IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10124-2024
Reserved on: 03.09.2024.
Pronounced on: 30.09.2024

Neeraj Saluja ...Petitioner

Versus

Union of India and another …Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Mukul Rohatgi, Senior Advocate (Through VC)
Mr. R.S.Rai, Senior Advocate
Mr. Anand Chhibbar, Senior Advocate with
Mr. Shikhar Sarin, Advocate,
Ms. Rubina Virmani, Advocate and
Mr. Ankur Saigal, Advocate
for the petitioner.

Mr. S.V.Raju, Additional Solicitor General of India (Through VC)
Mr. Zoheb Hossain, Special counsel, ED (Through VC)
Mr. Lokesh Narang, Senior Panel Counsel
Mr. Harmeet Singh Oberoi, Central Govt. counsel
Mr. Samrat Goswami, Central Govt. counsel and
Ms. Abhipriya Rai, Central Govt. counsel
for the respondent-Enforcement Directorate

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ANOOP CHITKARA, J.

PREDICATE OFFENCES [FOR THE CURRENT ECIR]:

Sr. No.	FIR No.	Date	Offences	Police Station
1.	RC2232020A0004	06.08.2020	120-B, 403, 420, 467, 468, 471 IPC and 13(2) r/w 13(1) (d) of PC Act	AC-V Delhi

SCHEDULED OFFENCES [IN THE PRESENT PETITION]:

ECIR No.	Dated	Sections
ECIR/JLZO/36/2020	08.10.2020	3 & 4 of Prevention of Money Laundering Act, 2002 [PMLA]

1. An industrialist incarcerated on the allegations of illegally diverting Rs.1530.99 crores from the loan amount for a purpose other than it was sanctioned, and subsequently, the above-captioned complaint was registered under PMLA for proceeds of crime based on the predicate offense, instead of filing a bail petition under Section 439 CrPC/483

BNSS had come up before this under Section 482 CrPC for quashing of arrest order and subsequent remand orders being illegal and contrary to judicial precedents.

2. The facts of the case are taken from the reply filed by the respondent- ED. The CBI registered the above-captioned predicate offense against the petitioner and some of his family members for causing wrongful loss to a consortium of banks led by the Central Bank of India to the tune of Rs.1530.99 crores by illegally diverting the loan amount for purposes other than it was sanctioned. As per para 3 (C) of the reply, the investigation conducted by ED pointed towards loan disbursement to a company 'SEL Textiles Ltd' for manufacturing plants and working capital. However, the petitioner, in connivance with the co-accused, illegally diverted some part of the loan amount to the tune of Rs.81.03 crores to two companies, namely M/s Silverline Corporation Limited and M/s Rhythm Textiles and Apparels Park Limited, owned and controlled by him without explicit permission from the Consortium of Banks. As per the investigation conducted by ED, the said amount has proceeds of crime generated by the accused through illegal gains causing wrongful loss to the Bank. As per para 3 (D) of the reply, SELT had exported the products; however, the amount received from such exports to Rs.191 crores was not realized, leading to SELT defaulting on its lenders. The investigation pointed out that the accused illegally diverted Rs.191 crore, which was due on account of exports. As per para 3, (E) of the reply, based on the findings of the Forensic Audit report dated 30.01.2017, on 28.02.2016, the consortium of banks declared the account of SELT as Non-Performing Assets, and subsequently, the account was declared as a fraud on 18.04.2018. The investigation revealed that after SELT's account had turned into NPA, a company named M/s Regnant Exim Private Limited was set up to divert the revenue from SELT's manufacturing units. The ED investigated the Directors and shareholders of M/s Regnant Exim Private Limited under Section 50 of PMLA, which revealed the establishment of this company by the petitioner through current and former employees of SELT who were appointed to siphon off revenue of SELT instead of re-paying loan amount to the Bank. The investigation pointed out that proceeds of Rs.40 crores had yet to be recovered from M/s Regnant Exim Private Limited, which showed the intentional siphoning of the money and the said amount in the proceeds of crime. As per para 3(F) of the reply, the petitioner diverted Rs.35.19 crores from SELT to M/s 3-A Exports as advance payment, and this firm was owned by Dhiraj Saluja- brother of the petitioner Neeraj Saluja, and this amount of Rs.35.19 crores constitute the proceeds of crime. As per para 3(G) of the reply, the petitioner and other accused illegally diverted a loan amount of Rs.9.51 crores for purchasing a flat in Mumbai for personal use. As per para 3(H) of the reply, the petitioner’s company used three entities based in Germany and France to import machinery, whereas the actual manufacturers were in Japan, and the payments were made in the bank account maintained by firms in Switzerland and the fraud which was committed was SELT had made advance money to entities mentioned

above to the tune of Rs.45 crores whereas the said machinery was yet to be manufactured and ten years have passed which again shows that all this was to siphon off the money. As per para 3(I) of the reply, the investigation led to the recovery of Rs.60 lacs in cash, which was proceeds of crime, and based on that, the petitioner was arrested on 18.01.2024 at 6.45 PM and was subsequently sent to judicial custody. It would be appropriate to refer to para no.3(K) of the reply, which reads as follows: -

> *"K. Role of Neeraj Saluja: SELT was a family-owned concern being controlled by Late Ram Saran Saluja (expired on 23.05.2023), Neeraj Saluja & Dhiraj Saluja. Neeraj Saluja was one of the directors of SELT and he was responsible for managing/controlling day to day affaires of the company along with his father, Late Ram Saran Saluja. Further, the credit facilities availed by SELT were illegally diverted / siphoned off, as explained above, by Neeraj Saluja and other accused persons causing wrongful loss to the banks and wrongful gain to themselves. The company Sel Textiles Limited was a promoter driven company, and the Neeraj Saluja was aware of matters which were important to the company and was actively involved in decision making of the company. Consequently, he was involved in all the matters related to availing of the loan facilities, disbursement of the loan, expansion of plants, procurement of raw material, selling the finished products in market. Further, he was authorized signatory to various banking transactions including obtaining and utilization of loan proceeds. Moreover, he had full control over the Board Meetings where decision regarding investment in the subsidiaries was taken, purchase of flat in Mumbai, credit to advance payments, export related orders and procurement of machinery and was fully involved in running the company including review of progress, budget, annual revenue of the company, its future prospects. He was at the helm of the affairs and he was involved in all the decisions with regard to company. Further, the credit facilities availed by SELT were illegally diverted / siphoned off, as explained above, by Neeraj Saluja causing wrongful loss to the banks and wrongful gain to themselves.*

3. I have heard Mr. Mukul Rohatgi, Sr. Advocate, Mr. R.S. Rai, Sr. Advocate, Mr. Anand Chhibbar, Sr. Advocate counsel for the petitioner, and Mr. S.V. Raju, Additional Solicitor General of India, with Mr. Zoheb Hossain, Special Counsel and Mr. Lokesh Narang, Senior Panel Counsel for the respondent.

4. Mr. Mukul Rohatgi, Ld. The Senior Advocate for the petitioner brought to the attention of this Court the following facts: the registration of the ECIR mentioned above, the grounds for illegal arrest, and the grounds for illegal remand orders.

a) On Apr 18, 2018, the account of the Petitioner's Company was declared as Fraud without adhering to the principles of natural justice and the consequential registration of the FIR by CBI, bearing number RC2232020A0004, dated 06.08.2020 at the behest of Central Bank of India.

b) On October 08, 2020, the Enforcement Directorate registered the above-captioned ECIR based on the predicate offense registered by the CBI.

c) On Feb 17, 2021, and Aug 02, 2022, the ED summoned the petitioner, who appeared and cooperated with the investigation.

d) On Oct 28, 2022, the CBI arrested the petitioner in the predicate offense.

e) On May 03, 2023, based on the bail granted by this Court, he was released on bail after six months and six days (188 days) of custody. Notably, the Petitioner has complied with all conditions for bail.

f) On Dec 26, 2022, a chargesheet was filed against the petitioner under sections 420, 477 A, and 120-B IPC, and since then, the trial has been at the stage of 207 CrPC.

g) On Jan 18, 2024, when the petitioner appeared before ED, he was suddenly arrested at 6:45 PM, four years after the registration of the ECIR.

h) On Jan 19, 2024, the Special Court issued a 'Remand Order' without satisfying the mandatory compliance of Section 19 PMLA, which is blatant non-compliance qua 'Grounds of arrest' and 'Reasons to Believe.'

i) On Feb 09, 2024, a division bench of the High Court of Punjab and Haryana, vide order dated 09.02.2024, passed in CWP No. 2771 of 2024, stayed all pending proceedings arising from the predicate offense.

j) On Mar 15, 2024, the ED filed a complaint against the petitioner and others.

k) Firstly, the petitioner was admittedly not furnished reasons to believe, as mandated by Section 19(1) PMLA, and held to be mandatory by the Hon’ble Supreme Court in Arvind Kejriwal v. Directorate of Enforcement, [Cr.A No. 2493 of 2024 (Para 36)].

l) Secondly, the Remand Court did not consider or examine the “Reasons to Believe” as the same was never even shown to the Special Court by the ED, as held to be mandatory by the Hon’ble Supreme Court in Arvind Kejriwal.

m) Thirdly, the 'Grounds of Arrest' so furnished do not depict the petitioner's guilt because there was no material to assess and evaluate, as mandated in 'V. Senthil Balaji' and reiterated in 'Pankaj Bansal.'

n) Fourthly, the non-cooperation of the Petitioner is the sole ground of arrest despite being violative of the Judgment of the Hon’ble Supreme Court in Pankaj Bansal v. Union of India (2023) SCC OnLine SC 1244.

o) Fifthly, no satisfaction regarding the necessity of arresting the petitioner is recorded.

p) Sixthly, the ED has merely copy-pasted the allegations of the CBI Chargesheet filed in the predicate offense, and no independent material has been considered by the Investigating Agency depicting the guilt of the petitioner, and there was nothing from whose evaluation they could form reason to believe, pointing towards the petitioner's guilt, which was to be mandatorily recorded in writing;

q) Seventhly, there was a complete violation of the mandatory requirements of Section 19, which calls for mandatory compliance with all the steps before affecting an arrest under the 2002 Act.

r) Last but not least, the Trial Court did not make an independent application of mind; thus, the remand order is mundane.

5. Mr. Mukul Rohatgi, Ld. Senior Advocate contended that ED explicitly admitted that reasons to believe were not furnished to the Petitioner. In its reply to CRM No. 28140 of 2024, on Page 2, it has been admitted by ED that the 'Reason to Believe' recorded under the provisions of section 19 of PMLA, 2002, at the time of arrest was not required to be supplied to the petitioner Neeraj Saluja.

6. Earlier, Mr. R.S. Rai and Mr. Anand Chhibbar, Sr. Advocates, also addressed arguments on various dates. To sum up, the cumulative arguments on the Petitioner's behalf are that the Petitioner's arrest is illegal as the same violates the mandate of Section 19 of PMLA and Constitutional safeguards under Art. 21 and 22 of the Constitution of India because the reasons to believe as mandated under the Act were admittedly not provided; the grounds of arrest were a mere reproduction of the CBI Challan; there was no satisfaction recorded regarding the necessity to arrest of the Petitioner; No independent application of mind by ED and the Trial Court; No formulation of reasons to believe by the ED using the material in their possession; Arrest having been done citing non-cooperation by the Petitioner in violation of the judgment of the Supreme Court in Pankaj Bansal. Reasons to believe should be shown to the Special Court for judicial review before the Remand order is passed. However, the perusal of the Remand order clarifies that Reasons to believe were never brought to the notice of the Sp. Court. Hence, the mandatory provisions of Section 19 of the 2002 Act have been violated, rendering the Petitioner's impugned arrest illegal and entitling him to release immediately. The Petitioner's custody in this ECIR (around eight months) and the previous custody in CBI's FIR of over six months is sufficient pre-trial incarceration, and the arrest of the Petitioner is in stark violation of the law laid down in:

i. Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. 2022 SCC OnLine SC 929 (para 300)

ii. V. Senthil Balaji v. State represented by Deputy Director, 2023 SCC OnLine SC 934(para 39)

iii. Pankaj Bansal v. Union of India & Ors. 2023 SCC OnLine SC 1244 (para 28)

iv. Arvind Kejriwal v. Directorate of Enforcement, 2024 INSC 512. (para 9,16, 27, 36,70,72,84)

7. Mr. S.V.Raju, Additional Solicitor General of India Counsel for the respondent, argued as follows:-

(a) The present petition filed u/s 482 of the Cr.P.C. seeks quashing of the Arrest Order dated 18.01.2024 and the Remand orders dated 19.01.2024 and subsequent Remand orders. It is submitted that remedies under Article 226 of the Constitution and Section 482 Cr.P.C. are distinct and operate in different fields. It is also well settled that Section 482 of the Cr. P.C. cannot be resorted to for seeking quashing of the executive or statutory actions which otherwise do not relate to preventing the abuse of the process of "Court." Reliance in this regard is placed on Kurukshetra University v. State of Haryana (1977) 4 SCC 451, wherein the Hon'ble Supreme Court had taken the view that the High Court could not quash an FIR in the exercise of its inherent power u/s 482 of the Cr.P.C. when no proceeding was pending in any Court in pursuance of the FIR. However, it is also well settled that the High Court can exercise Suo Motu power under Article 226 of the Constitution, and the vocabulary of the petition would not be decisive. If that be the case, a Writ against an arrest after a remand order has been passed can only be issued on the grounds of violating a Fundamental Right or Constitutional Infirmity. In this regard, reliance is placed on Para 18 and Para 32 of Pankaj Bansal v. Union of India 2023 SCC OnLine SC 1244. In Madhu Limaye & Ors. (1969) 1 SCC 292, the Hon'ble Supreme Court had carved out an exception to entertain a challenge to an arrest, post remand, on the ground that the orders of remand are not such as would cure Constitutional Infirmities

(b) The arrest is questioned on the ground that the Reason to believe was not whereas the obligation to furnish written Grounds of Arrest flows from a higher Constitutional mandate and therefore supplying written Grounds of Arrest was sufficient compliance. There is no consequence, even in Arvind Kejriwal for non-supply of Reason to Believe, unlike in Pankaj Bansal where non-compliance about supply written Grounds of Arrest has been held to lead to the release of the person straight away. The same would be evident from the Judgment

in V. Senthil Balaji. Moreover, the obligation to supply Reason to Believe would naturally have to be prospective for even the arrest of Sh. Kejriwal was not held to be illegal for non-supply of Reason to Believe. Therefore, the same yardstick or standard would apply to the obligation of supplying Reason to Believe.

(c) The petitioner has argued that the Grounds of Arrest is vitiated because of the mention of the fact that there is non-cooperation. However, the argument fails to consider that the grounds of arrest are based on several other materials unearthed during the investigation, and the need or necessity for custodial interrogation, which was to trace the public money siphoned off by the petitioner, has also been recorded. It is held that non-cooperation is the sole prerogative of the Investigating Agency, and it is also held that custodial interrogation is qualitatively more elicitation-oriented. Therefore, the necessity of arrest cannot be questioned. (See P. Chidambaram v. Directorate of Enforcement (2019) 9 SCC 24, Para 58 to 60. It is well settled that merely because a question is referred to a larger bench, it would not denude the existing Judgments of its precedential value. (Union Territory of Ladakh & Ors. v. Jammu and Kashmir National Conference & Anr. 2023 LiveLaw (SC) 749, (Para 35) at page 199 of the Judgment Compilation Vol. III by E.D.).

(d) The remand order categorically notes the fact that not only has it seen the Reason to believe, but it has satisfied itself of its correctness. The Court also records the necessity of arrest: the accused was withholding exclusive information within his knowledge.

(e) Unlike the present remand order, the Hon'ble Supreme Court in Pankaj Bansal found that there was total non-application of mind, and there was no satisfaction recorded regarding the reason to believe that the accused was guilty.

(f) The stay on the ground of Rajesh Aggarwal, of the predicate case, is an irrelevant consideration as held by the Hon'ble Supreme Court in Aditya Tripathi, and prima facie, the stay is bad in law. Secondly, the stay for the same reason in the E.D. case is also contrary to the statutory mandate of the Explanation to Section 44 of the PMLA.

(g) Lastly, the petitioner has a remedy of applying for bail on merits and satisfying the twin conditions u/s 45 of the PMLA. Since no regular bail application has been filed before this Hon'ble Court, the application for interim bail would also not be maintainable.

8. Earlier, Mr. Zoheb Hossain and Mr. Lokesh Narang, Sr. Panel Counsel, ED, had also addressed arguments on various dates. To sum up, the cumulative arguments on the ED's behalf are that when the petitioner was arrested, there was a statutory remedy before him to file a petition under Section 439 CrPC and now under Section 483 BNSS, as the case may be. However, instead of filing a bail petition under Section 438 CrPC, the petitioner has come up before this Court by invoking his extraordinary jurisdiction under Section 482 CrPC. This Court has no reason to exercise its inherent jurisdiction because the petitioner would have raised all these points at the time of his bail petition. Counsel for the respondent further argued that resorting to an extraordinary remedy cannot be exercised once the statute provides a specific remedy. It is not a case where the statute has not provided any remedy. On this preliminary objection alone, the petition deserves to be dismissed. The next contention is based on the evidence pointing towards proceeds of crime to demonstrate the necessity of the petitioner's arrest. It is a massive scam where the petitioner has siphoned off the bank money through various channels, and it is not a case where custody of 08 months can be termed prolonged custody. It is one of the most extensive banking scams, and this Court should not release the petitioner by declaring his arrest illegal and considering the massive fraud. The following argument is that there was a necessity to arrest the petitioner because of the amount involved, which was Rs.1580 crores, and there was ample evidence of his role, involvement, and strategy, which he deployed to siphon off the bank funds. Regarding the argument of judicial precedents, counsel for the respondent argued that Pankaj Bansal's judgment is prospective and not retrospective, and after analyzing material in the possession and reasons to believe, which were recorded in writing, the concerned Officer was of the considered opinion that petitioner was guilty of the offense punishable under the arrest and based on such material, such officer thought it appropriate to arrest the petitioner in exercise of their powers under Section 19 of PMLA and the grounds of arrest have been duly conveyed and informed to the petitioner. Counsel for the respondent referred to Article 22 of the Constitution of India and submitted that the language used in Article 22 is different from the language used in Section 19, and if it was not different, then there was no reason for the legislature to have incorporated Section 19 as a separate section under PMLA. Counsel submits that Article 22 warrants that when a person is detained in custody, he shall be informed as soon as may be of the grounds of such arrest, whereas under Section 19 of PMLA, based on the material when the officer had reasons to believe recorded in writing that person has been guilty of the offense, then he may arrest them and as soon as may inform such person of such arrest. Counsel for the respondent finally argued that if the authorized officer, after assessing the material in his possession and reasons to believe the accused is guilty, does not find the necessity of arrest, then the entire edifice on which the PMLA was enacted would crumble and no person can ever be arrested and consequently, sought dismissal of the present petition.

9. Money laundering, the offense of money laundering, the proceeds of crime, and punishment have been defined in S. 2 to 4 of The Prevention of Money-Laundering Act, 2002, in the following terms:

> 2(*p*) "money-laundering" has the meaning assigned to it in section 3;
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> 2(*u*) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country][1] [or abroad][2];
> [*Explanation*.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;][3]
>
> 3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming][4] it as untainted property shall be guilty of offence of money-laundering.
> [*Explanation.*—For the removal of doubts, it is hereby clarified that,—
> (*i*) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime,
> namely:—
> (a) concealment; or
> (*b*) possession; or
> (*c*) acquisition; or
> (*d*) use; or
> (*e*) projecting as untainted property; or
> (*f*) claiming as untainted property,
> in any manner whatsoever;
> (*ii*) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.][5]
>
> 4. Punishment for money-laundering.—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years

[1] Ins. by Act 20 of 2015, s. 145 (w.e.f. 14-5-2015).
[2] Ins. by Act 13 of 2018, s. 208 (w.e.f. 19-4-2018).
[3] Ins. by Act 23 of 2019, s. 192 (w.e.f. 1-8-2019).
[4] Subs. by Act 2 of 2013, s. 3, for "proceeds of crime and projecting" (w.e.f. 15-2-2013).
[5] Ins. by Act 23 of 2019, s. 193 (w.e.f. 1-8-2019).

> but which may extend to seven years and shall also be liable to fine ***[6]:
> Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

10. In Satender Kumar Antil v. Central Bureau of Investigation & anr., 2022:INSC:690, MA 1849 of 2021, In SLP (Crl.) No.5191 of 2021, decided on July 11, 2022, Hon'ble Supreme Court holds,

> ECONOMIC OFFENSES (CATEGORY D)
> [66]. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis…

11. The power to arrest has been defined in S. 2 to 4 of PMLA, 2002, in the following terms:

> 19. Power to arrest.—
> (*1*) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
> (*2*) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (*1*), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.
> (*3*) Every person arrested under sub-section (*1*) shall, within twenty-four hours, be taken to a [Special Court or][7] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:
> Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or][8] Magistrate's Court.

[6] The words "which may extend to five lakh rupees" omitted by Act 2 of 2013, s. 4 (w.e.f. 15-2-2013).
[7] Ins. by Act 13 of 2018, s. 208 (w.e.f. 19-4-2018).
[8] Ins. by Act 13 of 2018, s. 208 (w.e.f. 19-4-2018).

12. The issue regarding providing 'reasons to believe' to the person being arrested by ED has been dealt with expansively by the Hon'ble Supreme Court in Arvind Kejriwal v. Directorate of Enforcement (Para 36), wherein it has been held that it is difficult to accept that the "reasons to believe," as recorded in writing, are not to be furnished, and the requirements in Section 19(1) PMLA, are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the Court.

13. In compliance with the statutory mandate of S. 19 of PMLA, the arresting officer at the arrest stage had apprised the petitioner of his reasons of belief and the grounds that necessitated such an arrest. Consequently, the arrest conformed with the requirements of section 19 of the PMLA Act, 2002.

14. A perusal of the memo outlining the grounds of arrest reveals that the safeguards under Section 19 were adhered to, validating the arrest, and there is no failure to entitle the petitioner to be released by exercising the extraordinary powers of the High Court under S. 482 CrPC, 1973.

15. Because this Court is not dealing with a bail petition, the petitioner does not have any burden to satisfy the statutory rigors of the twin conditions placed under S. 45 of PMLA, 2002.

16. The arrest order dated 18.01.2024 accompanied with grounds of arrest have been annexed as Annexure P-12. Perusal of the arrest order points out that in the opinion of the Arresting Officer, the petitioner was guilty of the offences mentioned in ECIR and accordingly exercising his statutory powers conferred under Section 19(1) of PMLA, he informed the petitioner about his believe and grounds of arrest and has handed over grounds of arrest at the time of his arrest. It would be appropriate to reproduce the grounds of arrest which reads as follows:-

> "Grounds of Arrest of Neeraj Saluja"
>
> 1. This Directorate recorded Case Number ECIR/JLZO/36/2020 on 08.10.2020 and initiated investigation under the provisions of PMLA, 2002 on the basis of FIR No. RC2232020A0004 dated 06.08.2020 registered by CBI, New Delhi under Sections 120B, 403, 420, 467, 468, 471 of Indian Penal Code, 1860 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against you as well as other accused persons/entities. The said FIR was registered by CBI against M/s SEL Textiles Limited, wherein you were Director and were involved in day-to-day operation of the said entity, for causing wrongful loss to consortium of banks to the tune of ₹1530.99 crore by illegally diverting the loan amount for the purposes other than it was sanctioned.
>
> 2. You and Dhiraj Saluja along with your father, Mr. Ram Saran Saluja were the Directors of M/s SEL Textiles Limited during the

relevant period of crime and all of you were involved in day to day affairs of the company. Shri Ram Saran Saluja was expired on 23.05.2021 and not available for joining ongoing investigation under PMLA, 2002. Dhiraj Saluja has moved to United Arab Emirates and he failed to cooperate in ongoing investigation even after multiple opportunities provided via summons, to him to do the same. Therefore, you are the only person available in India, at present, who was involved in day-to-day affairs of M/s SEL Textiles Limited and in possession of relevant information pertaining to ongoing investigation.

3. Investigation has disclosed that you in connivance with other accused persons illegally diverted 81,03 crores, which was part of loan amount sanctioned and disbursed to M/s SEL Textiles Limited, to two companies viz. M/s Silverline Corporation Limited and M/s Rhythm Textiles and Apparels Park Limited which are both owned and controlled by you and your family members. The said amount of ₹81.03 crores is the part of proceeds of crime of 1530.99 crore generated by you in connivance with other accused persons/entities for illegal gain while causing wrongful loss to the consortium of banks.

4. Investigation has further revealed that you in connivance with other accused persons had illegally diverted a total amount of ₹35.19 crores from M/s SEL Textiles Limited to M/s 3-A Exports, a partnership firm owned by your brother, Dhiraj Saluja and his wife Reema Saluja. The said amount of 235.19 crores was diverted in guise of advance payment for purchasing goods which were never received by M/s SEL Textiles Limited. The said amount of 235.19 crores is the part of proceeds of crime generated by you in connivance with other accused persons/entities for illegal gain while causing wrongful loss to the consortium of banks.

5. Investigation has further revealed that you in connivance with other accused persons had illegally diverted 29.51 crores, which was part of loan amount sanctioned and disbursed to M/s SEL Textiles Limited, for purchasing a residential flat in Mumbai for personal use. The amount of 29.51 crores was the part of proceeds of crime generated by you in connivance with other accused persons for illegal gain while causing wrongful loss to the consortium of banks.

6. Investigation further disclosed that you along with other accused persons had illegally diverted the revenue generated by M/s SEL Textiles Limited to foreign countries, especially to United Arab Emirates Based entities, in form of export proceeds to the tune of ₹191 crores approx. which was never repatriated back to India causing default by M/s SEL Textiles Limited and loss to consortium of banks.

7. Investigation has further disclosed that after the account of M/s SEL Textiles Limited was declared Non-Preforming Assets (NPA) by the consortium of banks, led by Central Bank of India, you had set up two separate companies viz. M/s Declan Designers & Engineers Private Limited and M/s Regnant Exim Private Limited

> for diverting the revenue from manufacturing units of M/s SEL Textiles Limited so that repayment of loans to banks could be avoided. Investigation has revealed that these companies were controlled/operated by you through current and former employees of SEL Manufacturing Company Limited by appointing them as director(s)/shareholder(s) of these companies as front. M/s Declan Designers & Engineers Private Limited had generated a total revenue of ₹2172.08 crores between F.Y. 2017-18 to F.Y. 2021- 22 and M/s Regnant Exim Private Limited had generated a total revenue of ₹2005.27 crores between F.Y. 2016-17 to F.Y. 2021- 22. In other words, you had caused a revenue loss of 24177.35 crores to M/s SEL Textiles Limited and ultimately to the consortium of banks.
>
> 8. Due to your non-cooperation in ongoing investigation under PMLA, 2002, the relevant facts related to generation, layering, integration and possession of proceeds of crime, a huge part of proceeds of crime is still remained to be identified, can only be revealed through detailed custodial interrogation. You have not co-operated with the investigation by resorting to withholding of relevant information which is within your exclusive knowledge. You have been given ample opportunities to reveal the complete truth by virtue of recording your statements under Section 50 & 17 of PMLA, 2002. You have willfully adopted an attitude of non- cooperation by either evading the queries or giving misleading and evasive replies. Thus, on the basis of investigation conducted so far and material in the possession, I have reason to believe that you have committed an offence of money laundering as specified under section 3 of PMLA, 2022 and are therefore liable for punishment under section 4 of PMLA, 2002. You have directly attempted to indulged, knowingly is a party and have been actually involved in process or activity connected with the proceeds of crime diverted by you in connivance with accused persons in blatant violation of terms & conditions of the loan availed from the consortium of banks. You have actively involved yourself in the crime of money laundering as submitted above."

17. The similar details were also supplied to the concerned Court when an order of judicial remand was passed.

18. The petitioner's grievance is that his arrest violates Section 19 of PMLA and the pronouncement of Hon'ble Supreme Court in Pankaj Bansal vs. Union of India, 2022 SCC Online SC 1244 and V. Senthil Balaji v. State and others, 2023 SCC Online SC 934. It would be appropriate to extract the order dated 09.02.2024 passed by a Division Bench of this Court in CWP No.2771 of 2024, which reads as follows:-

> *"Petitioner was arrested vide Annexure P-12 on 18.01.2024 and at that time, there was no stay of Division Bench of this Court, as such a subsequent stay cannot be a ground to declare a previous arrest as illegal. Petitioner's contention that once the Division Bench has stayed the further proceedings, it would make the previous arrest as illegal cannot be a ground for the reason that the Court had not quashed the proceedings but have*

> *only stayed the further proceedings in terms of the order. At the time when the authorized officer had arrested the petitioner and the concerned Judicial Magistrate had sent him to judicial custody, the said order of Division Bench is not in existence, as such it cannot have a retrospective effect. Consequently, the petitioner fails to make out a case to declare his arrest as illegal based on the subsequent stay of predicate offence by Division Bench of this Court."*

19. An arrest made under Section 19 of PMLA Act shall be illegal when it violates Article 22 of the Constitution of India or was made without complying with the statutory requirements of S. 19 PMLA, or no reasons were mentioned for the necessity of such an arrest.

20. An illegal arrest, as determined by a breach of the fundamental requirements of Section 19, invalidates the arrest and prevents the possibility of re-arrest based on the same justifications. This is because the violation infringed upon the individual's constitutional rights.

21. Any arrest shall be illegal when it directly contradicts the legal requirements mandated by the PMLA, especially under Section 19. This section requires material evidence and a well-documented 'reason to believe' that the individual is involved in money laundering activities. A breach of these requirements signifies a profound legal violation, rendering the arrest void ab initio.

22. The language of Section 19 suggests discretion; however, once an arrest is effected, it must strictly adhere to the outlined statutory requirements. Failure to do so shifts the nature of the action from a permissible discretionary act to a violation of mandatory legal protocols.

23. The concept of 'reason to believe' is not merely procedural but a substantive safeguard that underpins the legality of an arrest under the PMLA. It requires a qualitative assessment of evidence before depriving an individual of liberty.

24. The lack of a valid 'reason to believe' documented at the time of arrest, as required by Section 19, directly leads to an arrest being classified as illegal rather than a mere irregularity.

25. The former, characterized by a fundamental breach of statutory requirements, renders the arrest void and precludes re-arrest on the same grounds. This interpretation upholds the principles of justice and the constitutional rights of individuals, ensuring that any deprivation of liberty is strictly under the law.

26. A perusal of the grounds of arrest explicitly reveal and point to the effect that the Arresting Officer had conveyed his intention, reasons, grounds and believe to arrest the petitioner. The order of grounds of arrest is in conformity with the requirement of Section 19 of PMLA Act. The satisfaction of the concerned Officer is also duly reflected in the wordings and the necessity of arrest and has also clearly revealed. Thus, there is no fault in the grounds of arrest and consequent arrest.

27. Given the massive amount involved, the necessity of the petitioner's arrest was primarily not because of his non-cooperation, not confessing to the guilt, but because of the magnitude of the money laundering of the mammoth proportions.

28. A perusal of the above grounds of arrest clearly mentions in detail the necessity which led to the petitioner’s arrest. One of the reasons which necessitated the petitioner’s arrest was the non-recovery of massive amount of proceeds of crime. The grounds of arrest are self-sufficient and need no other clarity from this Court.

29. Petition dismissed. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

30.09.2024
Jyoti Sharma

Whether speaking/reasoned: Yes
Whether reportable: YES.