay Madanlal Choudhury (supra) has dealt with power of arrest granted to the E.D. vis-a-vis compliance of Section 19 of the Act. The three conditions which are required to be fulfilled prior to arrest of a person under the PMLA are as follows:-

- i. The officer must have material in his possession;
- ii. On the basis of such material, the authorised officer should form and record in writing, “reasons to believe” that a person to be arrested is guilty of an offence punishable under the PMLA;
- iii. The person arrested, as soon as may be, must be informed of the grounds of arrest.

13. The accused cannot be arrested on the anvil of investigation borrowed from the predicate offence. Independent investigation leading to prima facie satisfaction of the three cardinal points is mandatory. [KTMS Mohd. and Another (supra)]. It is trite law that guilt can be established only on admissible evidence to be led before the Court and cannot be based on

inadmissible evidence. Power to arrest under Section 19(1) of the Act is not for the purpose of investigation and such power can be exercised only when the designated officer is able to form an opinion by recording reasons in writing that the arrestee is guilty. The material which exonerates the arrestee should also be considered.

14. The Hon'ble Supreme Court, in the authority in Arvind Kejriwal (supra) has observed as hereunder:-

“..... 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 effecting 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.” Also, this Court is tempted to rely on the authority in Radhika Agarwal (supra) wherein the Hon'ble Supreme Court has made the following observation:-

“86. So far as the arrest is made under the Prevention of Money Laundering Act, 2002 is concerned, in Vijay Madanlal Choudhary v Union of India, also the three-Judge Bench of this court has held, inter alia, that the safeguards provided in the PMLA and the pre conditions to be fulfilled by the authorized officer before effecting arrest as contained in section 19 of the said Act are stringent and of higher standard.

Those safeguards ensure that the authorized officers do not act arbitrary, 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 the Act.

87. However, when the legality of such an arrest made under Special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc., is challenged, the court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely, to ascertain whether the officer was an authorized officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorized officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.

88. It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and circumstances of each case. The criteria or parameters of judicial review over the subjective satisfaction applicable in service related cases, cannot be made applicable to the cases of arrest made under the Special Acts. The

scrutiny on the subjective opinion or satisfaction of the authorized officer to arrest the person could not be a matter of judicial review, in as much as when the arrest is made by the authorized officer on he having been satisfied about the alleged commission of the offences under the Special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant Special Act. Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorized officer, would not be a matter of scrutiny by the courts at such a nascent stage of inquiry or investigation.

91. Though, the power of judicial review keeps a check and balance on the functioning of the public authorities and is exercised for better and more efficient and informed exercise of their powers, such power has to be exercised very cautiously keeping in mind that such exercise of power of judicial review may not lead to judicial overreach, undermining the powers of the statutory authorities. To sum up, the powers of judicial review may not be exercised unless there is manifest arbitrariness or gross violation or non-compliance of the statutory safeguards provided under the Special Acts, required to be followed by the authorized officers when an arrest is made of a person prima facie guilty of or having committed offence under the special Act."

15. The Hon'ble Supreme Court has also held that mere passing of an order of remand is not sufficient in itself to validate the arrest, if such arrest is not in conformity with the requirements of Section 19 of the Act.
16. It is not in dispute that "grounds of arrest" and "reasons to believe" were made over to the petitioner immediately upon his arrest. It is needless to state that there is significant difference between "grounds of arrest" and "reasons for arrest", "reasons for arrest" being generic in nature and applicable to any person arrested on charge of an offence whereas "grounds of arrest" being personal to the accused and disclosing the basic facts on which he is being arrested in order to enable him to defend himself against custodial remand and to seek bail.
17. Herein, though the initial investigation was done by the cyber crime police station and material collected in course of such investigation relied upon in the investigation under the PMLA, the documents submitted by the E.D. prima facie suggest that an independent investigation was conducted by the E.D. and material was collected against the petitioner which led the authorised officer to form and record in writing "reasons to believe" that the petitioner was guilty of an offence punishable under the PMLA. Subjective satisfaction of the arresting officer with regard to the material and necessity to arrest appears to be in accordance with law. The mandate of Section 19(1) of the Act has been sufficiently and adequately complied with by the arresting officer and the arrest cannot be said to be vitiated for non compliance of the same. As stated earlier, the sufficiency or adequacy of the material collected or the correctness of the facts on the

basis of which the belief is formed to arrest the petitioner cannot be a matter of scrutiny by this Court at this stage.

18. Learned counsel for the petitioner has submitted that Section 19(2) of the Act has also not been complied with. Referring to the authorities in *Vijay Madanlal Choudhary (supra)* V. *Senthil Balaji (supra)*, *Pankaj Bansal (supra)*, *Dilbag Singh and Director of Enforcement and Another (supra)*, learned counsel has stated that compliance of Section 19 including Section 19(2) is mandatory and brooks no exception.
19. The petitioner was arrested on April 4, 2025 and the material was forwarded to the Adjudicating Authority by the E.D. on April 7, 2025. In explaining the said delay, learned counsel for the E.D. has submitted that by the time the relevant documents were made over to the petitioner on April 4, 2025 immediately after his arrest, working hours for the day were over. April 5, 2025 and April 6, 2025 were holidays for which the material could be sent to the Adjudicating Authority only on April 7, 2025 in compliance with Section 19 (2) of the Act. Learned counsel for the E.D. has placed reliance on a catena of judgments of the Hon'ble Supreme Court wherein the term "reasonable" has been discussed. "Reasonable time" has been defined as such length of time as may fairly, properly and reasonably be allowed or required, having regard to the nature of the act or duty and to the attending circumstances. The judgments also record that the Court cannot add anything into a statutory provision which is plain and unambiguous. Language employed in a statute itself determines and indicates the legislative intent.

20. In a judgment delivered in CRM (R) 84 of 2025 on November 14, 2025 this Court has held that since the “grounds of arrest” and “reasons to believe” were made over to the petitioner immediately after his arrest, the Court concerned was in a position to ascertain whether the material was already in possession of the arresting officer prior to arrest of the petitioner. This Court distinguished the fact situation of the case from that of the authority in Dilbag Singh (supra). The ratio decidendi of the said judgment is applicable herein.
21. In the said backdrop, it can be concluded that the mandate laid down under Section 19 of the PMLA has been complied with by the arresting officer in effecting arrest of the petitioner. In view thereof, the petitioner is not entitled to release on such score.
22. It is made clear that this Court has not gone into the merits of the case since release of the petitioner has been sought solely on the ground of non-compliance of Section 19 of the PMLA. In the event the petitioner seeks bail on merits, the appropriate Court may deal with the same independently in accordance with law without being influenced by any observation which may have been made in this judgment.
23. The writ petition is accordingly dismissed.
24. The connected application being CAN 1 of 2025 is also disposed of.
25. There shall however be no order as to costs.

26. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
27. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)