IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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(I) CRM-M-65367-2023 (O&M)
Reserved on: 02.04.2024
Date of Pronouncement: 30.04.2024

SERIOUS FRAUD INVESTIGATION OFFICE THROUGH B RAMESH KUMAR

-PETITIONER

V/S

ANIL JINDAL

-RESPONDENT

(II) CRM-M-65542-2023 (O&M)

SERIOUS FRAUD INVESTIGATION OFFICE -PETITIONER

V/S

NANAK CHAND TAYAL -RESPONDENT

(III) CRM-M-65539-2023 (O&M)

SERIOUS FRAUD INVESTIGATION OFFICE -PETITIONER

V/S

BISHAN BANSAL -RESPONDENT

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. J.S. Lalli, Deputy Solicitor General of India, with
Mr. Manish Verma, Advocate
for the petitioner.

Mr. Chetan Mittal, Sr. Advocate with
Mr. Suchakshu Jain, Advocate
Mr. Mayank Aggarwal, Advocate
Mr. Dilip, Advocate,
Mr. Vivek Aggarwal, Advocate and
Mr. Anil Rathore, Advocate
for the respondent (in CRM-M-65367-2023).

Mr. Kunal Dawar, Advocate with
Mr. Vipul Sharma, Advocate
for the respondent (in CRM-M-65542-2023).

Mr. P.S. Ahluwalia, Advocate with
Mr. Akhilesh Barak, Advocate
Mr./Ms. Raunaq Aulakh, Advocate and
Mr. Jaiveer Singh, Advocate
for the respondent (in CRM-M-65539-2023).

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KULDEEP TIWARI, J.

1. Since common questions of law are involved in all these petitions and the reliefs craved to be reaped therein are also alike, therefore, all these petitions are amenable for being decided through a common verdict.

2. To be precise, the gravamen of all these petitions is ingrained in the impugned orders of bail, inasmuch as, despite the respondents allegedly being the masterminds of a huge financial scam, yet they have been enlarged on regular bail by the learned trial Court. For the sake of brevity, the facts are being extracted from CRM-M-65367-2023.

3. The prime grievance woven by the petitioner in the instant petition, is that, the learned trial Court has, while granting regular bail to the respondent, turned a blind eye to the material facts indicative of respondent's culpability in commission of a serious economic offence. Consequently, the instant petition, as cast under Section 482 read with Section 439(2) of the Cr.P.C. and wherein becomes assailed the order dated 19.12.2023, aims at securing the relief of cancellation of bail granted to the respondent.

4. It would be apt to record here that the respondent had, before his succeeding in securing the concession of bail vide the impugned order (supra), made three unsuccessful attempts in that regard. Therefore, the fourth bail application, which found favour with the learned trial Court and whereon the impugned order (supra) has been passed, has caused pain to the petitioner.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONER

5. The learned counsel for the petitioner has vociferously opposed the observations recorded by the learned trial Court in the impugned order (supra). He has argued that when the respondent had never assailed the validity of the remand order dated 03.06.2021, therefore finality was/is to be assigned to the said order, and as such, there was no jurisdiction vested with the learned trial Court to, in the impugned order (supra), make any comment upon its own order, rather such an approach tantamounts to review of its own order by the learned trial Court, authority whereof clearly does not vest with it. Not only this, the learned trial Court has, while reviewing the remand order, passed adverse comments upon its predecessor/author of the remand order, which were totally uncalled for.

6. The learned counsel for the petitioner has next argued that the sole ground assigned by the learned trial Court behind grant of bail to the respondent, is anchored upon the decisions rendered by the Hon'ble Supreme Court, in cases titled as ***"Pankaj Bansal Vs. Union of India & Ors.", Criminal Appeal Nos.3051-3052 of 2023, Decided on: 03.10.2023***, and, ***"Ram Kishor Arora Vs. Directorate of Enforcement", CLP (Crl.) No.12863 of 2023, Decided on: 15.12.2023,*** inasmuch as, the arrest of the respondent has been declared illegal, on account of non-compliance of the mandate carried in Section 212(8) of the Companies Act, 2013 (hereinafter referred to as the 'Act of 2013'). The above observation attracts rebuttal from the learned counsel for the petitioner, inasmuch as, the learned trial Court failed to recognize that when no formal arrest took place in the present matter, therefore, there does not arise any question of infringement

of the jural parameters laid down in the judgments (supra). Moreover, it is not even obligatory for the petitioner-Serious Fraud Investigation Office (hereinafter referred to as the 'S.F.I.O.') to make a formal arrest of each and every accused, who is already in judicial custody in other cases. It is within the legal framework for the prosecution agency to seek remand of accused to judicial custody, instead of seeking production of such accused before it. In this regard, he has placed reliance upon the judgment drawn by the Madras High Court in ***"State by Inspector of Police Vs. K.N. Nehru & Ors.", 2011 SCC OnLine Mad 1984***.

7. Furthermore, the learned counsel for the petitioner has argued that the application for production warrants and for sending the respondent in judicial custody clearly reflect the incriminatory evidence collected by the investigating agency against him. Therefore, insofar as role of the respondent and the reasons requiring his arrest in the criminal complaint are concerned, the application(s) (supra) have always been a part of the record and as such, have been accessible to every citizen. Consequently, by no stretch of imagination, the learned trial Court could have construed that the ground(s) of arrest were not communicated to the respondent.

8. Proceeding further, the learned counsel for the petitioner has argued that, in fact, the judgment rendered in ***Pankaj Bansal's case (supra)*** has a prospective effect and it has been so held therein by the Hon'ble Supreme Court. Not only this, it has been reiterated by the Hon'ble Supreme Court while delivering the judgment in ***Ram Kishor Arora's case (supra).*** Since the application for judicial remand was filed in the presence of the respondent/accused, therefore, compliance was made to the mandate carried in Section 212(8) of the Act of 2013, and as such, the respondent/ac-

cused cannot, at this stage, claim that he was never communicated the ground(s) of his arrest.

9. Nonetheless, the learned counsel for the petitioner has argued that, when all the pleas (supra) were available with the respondent to be agitated in his earlier bail applications, as even then Section 212(8) of the Act of 2013 was a part of the statute, however, deliberate non canvassing thereof in the earlier bail applications tantamounts to waiver and abandonment of such pleas by the respondent. Consequently, the pleas (supra) becoming agitated in the fourth successive bail application cannot be construed to be the change in circumstances. As a matter of fact, the earlier three bail applications of the respondent were dismissed by the learned trial Court itself by employing the restrictive conditions of bail envisaged in Section 212(6) of the Act of 2013, as also by taking into account the magnitude of fraud and seriousness of the allegations. However, now while granting bail to the respondent vide the impugned order (supra), the learned trial Court has erred in not even making any discussion about satisfaction or not being made of the twin restrictive conditions of bail enclosed in Section 212(6) of the Act of 2013.

10. Concluding his arguments, the learned counsel for the petitioner has argued that the learned trial Court should not have entertained the fourth bail application of the respondent, especially when five of the respondent's co-accused have been declined bail by this Court and even the Hon'ble Supreme Court has not made any interference in those declining orders. **Nonetheless, another surprising fact is that, although the learned trial Court proceeded to decide the bail application of all the respondents (in these petitions), however, it did not decide the bail application**

of co-accused Rajesh Singla, which was/is also pending consideration before the learned trial Court, and, who has remained unsuccessful upto Hon'ble Supreme Court. (emphasis supplied)

CONCURRENT SUBMISSIONS OF THE LEARNED COUNSELS FOR THE RESPONDENTS

11. *Per contra*, the main thrust of the arguments advanced by the learned counsels for the respondents is directed at defending the observations recorded by the learned trial Court in the impugned order(s).

12. The learned counsels for the respondents have argued that, the primary cause behind the respondents becoming enlarged on bail spurred from breach being committed of the statutory mandate carried in Section 212(8) of the Act of 2013, and, in Rule 4 of the Companies (Arrest In Connection with Investigation by Serious Fraud Investigation Office) Rules, 2017, (hereinafter referred to as the 'Rules of 2017'), inasmuch as, there is no wrangle amongst the contesting litigants, rather it is an admitted fact by the petitioner that, the grounds of arrests were never supplied to the respondents, therefore, non-supply of the grounds of arrest paved the way for the learned trial Court to hold the custody of the respondents to be illegal and to accordingly grant them bail. Moreover, to arrive at this observation, the learned trial Court has rightly placed reliance upon the judgments rendered by the Hon'ble Supreme Court in cases titled as ***Pankaj Bansal's case (supra)*** and ***Ram Kishor Arora's case (supra).***

13. The next argument of the learned counsels for the respondents crops up from the principle that, in the event of a person becoming confined to judicial custody without making his/her formal arrest, such custody becomes rendered illegal from its very inception. By referring to the provi-

sions of Sections 167 and 309 of the Cr.P.C., the learned counsels for the respondents have tried to build a case that, since these provisions mandate that (i) arrest of a person, and/or, (ii) taking cognizance of the offence, are the conditions precedent for judicial custody, therefore, the power of remanding a person to judicial custody can only be invoked if such person has been arrested, and/or, cognizance of the offence has been taken. Consequently, when in the case at hand, the respondents were remanded to judicial custody without them being initially arrested by the authorized arresting officer concerned, and/or, without cognizance of the offence becoming taken, therefore, their custody was illegal and they have rightly been granted bail.

14. Moving forth, the learned counsels for the respondents have argued that, since Rule 4 of the Rules of 2017 clearly enunciate that "arrest order" accompanied by the "grounds of arrest" is to be served upon the arrestee, therefore, in the instant matter, it ought to have been served upon the arrestee/respondent and not upon the remanding court. Moreover, when the remanding court is also under an obligation to see whether the above statutory requirement is fulfilled or not, therefore, in the event of its becoming evidently breached, the arrest of the respondents stood vitiated and they were rightly enlarged on bail. To substantiate this argument, reliance is placed upon the judgment rendered by the Hon'ble Supreme Court in ***"V. Senthil Balaji vs. State represented by Deputy Director and Ors." (2023) SCC Online SC 934.***

15. The learned counsels for the respondents have further argued that, in case, a judicial remand application containing material disclosures is equated to be the compliance of Section 212(8) of the Act of 2013 and Rule

4 of the Rules of 2017, then in that eventuality, neither preparation of the "grounds of arrest", nor supply thereof to the arrestee would be mandatory, rather the said application would itself suffice the relevant purpose. However, in such an eventuality, the legislative intent underlying the incorporation of provisions (supra) would be rendered redundant and obsolete. Nonetheless, even if for the sake of arguments, the judicial remand application is equated to be the compliance of provisions (supra), yet the said application was never made available to the respondents, as, on the date of passing of the judicial remand order, they were not produced physically before the remanding court, rather were produced through virtual platform.

16. Furthermore, the learned counsels for the respondents have emphasized that although the application seeking respondents' remand to judicial custody, in pursuance of the application under Section 267 of the Cr.P.C., would imply that the respondents were arrested in the present matter, however, it was not so. Since the very purpose of making an application under Section 267 of the Cr.P.C., thereby seeking issuance of production warrants, is to effect arrest of a person, therefore, had there been no requirement of arrest of the respondents, there was no occasion for the petitioner-S.F.I.O. to make such an application. This modus was adopted by the petitioner-S.F.I.O. only to cover up the violations of the statutory provisions, as made by them by not supplying the "grounds of arrest" to the respondents.

17. Concluding their arguments, the learned counsels for the respondents have submitted that since the matter pertains to documentary evidence, therefore, subjecting the respondents to prolonged incarceration would not have served any gainful purpose and consequently, they have rightly been enlarged on regular bail.

JURISDICTION OF SUPERIOR COURT/APPELLATE COURT TO INTERFERE IN A BAIL ORDER, IN THE EVENT OF ITS BEING DRAWN PERVERSELY

18. Before embarking upon the process of gauging the merits/demerits of the instant petition and consequently evincing any opinion upon the validity of the impugned order (supra), it is deemed apt to begin with some of the significant legal pronouncements, which set up certain guidelines for testing the correctness of an order granting bail to the accused and if such order is perverse, to make interference therein and cancel the bail so granted.

19. Although it is trite law that, ordinarily the superior courts should not interfere in an order of bail, however, in the event of such an order *prima facie* emitting smell of arbitrariness or illegality, its validity can be tested on the anvil of whether there was an improper or arbitrary exercise of discretion in grant of bail. The relevant judgment to cite at this juncture would be the one rendered by the Hon'ble Supreme Court in case titled as ***"Mahipal Vs. Rajesh Kumar @ Polia and another", (2020) 2 SCC 118,*** whose relevant extract is reproduced hereinafter:-

> *"15. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted….."*

20. Another relevant judgment would be ***"Neeru Yadav v. State of***

U.P. and anr.", (2014) 16 SCC 508, wherein, the Hon'ble Supreme Court has rendered the following relevant observations:-

> *"13. …..It is well settled in law that cancellation of bail after it is granted because the accused has misconducted himself or of some supervening circumstances warranting such cancellation have occurred is in a different compartment altogether than an order granting bail which is unjustified, illegal and perverse. If in a case, the relevant factors which should have been taken into consideration while dealing with the application for bail and have not been taken note of bail or it is founded on irrelevant considerations, indisputably the superior court can set aside the order of such a grant of bail. Such a case belongs to a different category and is in a separate realm. While dealing with a case of second nature, the Court does not dwell upon the violation of conditions by the accused or the supervening circumstances that have happened subsequently. It, on the contrary, delves into the justifiability and the soundness of the order passed by the Court."*

21. Likewise, in ***"Deepak Yadav v. State of U.P. and another", (2022) 4 S.C.R. 1,*** the Hon'ble Supreme Court has categorically held that cancellation of bail cannot be limited to the occurrence of supervening circumstances. The relevant paragraph of the judgment (supra), wherein certain illustrative circumstances for cancellation of bail are quoted, is extracted hereinafter:-

> *"31. It is no doubt true that cancellation of bail cannot be limited to the occurrence of supervening circumstances. This Court certainly has the inherent powers and discretion to cancel the bail of an accused even in the absence of supervening circumstances. Following are the illustrative circumstances where the bail can be cancelled :-*
>
> *a) Where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record.*
>
> *b) Where the court granting bail overlooks the influential position of the accused in comparison to the victim of abuse or the witnesses es-*

pecially when there is prima facie misuse of position and power over the victim.

c) Where the past criminal record and conduct of the accused is completely ignored while granting bail.

d) Where bail has been granted on untenable grounds.

e) Where serious discrepancies are found in the order granting bail thereby causing prejudice to justice.

f) Where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified.

g) When the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case."

22. The judgment rendered by the Hon'ble Supreme Court in ***"Jagjeet Singh and ors. v. Ashish Mishra @ Monu and anr.", (2022) 4 S.C.R. 536,*** also propounds similar principles, inasmuch as, it speaks about cancellation of bail by an appellate Court, if it is illegal or is anchored upon irrelevant materials. The relevant paragraph of this judgment is reproduced hereinafter:-

"29. Ordinarily, this Court would be slow in interfering with any order wherein bail has been granted by the Court below. However, if it is found that such an order is illegal or perverse, or is founded upon irrelevant materials adding vulnerability to the order granting bail, an appellate Court will be well within its ambit in setting aside the same and cancelling the bail. This position of law has been consistently reiterated, including in the case of Kanwar Singh Meena v. State of Rajasthan, wherein this Court set aside the bail granted to the accused on the premise that relevant considerations and prima facie material against the accused were ignored. It was held that:

"10….Each criminal case presents its own peculiar factual scenario and, therefore, certain grounds peculiar to a particular case may have to be taken into account by the court. The court has to only opine as to whether there is prima facie case against the accused. The court must not undertake meticulous examination of the evidence collected by the police and com-

ment on the same. Such assessment of evidence and premature comments are likely to deprive the accused of a fair trial. …The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well-recognised principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society. Needless to say that though the powers of this Court are much wider, this Court is equally guided by the above principles in the matter of grant or cancellation of bail."

(Emphasis Supplied)

30. It will be beneficial at this stage to recapitulate the principles that a Court must bear in mind while deciding an application for grant of bail. This Court in the case of Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr., after taking into account several precedents, elucidated the following:

"9…However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;

> *(ii) nature and gravity of the accusation;*
> *(iii) severity of the punishment in the event of conviction;*
> *(iv) danger of the accused absconding or fleeing, if released on bail;*
> *(v) character, behaviour, means, position and standing of the accused;*
> *(vi) likelihood of the offence being repeated;*
> *(vii) reasonable apprehension of the witnesses being influenced; and*
> *(viii) danger, of course, of justice being thwarted by grant of bail."*
>
> *(Emphasis Supplied)"*

23. Another significant judgment rendered by the Hon'ble Supreme Court, in the above regard, would be ***"Ansar Ahmad v. State of Uttar Pradesh and anr." (2023) 4 S.C.R. 577,*** wherein, it has been explicitly propounded that likelihood of an abuse of bail cannot be interpreted as the only ground for cancellation of bail, rather the court seized of a challenge to such bail order is empowered to critically analyse the soundness of the bail order. The relevant paragraphs of the judgment would be 15 and 16, which are reproduced hereunder:-

> *"15. We are not at all impressed by the aforesaid submission of Mr. Basant as it is well settled position of law that cancellation of bail is not limited to the occurrence of any supervening circumstances. In Ash Mohammad vs. Shivraj Singh @ Lalla Babu and Another, reported in (2012) 9 SCC 446, this Court has observed that there is no defined universal rule that applies in every single case. Hence, it is not the law that once bail is granted to the accused, it can only be cancelled on the ground of likelihood of an abuse of bail. The Court before whom the order of grant of bail is challenged is empowered to critically analyse the soundness of the bail order. The Court must be wary of a plea for cancellation of bail order vs. a plea challenging the order for grant of bail. Although on the face of it, both situations seem to be the same yet, the grounds of contention for both are*

> *completely different. Let's understand the different conditions in both the situations.*
>
> *16. In an application for cancellation of bail, the court ordinarily looks for supervening circumstances as discussed above. Whereas in an application challenging the order for grant of bail, the ground of contention is with the very order of the Court. The illegality of due process is questioned on account of improper or arbitrary exercise of discretion by the court while granting bail. So, the crux of the matter is that once bail is granted, the person aggrieved with such order can approach the competent court to quash the decision of grant of bail if there is any illegality in the order, or can apply for cancellation of bail if there is no illegality in the order but a question of misuse of bail by the accused. In Puran v. Rambilas and another, reported in 2001 (6) SCC 338, this Court has observed, "The concept of setting aside as unjustified, illegal or perverse order is totally different from the cancelling an order of bail on the ground that the accused had misconducted himself, are because of some supervening circumstances warranting such cancellation"."*

24. The last judgment to cite in above context would be ***"Vipan Kumar Dhir v. State of Punjab and anr." (2021) 6 S.C.R. 1137,*** which speaks about a bail order becoming legally untenable in the event of its being granted on irrelevant factors or by ignoring the relevant material available on record. Paragraph 10 of this judgment is reproduced hereinafter:-

> *"10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the*

deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked."

25. In view of the legal propositions discussed hereinabove at length, this Court does not have any hesitation to analyze the legality of the impugned order (supra), especially when it has been challenged on the ground of its becoming drawn in utter disdain to the relevant materials available on record.

ANALYSIS OF THE IMPUGNED ORDER

22. This Court has made a meticulous scrutiny of the impugned order, whereupon, the hereinafter compendiously extracted defects/issues warranting interference surge forth:-

(i) The observations recorded by the Hon'ble Supreme Court in ***Pankaj Bansal's case (supra)*** *and* ***Ram Kishor Arora's case (supra),*** *i.e. "non-communication of 'grounds of arrest' would vitiate the arrest of the accused and constitute a ground for bail", have been erroneously resorted to entertain and affirm the fourth bail application, consequent upon dismissal of earlier three bail applications;*

(ii) The merits of the instant matter have not been evaluated on the anvil of the twin restrictive conditions of bail enclosed in Section 212(6) of the Act of 2013;

(iii) The learned trial Court has constructed the impugned order in utter oblivion of the relevant materials, which clearly reflect light upon compliance of Section 212(8) of the Act of 2013, rather it took into consideration such irrelevant material(s), which did not even deserve its being made a part of the judicial record;

(iv) The learned trial Court has, while deciding a bail application, acted as an appellate court and recorded uncalled for adverse comments against its predecessor/author of the remand order.

FACTUAL BACKDROP

23. Before assigning the reasons for interfering in the impugned order, it is deemed imperative to initially deal with the allegations, as levelled by the petitioner against the respondent and other accused. It is undoubtedly clear that, it is not only the individual role of the respondent that has to be analyzed, but the entire facts and circumstances have to be borne in mind, inasmuch as, serious allegations *qua* commission of a huge financial fraud, wherein huge sums of money are alleged to have been siphoned off by the accused(s) for their personal use, have been levelled in the present case.

24. Consequent upon forming of an opinion by the Ministry of Corporate Affairs (hereinafter referred to as 'M.C.A.') that investigation into the affairs of SRS limited and its Group Companies is necessary to be conducted by the S.F.I.O., it drew an order of investigation on 01.08.2018, in exercise of its powers, as conferred under Section 212(1)(a) of the Companies Act, 2013. Accordingly, the Director, S.F.I.O., vide order dated 08.08.2018, designated officers of S.F.I.O. as Inspectors to carry out the investigation. The investigation was conducted by various officers, whereupon it transpired that total 88 companies belonging to SRS Group were in existence since 01.04.2010. Therefore, investigation into the affairs of those 88 CUIs, including the eight companies which have been arrayed as accused No.1 to 8 in the complaint (supra), was conducted and on completion of the investigation, an Investigation Report dated 05.06.2021 was presented before the M.C.A. This Investigation Report constituted the backbone of the order dated 10.06.2021, wherethrough, the M.C.A. directed the S.F.I.O. to file complaint and to initiate prosecution against the accused for commission of various offences/violations, i.e. under Sections 36(c) read with Sec-

tion 447, 448, 92, 137, 134, 188, 128, 129, 143 of the Companies Act, 2013, and, Sections 209, 217, 211, 227, 297, 628 of the Companies Act, 1956.

25. It would be pertinent to record here that, during the course of investigation, on 26.05.2021, in pursuance of approval to arrest four persons/accused, namely, Anil Jindal, Bishan Bansal, Nanak Chand Tayal (respondents in these petitions) and Rajesh Singla (not before this Court), the petitioner moved an application under Section 267 of the Cr.P.C., thereby seeking issuance of production warrants against them. The learned Additional Sessions Judge, Gurugram, allowed the said application on 31.05.2021 and directed for issuance of production warrants for 03.06.2021. Thereafter, on 03.06.2021, an application seeking remand of aforesaid accused to judicial custody was moved by the petitioner, on the ground that, approval for arrest has been obtained from the Director, S.F.I.O., in accordance with the Rules of 2017. This application was allowed on the same day itself and the aforesaid accused were remanded to judicial custody in the present case.

26. The sum and substance of the complaint (supra), besides the crux of the investigation carried out by the S.F.I.O., is extracted hereinafter:-

> *"(I) SRS Group consisted of two categories of companies with the nomenclature 'SRS companies' and 'Non-SRS companies'. It is revealed that the affairs of these companies were managed and controlled by Anil Jindal, Jitender Kumar Garg, Praveen Kumar Kapoor, Bishan Bansal, Nanak Chand Tayal, Rajesh Singla and Sushil Singla. The said persons were the actual controlling "mind and will" and in control of the affairs of the SRS Group. The degree of their control was such that the directors in these companies were appointed or removed as per their whims and fancies.*

(II) That in case of Non-SRS companies, it is revealed that the directors were mostly the employees, known persons, or relatives of the controllers of the SRS Group. However, the total control over the operations of these companies was in the hands of the controllers of the SRS Group.

(III) It is revealed that five companies belonging to SRS Group i.e., SRS Limited, SRS Modern Sales Limited, SRS Healthcare & Research Centre Limited, SRS Finance Limited & SRS Real Estate Limited obtained loans to the tune of Rs. 528 crores (after 12.09.2013) from public sector banks/financial institutions. The outstanding bank loans with respect to nine of the SRS Group of companies, as per the latest financial statements filed with MCA, are Rs. 1596.94 Crores.

(IV) It is further revealed that the directors of SRS Ltd. and its four other Group Companies had presented falsified financial statements (after 12.09.2013) containing falsified statements of debtors, inflated Purchase & Sales figures, deliberately concealed the material facts in obtaining aforesaid credit facilities from public sector banks/financial institutions. In this regard, non-SRS companies were used for the purpose of inflating the sale, purchase, and profit of the SRS Companies, adjusting cash sales of jewellery and building material of declared SRS Companies, showing these Non-SRS companies as debtors in the books of accounts of SRS Companies.

(V) It is further revealed that the controllers of the CUls connived and Siphoned Off funds of Rs. 671.48 Crores and diverted funds amounting to Rs. 645.86 Crores from SRS Group of Companies by way of separate/distinct transactions. Further, the unlawful gain to the family members or Companies of the controller of SRS Group was by way of siphoning off the public funds from SRS Group of Companies and it was to the tune of Rs. 21.11 Crores after the period 11.09.2013.

(VI) Investigation also revealed that the auditors of the SRS Companies had deliberately suppressed the actual figures & entries in the accounts of the company and had given wrong,

false, and misleading statements in the financial statements, knowing it to be false in a material particular and had omitted to state the material facts, knowing to be material to hide the true nature of the financial statements.

(VII) The SRS Group - where mostly the directors were the Controllers of SRS Groups and their family members in these companies, the employees were also made directors. The directors of these companies were employees of SRS Group or their relatives. Many of these directors were the past directors in the SRS Group.

(VIII) Whenever Anil Jindal/co-accused wanted to incorporate a company either in SRS Group or as a Non-SRS Company, the Secretarial Department was provided the basic details such as a Name, Main objects, place of registered office, authorized capital, and directors, etc. by him. Based on information/instruction given by Anil Jindal, the Secretarial Department use to fill the form for incorporation after preparing the MOA and AOA as per the main objects through Ms. Savita Trehan, Practicing Company Secretary.

(IX) In this regard it is pertinent to mention here that Ms. Savita, in her statement on oath, stated that she either got incorporated or filed forms concerning many companies.

(X) As per the requirement, Anil Jindal conveys which person is to be appointed or resigned as director from any company and provide them the documents of the appointee director and accordingly they file the Form -32 / Form DIR- 12 of the concerned persons.

(XI) Anil Jindal or Accounts Department conveys which person/firm is to be appointed or has resigned from any company and further he provided them the documents of the appointee auditors. Accordingly, they filed forms for the appointment and resignation of concerned auditors.

(XII) No board meetings of most of the SR Group companies/were held, however, in compliance with Company Law or for other requirements such as the opening of bank accounts, etc., the

Secretarial Department prepares the minutes of all such companies. AGMs of SRS Group companies were not held physically. However, documents of these AGMs were prepared in compliance with company law on the instructions of Anil Jindal.

(XIII) Financial statements of SRS and Non-SRS companies were prepared by the accounts departments and they get the balance sheets signed by auditors, preparing notices, director reports, MDA, etc. After the preparation of the notice, director reports, MDA, etc., they use to handed over it to the accounts department or Anil Jindal for signing by Directors. After receiving the signed annual reports, they use to file the same with ROC as generally digital signatures of all the directors were kept with the Secretarial Department with the knowledge of the concerned Directors."

27. Consequent upon filing of the complaint (supra) by the S.F.I.O., since the learned Special Judge concerned, vide order dated 16.08.2021, summoned the accused(s) named therein, including the present petitioner, to face trial.

28. Based upon the material/evidence, as surfaced during investigation of the petitioner-S.F.I.O., the following offences have been invoked in the complaint (supra), in accordance with the role/period of involvement of each of the accused.

*"**a) False statement in balance sheets/books of SRS group of companies:** [Offences invoked against signatories/Directors to the balance sheets - s.448 of the Companies Act, 2013 and/or s. 628 of the Companies Act, 1956].*

***b) Fraudulent representation before banks for obtaining credit facilities:** [Offences invoked against loan taking companies and the controllers of the said companies who submitted falsified balance sheets signatories/directors to the balance sheets - s.36(c) of the Companies Act, 2013].*

***c) Siphoning and diversion of funds received as loan from banks/ financial institutions:** [Offences invoked against respective compa-*

nies and the individuals involved - s.447 of the Companies Act, 2013].

d) Material mis-statements in the financial statements of the SRS group companies: *[Offences invoked against respective Statutory Auditors - s.143 r/w 147, 448 of the Companies Act, 2013 and/or s. 227 r/w 233, 628 of the Companies Act, 1956].*

e) Form & contents of balance sheet, profit & loss account not giving true & fair view of the affairs of the companies, deficient Director's report and not keeping proper books of accounts: *[Offences invoked against respective Directors/controllers/officers in default of the Companies- 209, 211, 217 of Companies Act, 1956 and Section 128, 129, 134 of Companies Act, 2013).*

f) Non-declaration of 'related parties' in Financial Statements: *[Offences invoked against respective Companies & its controllers - u/s 188 (5) of the Companies Act, 2013 and/or S. 297 r/w 629A of the Companies Act, 1956].*

g) Non-filing of annual returns and financial statements: *[Offences invoked against respective Companies & its directors/controllers/officers in default - 92(5) & 137(3) of Companies Act, 2013].”*

ROLE OF THE RESPONDENT(S)

29. The role of the respondent(s), as succinctly stated in the application seeking issuance of production warrants against the respondent(s) (Annexure P-2), is reproduced hereunder:-

*“19. As far as **ANIL JINDAL** is concerned, it is revealed that He was ‘Controllers of SRS Group’ and Chairman of SRS Group. He was also a director/signatory in many companies of SRS Group. He was responsible for the overall planning, administration of the Group, brand building, preparation of the financial statements, and fulfilling the fund's requirement as and when required. He was instrumental in getting loan facilities to the SRS Group companies by furnishing false documents. The companies were incorporated with the purpose to adjust the cash sales, in the wholesale jewellery and building material and to increase the net worth of the Group by showing sale / purchase between these companies.*

*20. As far as **BISHAN BANSAL** is concerned, it is revealed that he was a director in many companies of SRS Group. He was handling all construction-related work of the real estate projects, sand mining activities, food court and banquet business of SRS Group, finance activities, etc. He was instrumental in getting loan facilities to the SRS Group companies by furnishing false documents. Fictitious purchases of building material from other companies of the SRS Group was shown in the books of accounts of SRSHRCL from the year 2014-15 to 2016-17 to increase the cost of construction for SRSHRCL.*

*21. As far as **NANAK CHAND TAYAL** is concerned, it is revealed that he was responsible for all liasioning work for approvals, permission, licensing, renewals, and was also looking after the finance business. He was instrumental in getting loan facilities to the SRS Group companies by furnishing false documents. Bimlesh Tayal (his wife) has been paid against the sale of shares however, no such shares were acquired by her. These proceeds were used for the purchase of a house at Faridabad. Money was diverted to his daughters."*

REASONS FOR ALLOWING THE INSTANT PETITION(S) AND SETTING THE IMPUGNED ORDER(S)

30. The first and the foremost issue, anchored whereupon bail has been granted to the respondent and which requires interference, hinges upon breach being committed of the hereinafter extracted statutory mandate carried in Section 212(8) of the Act of 2013 and in Rule 4 of the Rules of 2017.

Section 212(8) of the Act of 2013

212.(8) *If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office 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 any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

Rule 4 of the Rules of 2017

4. *The Director, Additional Director or Assistant Director, while exercising powers under sub-section (8) of section 212 of the Act, shall sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgement of service.*

31. A conjoint reading of the above provisions makes vivid display that the legislative intent underlying the incorporation of these provisions is to safeguard the interests of the arrestee, as also to bring an element of fairness and accountability. According to these provisions, the authorized arresting officer, who has, on the basis of material in his possession, the reason to believe (to be recorded in writing) that, any person has been guilty of any offence punishable under section referred to in sub-section (6), '**may'** arrest such person and as soon as may be, inform such person the grounds for such arrest. Moreover, Rule 4 of the Rules of 2017 adds another safeguard, i.e. the authorized arresting officer shall, while exercising power under Section 212(8) of the Act of 2013, sign the arrest order together with personal search memo in the Form appended to these rules and shall serve it on the arrestee and obtain written acknowledgment of service.

32. Gainful reference in the above regard can be made to ***V. Senthil Balaji's case (supra),*** wherein, the Hon'ble Supreme Court has observed as under:-

> *"39. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002*

would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.

XX XX XX

68. Such a Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the PMLA, 2002. It is his bounden duty to see to it that Section 19 of the PMLA, 2002 is duly complied with and any failure would entitle the arrestee to get released. The Magistrate shall also peruse the order passed by the authority under Section 19(1) of the PMLA, 2002. Section 167 of the CrPC, 1973 is also meant to give effect to Section 19 of the PMLA, 2002 and therefore it is for the Magistrate to satisfy himself of its due compliance. Upon such satisfaction, he can consider the request for custody in favour of an authority, as Section 62 of the PMLA, 2002, does not speak about the authority which is to take action for noncompliance of the mandate of Section 19 of the PMLA, 2002. A remand being made by the Magistrate upon a person being produced before him, being an independent entity, it is well open to him to invoke the said provision in a given case. To put it otherwise, the Magistrate concerned is the appropriate authority who has to be satisfied about the compliance of safeguards as mandated under Section 19 of the PMLA, 2002. On the role required to be played by the Magistrate, qua a remand, we do not wish to go any further as it has been dealt with by this Court in ***Satyajit Ballubhai Desai v. State of Gujarat, (2014) 14 SCC 434:***

> *"9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be impossible for the police authorities*

> *to undertake further investigation and only in that event police custody would be justified as the authorities specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers which at times may be at the instance of an interested party also. But it is also equally true that the police custody although is not the be-all and end-all of the whole investigation, yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and, has therefore, permitted limited police custody."*
>
> *(emphasis supplied)*

33. The above view was reiterated and reinforced by the Hon'ble Supreme Court in ***Pankaj Bansal's case (supra)***, wherein, the following relevant observations have been made:-

> *"15. This Court had occasion to again consider the provisions of the Act of 2002 in V. Senthil Balaji vs. The State represented by Deputy Director and others2, and more particularly, Section 19 thereof. It was noted that the authorized officer is at liberty to arrest the person concerned once he finds a reason to believe that he is guilty of an offence punishable under the Act of 2002, but he must also perform the mandatory duty of recording reasons. It was pointed out that this exercise has to be followed by the information of the grounds of his arrest being served on the arrestee. It was affirmed that it is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested and it was observed that this safeguard is meant to facilitate an element of fairness and accountability. Dealing with the interplay between Section*

> *19 of the Act of 2002 and Section 167 Cr.P.C, this Court observed that the Magistrate is expected to do a balancing act as the investigation is to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that Section 19 of the Act of 2002, supplemented by Section 167 Cr.P.C., provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the Act of 2002. It was held that the Magistrate is under a bounden duty to see to it that Section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that Section 167 Cr.P.C is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer."*

34. The conclusion, as stems from the above discussion, is that, owing to non-compliance of the mandate carried in Section 212(8) of the Act of 2013 and in Rule 4 of the Rules of 2017, the arrest of a person becomes vitiated and resultantly, he/she becomes entitled for regular bail.

35. Now reverting to the case at hand, what erupts from a naked eye scrutiny of the factual matrix discussed in the preceding paragraphs of

this verdict is that, undisputedly, the respondent was never formally arrested by the petitioner-S.F.I.O., rather in pursuance of his production warrants, he was produced before the learned Court concerned by the jail authorities concerned, through virtual platform (in compliance of the COVID-19 protocols), and, on the same day itself, upon an application moved by the petitioner, he was remanded to judicial custody. Consequently, the issue which now crops up for adjudication is *"whether, in the circumstances (supra), the compliance of the mandatory provisions enshrined in Section 212(8) of the Act of 2013 and in Rule 4 of the Rules of 2017, can be deemed to have been meticulously made or not"*.

36. To the considered mind of this Court, **the answer to the issue is in affirmative**. The reason for forming this inference is embedded in the application filed under Section 267 of the Cr.P.C., wherethrough, production warrants of respondent, who was lodged in District Jail, Faridabad (in different criminal cases), were sought to be issued. This application makes the hereinafter extracted significant graphic emergences:-

> *(a) This application was moved after taking approval from the competent authority to arrest the respondent for offences punishable under the Act of 2013;*
>
> *(b) In compliance of the order of investigation drawn by the M.C.A. on 01.08.2018, the Director, S.F.I.O., vide order dated 08.08.2018, designated officers of S.F.I.O. as Inspectors to carry out the investigation;*
>
> *(c) This application gave complete details of all the relevant materials collected during investigation, based whereupon, the petitioner-S.F.I.O. formed an opinion/'reason to believe' about the guilt of the respondent and accordingly sought issuance of production warrants against him in the instant case;*
>
> *(d) This application disclosed the specific role and the*

modus operandi adopted by the respondent/accused concerned in commission of cognizable offences;

37. In this way, when the application (supra) fulfilled all the mandatory requirements, i.e. (i) it disclosed the materials collected during investigation, which constituted the 'reason to believe' that the respondent/ accused concerned has been guilty of offence punishable under section referred to in sub-section (6); and (ii) it disclosed the specific role of the respondent/accused concerned in commission of the alleged offences, besides disclosing the opinion and permission to arrest him; and, when the application (supra) has always been a part of the judicial record, which is accessible to all concerned, therefore, this Court has no hesitation to hold that all the mandatory requirements encapsulated in Section 212(8) of the Act of 2013 have been complied with. For ready reference, the relevant paragraphs of the application (supra) filed by the petitioner-S.F.I.O. on 26.05.2021 are reproduced hereinafter:-

"23. Thus, based on aforesaid and the supporting material collected during investigation as on date, the "reason to believe" that Anil Jindal, Bishan Bansal, Nanak Chand Tayal, And Rajesh Singla are guilty of offences punishable under Section 447 of the Companies Act, 2013, which is cognizable and non bailable, have been recorded u/s 212(8) of the Companies Act, 2013.

24. That on the basis of material in possession and reason to believe, as stated above, in compliance of Rule (2) of the Companies (Arrests in connection with Investigation by Serious Fraud Investigation Office) Rules, 2017, written approval to arrest ANIL JINDAL, BISHAN BANSAL, NANAK CHAND TAYAL, AND RAJESH SINGLA has been taken from the Director, SFIO.

25. That the said persons are under Judicial Custody is District Jail, Faridabad in connection with FIR No. 111/2018 & 260/2018 registered at Police Station Sector 31, Faridabad, Haryana."

Since the application (supra), being a part of the judicial record, was openly accessible and even the order of judicial remand was passed in presence of the respondent/accused, therefore, now at this belated stage, he cannot plead ignorance about the same.

38. The inference (supra) gets further strengthened from the subsequent sequence of events, inasmuch as, after about 15 days of filing of the application (supra), a detailed criminal complaint containing all the relevant materials, which runs into thousands of pages, was filed by the petitioner on 11.06.2021, before the learned Special Court concerned, which resulted in the latter taking cognizance of the offences and summoning the respondent/accused concerned, vide order dated 16.08.2021. From the above, it becomes clearly established that all the materials, which were collected during investigation and which formed the 'reason to believe' that respondent is guilty and there are sufficient reasons to arrest him, were very much available to the petitioner-S.F.I.O.

39. Not only this, the application seeking respondent's remand to judicial custody, as filed in the presence of respondent (present through virtual platform), has also been framed in a similar fashion, inasmuch as, it also makes detailed disclosures about the materials collected by the petitioner during investigation, besides making disclosure about role of the respondent/accused concerned. Therefore, in these peculiar circumstances, the respondent is barred from claiming that neither he was aware about the material, which led to the authority concerned to form an opinion that he has committed offence punishable under the Act of 2013, nor he was aware of the grounds of his arrest.

40. Significant reference at this juncture can be made to ***"Neeraj***

Singal Vs. Directorate of Enforcement" (2024:DHC:129), wherein, the Delhi High Court has held that *"when the arrestee or his/her counsel is provided with a copy of the application filed by the ED under Section 167 Cr.P.C. read with Section 65 PMLA seeking custody remand, he/she will stand informed in terms of Section 19(1) of the PMLA (akin to the provisions of Section 212(8) of the Companies Act, 2013), if the said application sets out the materials which also virtually contain the grounds of arrest."*

41. In fact, a perusal of both the applications (supra) makes it abundantly clear that not only the object underlying the incorporation of provisions (supra) has been fulfilled, but the entire judicial proceedings have also been carried in a fair and transparent manner, inasmuch as, not only the respondent was well versed with the "grounds of his arrest" and other relevant materials, but all concerned had access to those documents. Mere non-compliance of the formality encapsulated in Rule 4 of the Rules of 2017 cannot be construed to be the breach of the mandate carried in Section 212(8) of the Act of 2013, as in the case at hand, since no formal arrest had taken place, therefore, there arose no occasion for the petitioner to make compliance of the said Rules, which could have only been done had a formal arrest of the respondent been made by the petitioner. Once all the safeguards, as provided by the legislature in the provisions (supra), have been meticulously complied with by the petitioner, through detailing all the relevant materials in the respective applications for production warrants and for remand to judicial custody, therefore, there was no occasion for the respondent/accused to insist for issuance of "arrest order", as prescribed under the Rules of 2017, especially when no formal arrest had taken place.

42. The prime object behind incorporation of the provisions (supra)

is to curtail the arbitrary powers of the authorized arresting officer and to constitute an element of fairness and accountability in the arrest mechanism of the S.F.I.O., specifically when, consequent upon arrest, the accused has to pass the rigor of Section 212(6) of the Act of 2013.

43. Astonishingly and strangely, despite the applications (supra) carrying the hereinabove discussed disclosures, the learned trial Court has erred in forming an opinion that the "grounds of arrest" have not been spelt out in the application seeking judicial remand. In fact, the learned trial Court has, instead of traversing through its own record and digging out the explicitly comprehensive materials from the applications (supra), thus complying with the requirements of Section 212(8) of the Act of 2013, contrarily placed reliance upon an e-mail communication *inter se* the learned counsel for the respondent and the learned Public Prosecutor for S.F.I.O., whereby, arrest memo and grounds of arrest have been demanded.

44. As a sequel to the discussion made hereinabove, this Court is of the opinion that, through the applications (supra), the respondent became well acquainted with all the relevant information, especially 'grounds of arrest', in compliance of Section 212(8) of the Act of 2013, and consequently, his judicial custody was not illegal or vitiated.

45. It is deemed apt to, at this juncture, deal with an argument made by the learned counsel for the respondent, which relates to physical non production of the respondent before the learned Special Court concerned at the time of remanding him to judicial custody. By referring to the provisions of Sections 167 of the Cr.P.C., an argument is advanced that, at the time of initial remand, it is mandatory for the authority to physically produce the accused before the Magistrate, instead of virtual mode.

46. This argument is refuted by the learned counsel for the petitioner, on the ground that, since at the time of production of respondent before the learned Special Court for his remand to judicial custody, the pandemic of COVID-19 was prevailing in the entire world, therefore, certain precautionary instructions, thereby mandating facility of video conferencing for production of under-trial prisoners, were issued by this Court. He has further argued that, even in view of the COVID-19 protocol/government guidelines, it was not at all feasible to produce the respondent physically before the learned Special Court, when he was already in custody in some other case. The relevant extract of the instructions (supra) of this Court, as relied by the learned counsel for the petitioner, is reproduced hereinafter:-

> *"Re:- THE MATTER WITH REGARD TO PRECAUTIONARY MEASURES IN WAKE OF PANDEMIC NOVEL CORONAVIRUS (COVID-19)*
>
> *xxxxxx*
>
> *(iv) No under-trial prisoner would be produced before the subordinate courts till further orders and* ***facility of video conferencing be utilized for the said purposes including extension of remand****. Sufficient number of Duty Magistrates shall be deputed by the concerned District & Sessions Judge(s) for the purpose of remand work, in case the same is not feasible through video conferencing.*
>
> *(v) In all the matters endeavour would be made by the concerned Courts to use Video Conferencing facilities, thereby avoiding human contact.*
>
> *xxxxxx….."*

47. Taking into account the havoc caused by COVID-19 pandemic during the said period, this Court concurs with the arguments of the learned counsel for the petitioner, as the same are anvilled on concrete grounds. Moreover, no prejudice has been caused to the respondent by his production before the learned Special Court through virtual mode, rather the same was

a precautionary measure and for his betterment.

48. Another argument of the learned counsel for the respondent, which requires adjudication, relates to the judicial custody of the respondent becoming rendered illegal from its very inception, for want of any formal arrest. To substantiate this argument, the learned counsel for the respondent has referred to Sections 167 and 309 of the Cr.P.C. and submitted that, since these provisions mandate that (i) arrest of a person, and/or, (ii) taking cognizance of the offence, are the conditions precedent for judicial custody, therefore, the power of remanding a person to judicial custody can only be invoked if such person has been arrested, and/or, cognizance of the offence has been taken. However, the above mandate has not been complied with in the present case.

49. This Court is of the considered view that the above argument is a highly misplaced argument. This issue has already been dealt with and thoroughly discussed by different High Courts. In the case of "***State by Inspector of Police Vs. K.N. Nehru & Ors." (supra),*** the Madras High Court has dealt with this issue and concluded that arrest is not a condition precedent for judicial remand. The relevant paragraphs of this judgment are extracted hereunder:-

> *"15. But, if an accused already is in judicial custody in connection with some other case, when the Investigating Officer wants to arrest him in connection with a different case, some confusion may surface regarding the mode of arrest. As has been held by the Hon'ble Supreme Court in CBI vs. Anupam J. Kulkarani, 1992 (3) SCC 141, he can effect formal arrest of the accused in prison. As provided in Section 46(1) of the Code of Criminal Procedure by effecting arrest in prison, the Police Officer cannot take him into custody at all, because the detention of such accused in judicial custody has already been authorized by the Magistrate in connection with some other*

case. Therefore, without the authority of the Magistrate, it is not possible in law for the police officer to remove the accused after effecting arrest in prison either to the Jurisdictional Magistrate or to the nearest Magistrate for the purpose of remand. It is only to meet such exigency, the Hon'ble Supreme Court developed a concept known as formal arrest in C.B.I. vs. Anupam J.Kulkarni cited supra. As in the instant case, in that case also, the accused was already in prison in connection with a former case. In connection with the subsequent case, the accused was arrested in prison. Thereafter, he was produced before the learned Magistrate. By that time, the initial period of 15 days of remand in the former case had expired. When police custody was sought for in the latter case, it was opposed by the accused that during the subsequent period, after the initial period of 15 days of remand, the police custody cannot be granted. While declaring the law that the detention of the accused in police custody can be made by the Magistrate either having jurisdiction or not, only during the initial period of 15 days from the date of first remand, the Hon'ble Supreme Court went on to analyse the legal position as to the effect of formal arrest made in connection with a latter case after the expiry of the initial period of 15 days in connection with the former case. The Hon'ble Supreme Court in Paragraph No.13 of the said Judgment, has held as follows:-

> *"There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction. Even if he is in judicial custody in connection with the investigation of the earlier case he can formally be arrested regarding his involvement in the different case and associate him with the investigation of that other case and the Magistrate can act as provided under Section 167(2) and the proviso and can remand him to such custody as mentioned therein during the first period of fifteen days and thereafter in accordance with the proviso as discussed above. If the investigation is not completed within the period of ninety days or sixty days then the*

accused has to be released on bail as provided under the proviso to Section 167(2). The period of ninety days or sixty days has to be computed from the date of detention as per the orders of the Magistrate and not from the date of arrest by the police. Consequently the first period of fifteen days mentioned in Section 167(2) has to be computed from the date of such detention and after the expiry of the period of first fifteen days it should be only judicial custody."

It is only after the said judgment, the concept of formal arrest in prison while the accused is already in prison in connection with some other case came into being and thereafter invariably in most of the cases, we are informed, the police officials do effect formal arrest in prison and thereafter get the accused remanded to either judicial custody or police custody under Section 167 of the Code of Criminal Procedure.

31. In a case where the police officer deems it necessary to arrest when the accused is already in judicial custody in connection with a different case, in our considered opinion, there are two modes available for him to adopt. The first one is that, instead of effecting formal arrest, he can very well make an application before the Jurisdictional Magistrate seeking a P.T. Warrant for the production of the accused from prison. If the conditions required under 267 of the Code of Criminal Procedure, are satisfied, the Magistrate shall issue a P.T. Warrant for the production of the accused in Court. When the accused is so produced before the Court, in pursuance of the P.T. Warrant, the police officer will be at liberty to make a request for remanding the accused, either to police custody or judicial custody, as provided in Section 167(1) of the Code of Criminal Procedure. At that time, the Magistrate shall consider the request of the police, peruse the case diary and the representation of the accused and then, pass an appropriate order, either remanding the accused or declining to remand the accused.

32. It has been held, in Elumalai vs. State of Tamil Nadu, 1983 L.W. (Crl.)121 and followed in G.K.Moopanar, M.L.A., vs State of Tamil Nadu 1990 LW (Crl) 113, that it is a very serious judicial act to be performed by the Magistrates, while remanding the accused, as the personal liberty of the individual is deprived off. While considering

the request for remand, the learned Magistrate is required to hold a summary enquiry. The nature of the enquiry to be held and the scope of such enquiry and under what circumstances, the order of remand can be passed by the Magistrate, have been elaborately dealt with by this Court, in State vs. K.C.Palanisamy Crl.O.P.(MD)No.13615 of 2011 dated 14.10.2011. At that time, the Magistrate may remand the accused, either to police custody or judicial custody. Thus, even without effecting a formal arrest, the police officer is entitled to seek police custody or judicial custody of the accused, as elaborated above.

33. The other mode, which the police officer may adopt, is to effect a formal arrest in prison, as stated in Anupam Kulkarni's case and thereafter, to make a request to the Jurisdictional Magistrate for issuance of P.T. Warrant for the production of the accused. When the accused is so produced before the Magistrate, the police officer will be entitled to make a request for the remand of the accused, either in judicial custody or in police custody.

42. (5). If the police officer decides not to effect formal arrest, it will be lawful for him to straightaway make an application to the Jurisdictional Magistrate for issuance of P.T. Warrant for transmitting the accused from prison before him for the purpose of remand. On such request, if the Magistrate finds that the requirements of Section 267 of the Code of Criminal Procedure are satisfied, he shall issue P.T. Warrant for the production of the accused on or before a specified date."

50. The above view gets strengthened and reiterated by the Hon'ble Supreme Court in ***"Pradeep Ram vs The State Of Jharkhand" (2019) 8 S.C.R. 824.*** The relevant portion of this judgment is extracted hereunder:-

"2.3 On the prayer made by the Investigating Officer on 09.04.2017, offences under Sections 16, 17, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967 were added against the accused. Central Government issued an order dated 13.02.2018 in exercise of power conferred under sub-section 5 of Section 6 read with Section 8 of the National Investigation Agency Act, 2008 suo-moto directing the National Investigation Agency to take up investigation of case F.I.R. No.02/2016, in which Sections 16, 17, 20 and 23 of the Unlawful Ac-

tivities (Prevention) Act, 1967 were added, which were scheduled offences. In pursuance of the order of the Central Government dated 13.02.2018, National Investigation Agency re-registered the First Information Report as FIR No.RC-06/2018/NIA/DLI dated 16.02.2018 under the above noted sections. The appellant being under custody in some other case, request was made on behalf of the National Investigating Agency before the Special Judge, NIA, Ranchi on 22.06.2018 praying for issuance of production warrant. The Special Judge allowed the prayer. Consequently, the appellant was produced from Chatra Jail on 25.06.2018 and was remanded to judicial custody by order of Special Judge dated 25.06.2018.

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64. We, however, have to decide the issue as per law irrespective of the stand taken by CBI. We may notice the order dated 25.06.2018 passed by the Court of Judicial Commissioner-cum-Special Judge NIA, Ranchi, which is to the following effect:-

> *"……25.06.2018 On strength of issued production warrant superintend Chatra Jail, Chatra produced accused namely Pradeep Ram @ Pradeep verma S/o Devki Ram, R/o Village. Winglat, P.S. Tandwa, District-Chatra. Let accused Pradeep Ram remanded in the case and sent to B.M.C. Jail, Ranchi to be produced on 26.06.2018. Learned Spl.P.P. is present.*
>
> *Issued Custody warrant.*
>
> *Dictated Ad/- Illegible Spl. Judge(NIA) .."*

65. The special Judge in his order has neither referred to Section 309 nor Section 167 under which accused was remanded. When the Court has power to pass a particular order, non-mention of provision of law or wrong mention of provision of law is inconsequential. As held above, the special Judge could have only exercised power under Section 309(2), hence, the remand order dated 25.06.2018 has to be treated as remand order under Section 309(2) Cr.P.C. ***The special Judge being empowered to remand the accused under Section 309(2) in the facts of the present case, there is no illegality in the remand order dated 25.06.2018 when the accused was remanded to the judicial custody.***

66. We, thus, do not find any error in the order dated 25.06.2018 but for the reasons as indicated above. The High Court, thus, com-

> ***mitted error in holding that the order of remand dated 25.06.2018 was in exercise of power under Section 167 Cr.P.C. We, however, hold that the remand order dated 25.06.2018 was in exercise of power under Section 309(2). The remand order is upheld for the reasons as indicated above."***

51. This Court also holds a concurrent view, as adopted by the Madras High Court and by the Hon'ble Supreme Court, in the judgments (supra) and is of the view that, in the peculiar facts and circumstances of the present case, neither formal arrest of the respondent/accused by the petitioner-S.F.I.O. was necessary, nor it was a condition precedent for remanding the respondent to judicial custody. Consequently, this argument of the learned counsel for the respondent is also rejected.

52. Insofar as the second issue is concerned, it is anvilled on non-evaluation of the twin restrictive conditions of bail enclosed in Section 212(6) of the Act of 2013, while granting bail to the respondent.

53. Reiteratedly, the impugned order has been passed on the fourth bail application of the respondent, whereas, his earlier three bail applications were dismissed, out of which, two were dismissed on merits. The said two dismissal orders were not only anchored upon the respondent attracting the rigor of the restrictive conditions of bail encapsulated in Section 212(6), but the seriousness of the allegations were also one of the determining factors.

54. Section 212(6), which starts with a non-obstante clause and prescribes the twin stringent conditions for releasing a person on bail, is reproduced hereunder:-

> ***"212. Investigation into affairs of Company by Serious Fraud Investigation Office.—***

xx xx xx

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

55. Sub-section (7) of Section 212 of the *ibid* Act further prescribes that the limitation on grant of bail, as specified in sub-section (6), is in addition to the limitations provided under the Code of Criminal Procedure.

56. The Hon'ble Supreme Court, in case titled as ***"Vijay Madanlal Choudhary & Ors. V/s Union of India & Ors." (2022 SCC OnLine SC 929),*** while dealing with the constitutional validity and the applicability of restrictive conditions of bail provided under Section 45 of the Prevention of Money Laundering Act, 2022 [akin to conditions laid down under Section 212(6) of the Act of 2013], has made the hereinafter extracted relevant observations:-

"131. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act……

132. Sub-section (6) of Section 212 of the Companies Act imposes similar twin conditions, as envisaged under Section 45 of the 2002 Act on the grant of bail, when a person is accused of offence under Section 447 of the Companies Act which punishes fraud, with pun-

ishment of imprisonment not less than six months and extending up to 10 years, with fine not less than the amount involved in the fraud, and extending up to 3 times the fraud. The Court in Nittin Johari, while justifying the stringent view towards grant of bail with respect to economic offences held that-

> *"24. At this juncture, it must be noted that even as per Section 212(7) of the Companies Act, the limitation under Section 212(6) with respect to grant of bail is in addition to those already provided in the CrPC. Thus, it is necessary to advert to the principles governing the grant of bail under Section 439 of the CrPC. Specifically, heed must be paid to the stringent view taken by this Court towards grant of bail with respect of economic offences. In this regard, it is pertinent to refer to the following observations of this Court in Y.S. Jagan Mohan Reddy: (SCC p.449, paras 34-35)*
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> > *"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.*
> >
> > *35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."*

XX XX XX

134. As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this Court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special

legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of preconditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the Courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis.

XX XX XX

139. Therefore, as noted above, investigation in an economic offence, more so in case of money-laundering, requires a systematic approach. Further, it can never be the intention of the Parliament to exclude the operation of Section 45 of 2002 Act in the case of anticipatory bail, otherwise, it will create an unnecessary dichotomy between bail and anticipatory bail which not only will be irrational but also discriminatory and arbitrary. Thus, it is totally misconceived that the rigors of Section 45 of the 2002 Act will not apply in the case of anticipatory bail.

XX XX XX

141. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering."

57. To the considered mind of this Court, the learned trial Court has structured the impugned order (supra) in utter oblivion of the relevant materials available on record. Moreover, the impugned order (supra) also does not manifest that the learned trial Court had even bothered to record any satisfaction regarding compliance being met to the dual statutory conditions encapsulated in Section 212(6) of the Act of 2013, satisfaction

whereof was in fact mandatory for grant of bail. Consequently, the impugned order warrants interference of this Court.

58. Moreover, the learned trial Court has, while extending the relief of regular bail to the respondent, not borne in mind the seriousness and magnitude of the offence committed, which is in fact one of the predominant factors to be taken into consideration.

59. Gainful reference in the above regard can be made to ***"Sushil Singla v. The Serious Fraud Investigation Officer", (2022:PHHC:136677),*** wherein, this Court has held that economic offences, being against the Society at large, are required to be strictly dealt with, as such offences affect the sovereignty and integrity of the country. The relevant portion of this judgment is reproduced hereinafter:-

> *"The economic offences, being against the Society at large, have been strictly dealt with in the recent past. Very recently, the Hon'ble Apex Court in* ***Vijay Madanlal Choudhary & Ors. V/s Union of India & Ors.*** *(2022 SCC OnLine SC 929), while considering the constitutional validity and applicability of restrictive conditions of bail provided under Section 45 of the Prevention of Money Laundering Act, 2002, has held that money laundering is an offence against the sovereignty and integrity of the country."*

60. In view of the above, this Court finds that the impugned order (supra) suffers from mis-appreciation/non-appreciation of the materials available on record and it has been passed without adhering to the stringent conditions encapsulated in Section 212(6) of the Act of 2013.

61. The third issue, which emanates from the impugned order, relates to non consideration of the relevant materials by the learned trial Court and on the contrary, making heavy dependence upon irrelevant materials for granting bail to the respondent. Reiteratedly, the learned trial Court has, in-

stead of making a studied survey of its own record containing comprehensive materials, thus meticulously conforming with the requirements of Section 212(8) of the Act of 2013, contrarily placed reliance upon an e-mail communication *inter se* the learned counsel for the respondent and the learned Public Prosecutor for S.F.I.O., whereby, arrest memo and grounds of arrest have been demanded. The relevant portion of the impugned order, in this regard, is reproduced hereunder:-

> *"27. Regarding non-supplying of arrest memo, grounds of arrest etc., at the stage of remand proceedings, applicant-accused had moved an application for direction to respondent-SFIO to produce all the required documents i.e. arrest memo, copy of reason to believe and grounds of arrest etc. alongwith supporting affidavit, on the basis of which, accused-applicant was arrested. Thereafter, counsel for accused-applicant has sent a mail to Hari Kishan learned Senior Prosecutor for respondent-SFIO. Said mail has been placed on record as Annexure A-3 and reads as under-*
>
> > *" I, Adv.V.Govinda Ramanan, am the counsel for Mr.Anil Jindal, who has been arrested in terms of Section 212(8) of the Companies Act, 2013 by the SFIO on 03.06.2021 and thereafter he has been arrayed as accused No.9 in the captioned complaint [COMA 17/2021]. It has been brought to out attention that neither the copy of the arrest memo nor the copy of the 'reason to believe' as per the provisions, rules and natural justice were ever supplied/provided by the Department/SFIO to Mr.Anil Jindal/Accused No.9 of the said case.*
> >
> > *We had also moved an appropriate application for inspection before the Ld.District and Sessions Court, Gurugram, but were surprised and shocked to find that the copies of the Arrest memo and the reason to believe were absent, even from the judicial file of the Hon'ble Court. Therefore, in the interest of Natural Justice, we most humbly request your good office, to kindly supply/provide us with the copy of the Arrest Memo along with the copy of the 'reason the believe' so recorded, while arresting Mr.Anil Jindal in the captioned*

case as per the applicable provision of law.

We also request your good office to kindly expedite the same, so that Mr.Anil Jindal, who has been in custody/incarceration in the captioned case for more than 2 years now and that too without having ever been supplied with the copies of the arrest memo and the reason to believe, can avail his legal remedies, which are available to him in accordance with the law."

28. In reply to the aforesaid mail, Shri Hari Kishan, Senior Prosecutor for respondent-SFIO, has sent the mail on 08.06.2023, the relevant portion reads as under-

"I may refer to the email under reply respecting the subject mentioned above and may state that accused-Anil Jindal along with three other were taken into custody during the course of investigation upon being filing of appropriate applications, along with all the relevant documents required in this regard in terms of the applicable law, before the Ld.Special Court at Gurugram in REMP 84/2021. It is pursuant to the perusal of the said applications as well as of the relevant documents that the Ld.Special Court was pleased to take the accused in custody and ordered remand of the accused concerning the ongoing investigation at the said stage."

62. Consequently, when a significant piece of record has been ignored by the learned trial Court, rather reliance has been placed upon a communication which cannot even be made a part of the judicial record, to record that "grounds of arrest" have not been supplied to the respondent, therefore too, the impugned order deserves its being interfered. In fact, to satisfy its conscience as to whether the "grounds of arrest" have been supplied or not to the respondent, the learned trial Court out to have considered and made a discussion about the respective applications for production warrants and for remand to judicial custody, which are well replete with the relevant adhering information.

63. Nonetheless, what is even more surprising, is that, despite the

learned trial Court making a joint hearing of the bail applications of all the respondents (in these petitions) and of co-accused Rajesh Singla, who has been declined bail upto the Hon'ble Supreme Court, although decided the bail applications of the respondents (in these petitions), however, it did not decide the bail application of co-accused Rajesh Singla, rather kept it pending. The status of bail application of co-accused Rajesh Singla, as supplied by the learned counsel for the petitioner in his synopsis, is extracted hereinafter:-

NAME OF ACCUSED	WHETHER TAKEN INTO CUSTODY DURING INVESTIGATION	STATUS OF BAIL FROM THIS HIGH COURT	STATUS OF BAIL FROM HON'BLE SUPREME COURT
Rajesh Singla	Yes	Dismissed on 17.10.2022	Dismissed on 13.03.2023

64. The last issue revolves around jurisdiction of the learned trial Court to, in the impugned order, record adverse comments against its predecessor/author of the remand order.

65. Although the learned trial Court could have taken cognizance that the remand order is drawn in breach of certain mandatory provisions/ directions, which constitutes a ground for bail, however, it did not confer any jurisdiction upon it to review its own order and record adverse comments against its predecessor. To the considered mind of this Court, the said adverse remarks warrant expunction, inasmuch as, without the learned trial Court being bestowed with any statutory jurisdiction to review its own order, yet it acted like an appellate court and reviewed the order of its predecessor, whereupon, it not only held the remand order to be illegal, but also recorded the hereinafter extracted adverse remarks:-

"33. …..In the event, the Court fails to discharge this duty in right

earnest and with the proper perspective, as pointed out hereinbefore, the order of remand would have to fail on that ground…..”

66. Since the observations (supra), which are alike in all the orders impugned herein, are out the outcome of jurisdiction becoming exceeded by the learned trial Court and should have been avoided, therefore, this Court specifically takes note of it and expunge these observations/remarks from all the orders impugned herein.

FINAL ORDER

67. In summa, the instant petitions are **allowed** and the impugned orders are hereby set aside.

68. In case, the respondents have been released from judicial custody, the S.H.O. of the jurisdictional Police Station concerned is directed to forthwith arrest them and thereupon produce them before the learned trial Court for them becoming re-confined to judicial custody.

69. It is made clear that the observations made hereinabove are only for the purpose of deciding the instant petition and the same shall not be construed to have any bearing on the merits of the case.

70. Pending application(s), if any, stand disposed of accordingly.

71. Registry is directed to forthwith send a copy of this order to the Presiding Officer concerned, who drew the impugned orders, for information and perusal.

(KULDEEP TIWARI)
JUDGE

30.04.2024
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No