



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-9783-2024

Date of decision: 18th November, 2024

Balwant Singh

...Petitioner

Versus

Directorate of Enforcement

....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Vikram Chaudhri, Senior Advocate assisted by
Mr. Keshavam Chaudhri, Advocate,
Ms. Hargun Sandhu, Advocate and
Mr. Gorav Kathuria, Advocate,
for the petitioner.

Mr. Satya Pal Jain, Addl. Solicitor General of India (**through V.C.**)
assisted by Ms. Meghna Malik, Central Govt. Counsel
for the respondent.

MAHABIR SINGH SINDHU, J.

Present petition has been filed, under Article 226 of the Constitution read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”) as well as Section 482 of Code of Criminal Procedure, 1973, (for short, “Code”) with the following prayer(s):-

“To issue appropriate writ(s), order(s), or direction(s) in the nature of Habeas Corpus, certiorari, mandamus etc. as under:-

A) *Hold that the entire proceedings emanating from the Application dated 27.08.2024 (P-10) filed under Section 309(2) Cr.P.C by the respondent-Enforcement Directorate in COMA/01/2024 dated 04.01.2024 in ECIR/JLZO/10/2022 seeking the grant of*



custodial interrogation of Balwant Singh (the petitioner) for 07 days to complete the investigation, are an affront to the petitioner's fundamental right as guaranteed under Article 21 of the Constitution and non-est as well as illegal; unconstitutional; null and void ab initio;

B) *As a consequence and sequel to the prayer (supra) set aside and quash the respective orders dated 05.10.2024 (P-12) passed by learned trial Court thereby, allowing the custodial interrogation of the petitioner at the hands of respondent-Enforcement Directorate and granting remand of the petitioner to the custody of the respondent for 04 days as being not only an anathema to law but also resulting in a grave miscarriage of justice;*

c) *Direct the forthwith release of the petitioner from the custody of the respondent-Enforcement Directorate as even a single day's incarceration would tantamount to one too many and under no circumstances can the petitioner be allowed to suffer in absolutely illegal custody of the respondent-Enforcement Directorate;*

D) *As an interim/ad-interim measure, this Court may be pleased to forthwith stay the effect and operation of the impugned order dated 05.10.2024 (P-12) and set the petitioner at liberty on such terms as deemed fit during the pendency of the present petition before this Court;*

E) *As an interim/ad-interim measure, this Court may be pleased to stay all further proceedings pursuant to the custody granted to respondent/Enforcement Directorate vide impugned order dated 05.10.2024 (P-12).*

F) *Pass such other or further order(s) or direction(s) as this Court may deem fit in the peculiar facts and circumstances of the case in favour of the petitioner."*

2. BRIEF FACTS:-

2.1. M/s Tara Corporation Limited, for short TCL, {incorporated on 16.11.2010 (later re-named as Malaudh Agro Limited)} engaged in trading of



cattle feed, availed credit facility of Rs. 35 Crore from Bank of India, Model Town Branch, Ludhiana on 24.09.2011 and which was subsequently increased to Rs.46 crore.

2.2 TCL committed default in discharging of its liability and as a result thereof, the outstanding amount accumulated to the tune of Rs.40.92 crore. On 31.03.2014, the account of TCL was declared as Non-Performing Asset (NPA).

2.3 Some attempts were made by TCL to settle the outstanding dues through “One Time Settlement” (OTS), but did not materialize for certain reasons. Later on, the account of TCL was declared as “*Wilful Defaulter*”. Aggrieved against the action of the Bank, CWP-25192-2018 was filed and which was allowed by then Division Bench vide order dated 24.02.2020. Resultantly, order of the bank, declaring TCL as “*Wilful Defaulter*” was quashed and set aside.

2.4 Thereafter, the Bank submitted a written complaint to the Central Bureau of Investigation (CBI) and on the basis of which FIR No.RCCHG2022A0012 dated 28.03.2022 under Sections 406, 409, 420, 421 & 120-B of Indian Penal Code, 1860 (IPC) and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988, (as amended vide Amendment Act, 2018) (PC Act) was registered against the petitioner as well as other co-accused.

2.5 Contents of above FIR were scrutinized by the Enforcement Directorate (E.D) and it was found that offences under Sections 120-B & 420 of I.P.C and Section 13(1)(d) read with Section 13(2) of PC Act are falling within the definition of “*Scheduled Offence*” under Section 2 (y) of PMLA and covered under Part-A of the Schedule thereof. Resultantly, ECIR/JLZO/10/2022 was recorded against the petitioner along with other co-accused on 23.05.2022.



2.6 On 04.01.2024, E.D filed the complaint under Section 44 PMLA against 07 persons, including, the petitioner, Jaswant Singh, Kulwant Singh and Tejinder Singh, M/s TCL, M/s THFL and M/s Tara Sales Limited.

2.7 By way of order dated 18.03.2024, finding *prima facie* sufficient grounds to proceed against the accused, learned Special Court proceeded to take cognizance against all the accused mentioned in the complaint. Since petitioner failed to put in appearance in pursuance to the notices issued to him, he was ordered to be summoned through bailable warrants dated 01.04.2024 and thereafter, through non-bailable warrants of arrest on 20.04.2024.

2.8 Thereafter, petitioner filed pre-arrest bail before this Court vide CRM-M-12495-2024 which was later on withdrawn for availing the remedy as laid down in *Tarsem Lal Versus Directorate of Enforcement, Jalandhar, (2024) 7 SCC 61*.

2.9 On 22.05.2024, an application was moved on behalf of petitioner and co-accused for cancellation of their non-bailable warrants of arrest. On 28.05.2024, directions were issued to the E.D as not to execute the non-bailable warrants of arrest issued against petitioner and co-accused. This application was disposed off vide order dated 16.08.2024, whereby petitioner and co-accused were directed to furnish personal bonds in the sum of Rs.1 lakh each with one surety in the like amount each under Section 88 of the Code. In compliance thereof, petitioner along with co-accused furnished bonds along with surety as well as an undertaking to that effect on 20.08.2024.

2.10 Thereafter on 27.08.2024, E.D moved an application under Section 309(2) of the Code read with Section 346(2) of BNSS for seeking custodial interrogation of the petitioner for 07 days.



2.11 Vide order dated 05.10.2024 aforesaid application was disposed off by learned Special Court and the petitioner was remanded to E.D custody for 04 days. Hence present petition.

3. CONTENTIONS

ON BEHALF OF PETITIONER: -

3.1 Learned Senior Counsel contends that during investigation of the case, E.D. chose not to arrest the petitioner, his brother Kulwant Singh as well as his nephew Tejinder Singh whereas, co-accused Jaswant Singh was arrested by the respondent in exercise of power under Section 19 of PMLA. In other words, the E.D consciously did not arrest the petitioner.

3.2 Also contends that the complaint under the PMLA was filed without arresting the petitioner and co-accused and the only prayer made to Court was to take cognizance of the offence and punish the accused in accordance with law.

3.3 Further contends that petitioner along with his co-accused moved an application before learned Special Court for cancellation of non-bailable warrants issued against them which was rightly accepted by learned Special Court with a direction to the accused to furnish personal bonds in terms of Section 88 of the Code vide order dated 16.08.2024. Such a course adopted by learned Special Court is in tune with the law laid down by Hon'ble the Supreme Court in *Tarsem Lal's case (supra)*.

3.4 Still further contends that vide order dated 20.8.2024, said bail bonds in the form of fixed deposit were furnished by the accused which were accepted and attested by learned Special Court. However, neither the order dated 16.08.2024; nor order dated 20.08.2024 was ever challenged by the E.D and the same have attained finality.



3.5 Vehemently contends that when a Court passes an order of a nature which takes away the liberty of a person, the same must contain adequate reasons and the same may not be based upon the whims and fancies of the investigating agency. In the present case, the application filed by E.D for seeking remand of petitioner is nothing but replica of the contents of prosecution complaint which was filed eight months earlier i.e. on 04.01.2024. In other words, the custody was not being sought for any further investigation; rather the entire application of E.D is based on previous material which is already part of prosecution complaint.

3.6 Lastly contended that the approach adopted by learned Special Court tantamounts to reviewing its own order which is squarely hit by Section 362 of the Code; thus cannot be permitted under any circumstances whatsoever.

3.7 In support of the contentions, learned Senior counsel has relied upon the following judicial precedents:

- i. ***Arnab Manoranjan Goswami Versus State of Maharashtra and others, (2021) 2 SCC 427;***
- ii. ***Gautam, Navlakha Versus National Investigation, 2021 SCC Online 382;***
- iii. ***Chanda Deepak Kochhar Versus Central Bureau of Investigation, 2023 SCC Online Bom 72;***
- iv. ***Roop Bansal Versus Union of India and another CWP-23005-2023 DOD: 31.10.2023 Pb. & Hr.***
- v. ***Pranav Gupta Versus Union of India CWP No. 24787-2023 DOD: 07.12.2023 Pb. & Hr.***
- vi. ***V. Senthil Balaji Versus The Deputy Director, Directorate of Enforcement, 2023 SCC Online SC 934***
- vii. ***Pankaj Bansal Versus Union of India 2023 SCC Online SCC 1244;***
- viii. ***Arvind Kejriwal Versus Directorate of Enforcement, 2024 SCC Online SC 1703;***



- ix. ***Arvind Kejriwal Versus Central Bureau of Investigation, 2024 SCC Online 2550***
- x. ***Dilbag Singh @ Dilbag Sandhu Versus Union of India, CRM-M-2191-2024 DOD 08.02.2024;***
- xi. ***Arun Kumar Aggarwal Versus Enforcement Directorate WP(Crl.) No.9/2024 DOD 15.03.2024 J&K;***
- xii. ***Surender Panwar Versus Directorate of Enforcement, CRM-M-41194-2024 DOD: 23.09.2024 Pb.& Hr.***

ON BEHALF OF RESPONDENT: -

4.1 Learned Addl. Solicitor General of India appearing for the respondent, submits that loan facility to the tune of Rs.46 crore was fraudulently availed by TCL while showing bogus share capital and fictitious turnovers. Further submits that above amount was never used for the intended purposes; instead, diverted to the accounts of sister concerns and other shell companies to misuse the loan amount.

4.2 Again submits that petitioner has caused loss to the public exchequer to the tune of Rs. 41 Crore.

4.3 Further submits that despite issuance of summons on 09.06.2023; 18.09.2023; 25.10.2023; 27.11.2023; 05.12.2023 and 29.01.2024, petitioner did not join the investigation; thus learned Special Court has rightly given his custody to the E.D.

4.4 Also contends that investigation *qua* co-accused is still going on. E.D has every right to seek custody of petitioner for proper investigation of the case.

4.5 Still further submits that all the orders of remand have been passed in terms of the law laid down in ***Tarsem Lal's case (supra)***.

4.6 Lastly submitted that writ petition in the present form is not maintainable. As the petitioner has laid challenge to the judicial orders, he ought to



have moved petition under Section 482 of the Code and a resort to the writ of *Habeas Corpus* is totally misconceived.

4.7 In support of the contentions, learned Additional Solicitor General has relied upon following judicial precedents:-

- i. ***B. Ramachandra Rao Versus State of Orissa (1972) 3 SCC 256;***
- ii. ***Deepak Bajaj Versus State of Maharashtra 2008 (16) SCC 14;***
- iii. ***State of Maharashtra Versus Tasneem Rizwan Siddiqui (2018) 9 SCC 745***
- iv. ***Manubhai Ratilal Patel Versus State of Gujarat, 2013 (1) SCC 314;***
- v. ***Saurabh Kumar Versus Jailor Koneila Jail 2014 (13) SCC 436 and;***
- vi. ***Serious Fraud Investigation Versus Rahul Modi; 2022 SCC Online SC 153;***
- vii. ***Tarsem Lal Versus Directorate of Enforcement (2024) 7 SCC.***

5. Heard learned counsel for the parties and perused the paper-book.

6. Before proceeding further, it is necessary to extract the relevant provisions of Section 44 of the PMLA and which read as under:-

“44. Offences triable by Special Courts--(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--

(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided.....or;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial;



Provided that after conclusion of investigation, if no offence of money laundering is made out, requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c).....

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.

Explanation.--For the removal of doubts, it is clarified that,--

(i)

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

(2).....”

7. In terms of Section 44(1)(b) (*ibid*), the complaint was filed by E.D on 04.01.2024 against 07 persons, including present petitioner and cognizance in the matter was taken by learned Special Court on 18.03.2024.

8. For reference, paragraph 11.2.7 of the complaint as well as prayer clause thereof, being relevant are recapitulated as under:-

“11.2.7 Further, Balwant Singh was non co-operative during the investigation conducted in the case. Summonses dated 09.06.2023, 18.09.2023, 25.10.2023, 27.11.2023 and 05.12.2023 were issued to Balwant Singh to appear before the Investigating Officer for the purpose of recording of statement u/s 50 of the PMLA. However, even after availing ample opportunities, he never joined the investigation. This clearly indicates the intention of Balwant Singh to create hindrances in the investigation by not answering the facts which were within his exclusive knowledge about the money trail and disposal of POC.”



Prayer Clause

“In the facts and circumstances stated hereinabove, it is most humbly prayed that

a) The Hon'ble Court may be pleased to take cognizance of the offence against the accused for the offence of money laundering as defined u/s 3 read with section 70 and punishable under section 4 of PMLA, 2002, issue process against accused 1 to 7, try and punish the accused in accordance with the law.

b) Confiscate the properties involved in money laundering in terms of section 8(5) of PMLA, 2002.

c) To permit the complainant to file additional Complaint (supplementary complaint), if any, on completion of further investigation which is still ongoing.

d) To grant any other relief, which this Hon'ble Court deems fit and proper, in the facts and circumstances of the case.”

9. It transpires that after taking cognizance, bailable/non-bailable warrants were issued against the petitioner along with other co-accused. But later on, in view of the judgment of **Tarsem Lal (supra)**, the same were recalled by learned Special Court, vide order dated 16.08.2024, while observing as under:-

“6. It is in pursuance to the afore-mentioned directions rendered by the Hon'ble Supreme Court of India in Tarsem Lal's case that the present application has since been moved. In the case in hand, applicants/accused not having appeared before the court pursuant to the notice got served upon him, bailable warrants of their arrest and non-bailable warrants of arrest were issued on account of their non-appearance in the court. On the very day, their non-bailable warrants had been received back executed, the application in hand came to be filed for cancellation of their non-bailable warrants and for grant of permission to furnish surety bonds.

7. From the above, it is clear that applicant Balwant Singh, Kulwant Singh and Tejinder Singh, are accused in the money laundering case, were not arrested by the ED prior to the filing of the prosecution complaint and it was after cognizance had been taken, that applicants appeared before the court in response to the non-bailable warrants having been served upon



them. In view of the above and in view of the guidelines, in Tarsem Lal's case (supra), it is not necessary for the applicants to apply for bail. However, this Special Court can direct the applicants to furnish bonds in terms of section 88 Cr.P.C., which shall be treated as an undertaking by the applicants/accused to appear before the court on the dates to be fixed from time to time.

8. Accordingly, applicant/ accused Balwant Singh, Kulwant Singh and Tejinder Singh are directed to furnish personal bonds in the sum of Rs.1 lac each with one surety in the like amount each to the satisfaction of this court in terms of section 88 Cr.P.C. with an undertaking that they shall regularly and punctually appear before this court on the dates fixed.

9. Applicants/accused are directed to furnish bail bond in the sum of Rs.1 lac each with one surety in the like amount each to the satisfaction of this court within 15 days from the date of this order. Papers be attached with the main file.”

10. In pursuance of the aforesaid order, bail/surety bonds were furnished by the petitioner and which were duly accepted by learned Special Court on 20.08.2024, in the following manner:-

“File taken up today in view of the application moved by learned counsel for the applicants/accused-Balwant Singh; Kulwant Singh and Tejinder Singh for acceptance of bail/surety bonds in terms of order dated 16.08.2024 passed by the undersigned. Downloaded copy of the order has been brought on file.

In pursuance of the said order, applicants/accused Balwant Singh; Kulwant Singh and Tejinder Singh have appeared today and requisite bail bonds in the form of fixed deposit have been furnished, which have been accepted and attested. Intimation be given to the State Bank of India, Bhurthala Mandher, not to



release the above-said fixed deposits, without order of this court. Papers be attached with the main file.”

11. It is not the case of E.D that after furnishing bail/surety bonds in pursuance of order dated 16.08.2024, passed by learned Special Court, the petitioner has misused the concession in any manner.

12. Despite above factual position, the E.D moved an application on 27.08.2024 for seeking “*custodial interrogation*” of the petitioner for 07 days alleging, *inter alia*:-

“IX. That the conduct of Balwant Singh was evasive during the investigation and Balwant Singh was also non-cooperative during the investigation conducted in the case. Summonses dated 09.06.2023, 18.09.2023, 25.10.2023, 27.11.2023, 05.12.2023 and on 29.01.2024 were issued to Balwant Singh to appear before the Investigating Officer for the purpose of recording of statement u/s 50 of the PMLA. However, even after availing ample opportunities, he never joined the investigation. The adequate efforts were also made from time to time to raid his premises and to reach his address, but the accused Balwant Singh was running away from the process of investigation with a motive to conceal his liability. This clearly indicates the intention of Balwant Singh to create hindrances in the investigation by not answering the facts which were within his exclusive knowledge about the money trail and disposal of POC.”

13. A perusal of the above extract reveals that E.D made efforts to raid the premises of petitioner, but there is no material available on record to substantiate that after taking cognizance in the matter, the E.D had sent any notice to the petitioner under Section 50 of the PMLA and/or approached learned Special Court for conducting “*further investigation*” *qua* the petitioner in terms of Section



44(1)(d), Explanation—(ii) (*ibid*). Thus, in such a scenario, there is no hesitation to observe that E.D was simply interested in the “*custodial interrogation*” of the petitioner and not for any “*further investigation*”, to elicit more materials.

14. Even otherwise, if E.D was really inclined for conducting “*further investigation*” in terms of Explanation (ii) (*ibid*), then custodial interrogation of the petitioner was not a condition precedent; rather, they could have approached learned Special Court in this regard, but no such course was followed by the E.D, for the reasons best known to them.

15. This Court has gone through the impugned order dated 05.10.2024, carefully and after perusal of the same, there would be no hesitation to observe that above order is neither coherent; nor any reason(s) is/are discernible to sustain the custodial interrogation of petitioner for 04 days on mere asking of the E.D.

16. On the contrary, it appears that learned Special Court has accepted the prayer of E.D in a routine manner and authorized the custodial interrogation while negating the salutary protection emanating from Article 21 of the Constitution.

17. Apart above, it seems that learned Special Court did not advert to the relevant provisions of law for authorizing custodial interrogation in such like case(s); nor examined the provisions of Section 44 of the PMLA and/or Section 309 of the Code. Here, it would be relevant to emphasize that the Judicial Officer(s), who have been assigned the task of Special Court under PMLA, is/are not supposed to act as an extended arm of the E.D and pass the remand order against the suspect as a matter of course.

In the present case, learned Special Court while passing the impugned remand order, thereby authorizing custody of petitioner to the E.D, failed to consider the drastic consequences and negated the rule of law. Had there been proper application of mind by learned Special Court, then there was no occasion to



remand him to E.D custody in these circumstances and further remanding the petitioner to judicial custody, without there being any justification.

18. On 05.10.2024, learned Special Court while remanding the petitioner to E.D custody for 04 days, directed that he be produced on 09.10.2024 at 12.00 p.m. It is curious to note that on 09.10.2024, the Presiding Officer proceeded on short casual leave w.e.f. 12.00 p.m. and resultantly, the petitioner was produced before the Judge on Duty. Unfortunately, on 09.10.2024, learned Judge on duty neither extended the remand of petitioner; nor remanded him to judicial custody; rather simply posted the matter for 10.10.2024 like a civil dispute and as *a fait accompli*, the petitioner remained in the custody of E.D on 5th day as well.

19. Again, on 10.10.2024, without there being any justification, the petitioner was remanded to judicial custody by learned Special Court upto 23.10.2024.

20. It is quite disheartening to note here that on 23.10.2024 also, the petitioner was further remanded to judicial custody for another 14 days i.e. uptill 06.11.2024. Still further, on 06.11.2024, he was remanded to judicial custody uptill 20.11.2024, but no reason(s) at all have been assigned by learned Special Court while passing the repeated remand orders against him.

21. *A fortiori*, as the impugned remand order has been passed at the post-cognizance stage, therefore, it would be appropriate to recapitulate the provisions of Section 309 of the Code and which read as under:-

“309. Power to postpone or adjourn proceedings- (1) *In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:*

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376AB,



section 376B, section 376C, section 376D, section 376DA, section 376DB of the Indian Penal Code (45 of 1860), the inquiry or trial shall be completed within a period of two months from the date of filing of the charge sheet.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable and may by a warrant remand the accused **if in custody**:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that--

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party;

(b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment;

(c) where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the



examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1. - If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2. - The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.”

Section 309(2) Explanation 1 (*ibid*) of the Code envisages that an accused can be remanded to custody subject to the fulfillment of two pre-conditions viz., (i) the accused is in custody; and (ii) sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by a remand.

However, in the present case, none of above conditions had been satisfied on 05.10.2024 for the simple reason that neither the petitioner was in custody; nor there was sufficient evidence obtained by the E.D to the effect that he has committed an offence of money-laundering as no order in terms of Section 19 of the PMLA is passed by the competent authority till date.

22. Although learned Special Court has tried to base the impugned order while referring ***Tarsem Lal's case(supra)***, but in view of the discussion made herein-above, it is apparently clear that aforesaid legal precedent has not been properly applied to the facts of the present case while authorising the custodial interrogation of the petitioner.

In paragraph No.33.10 of the above judgment, Hon'ble the Supreme Court, *inter alia*, laid down that if E.D wants custody of the accused who appears



after service of summons for conducting further investigation in the same offence, E.D will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application by recording brief reasons. While hearing such an application, the court may permit custody only if it is satisfied that custodial interrogation at that stage is required, even though the accused was never arrested under Section 19 of the PMLA. As already concluded, in the present case, no reason(s) is/are coming forward for authorizing the custodial interrogation of petitioner while passing the impugned order; hence, same is not helpful to the E.D in any manner.

23. Even the judicial precedents relied upon by the E.D would not be helpful to oppose the prayer of petitioner and which are discussed here-as-under:-

- i. *There is no quarrel with the proposition of law laid down in **Tarsem Lal's case (supra)**. However, in the present case, as already noticed, no reasons have been assigned by learned Special Court while remanding the petitioner to E.D custody.*
- ii. ***Deepak Bajaj's case (supra)** deals with preventive detention; therefore, having no relevancy with the facts of present case.*
- iii. *In **Rahul Modi; B. Ramachandra Rao; Manubhai Ratilal Patel; Saurabh Kumar and Tasneem Rizwan's cases (supra)**, it was held that a Habeas Corpus petition is not maintainable against a judicial remand. In the present case, petitioner has challenged the impugned remand order while praying for issuance of writ in the nature of Habeas Corpus, certiorari, mandamus and any other order or directions in view of the facts and circumstances; therefore, the judgments are distinguishable.*

24. In view of the observations made here-in-above, this Court is of the considered opinion that impugned order dated 05.10.2024 for custodial interrogation as well as the subsequent orders for judicial custody have been



passed by learned Special Court, without application of judicial mind; hence, indefensible in law.

25. Consequently, the petition is **allowed**; impugned order dated 05.10.2024 passed by learned Special Court as well as successive orders, thereby remanding the petitioner to judicial custody, are hereby quashed and set-aside.

26. Petitioner is ordered to be released from the judicial custody, forthwith.

27. It is clarified that bail-bonds/surety bonds already furnished by the petitioner shall remain intact and valid to ensure his appearance before learned Special Court during the pendency of trial.

28. Also clarified that petitioner shall fully co-operate with learned Special Court without seeking any unnecessary adjournments.

29. Before parting with the order, Registrar (Vigilance) is requested to look into the matter as to on which date and time, the detailed order dated 05.10.2024 was uploaded by learned Special Court and report in this regard be submitted within two months, for perusal of this Court and for further action, if required.

30. Needless to say that above observations be not construed as an expression of opinion on merits of the complaint pending before learned Special Court; rather confined only to decide the present petition.

Pending criminal misc. application(s), if any, shall also stand disposed off.

18th November, 2024
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No