In the High Court of Punjab and Haryana at Chandigarh

CWP No. 25140 of 2024 (O&M)
Reserved on: 03.10.2024
Date of Decision: 23.10.2024

Virender Singh .....Petitioner

Versus

State of Haryana and another .....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Chanchal K. Singla, Advocate with
Mr. Raj Kumar Chauhan, Advocate,
Ms. Kavita Joshi, Advocate,
Mr. Antriksh Sharma, Advocate,
Mr. Sargun Soni, Advocate and
Mr. Anuj Chauhan, Advocate
for the petitioner.

Mr. Ankur Mittal. Addl. A.G., Haryana with
Mr. Saurav Mago, DAG, Haryana,
Mr. Karan Jindal, AAG, Haryana,
Ms. Kushaldeep Kaur, Advocate and
Ms. Naina Jindal, Advocate
for respondent No. 1-State.

Mr. Lokesh Narang, Sr. Panel Counsel and
Mr. Shubleen Dhariwal, Advocate
for respondent No. 2.

Mr. Ashok Aggarwal, Senior Advocate and
Mr. Puneet Bali, Senior Advocate with
Mr. Mukul Aggarwal, Advocate,
Mr. Jatin Sehgal, Advocate,
Mr. Sachin Jain, Advocate and
Mr. Anmol Chandan, Advocate
for respondent No. 5.

Mr. Prateek Gupta, Advocate and
Mr. Roshneel Singh Brar, Advocate
for the respondent-Election Commission of India
(through Video Conferencing)

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SURESHWAR THAKUR, J.

1. The instant petition has been preferred by the petitioner under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus, thus directing the Enforcement Directorate to take appropriate legal action against respondent No. 5, who is/was a member of the Legislative Assembly Haryana, and, is re-contesting from Samalkha constituency, despite registration of FIRs and Enforcement Case Information Report, besides despite issuance of various non-bailable warrants. The petitioner has also sought a direction being issued upon respondent No. 3 to re-evaluate the affidavit dated 9.9.2024 (Annexure P-19) furnished by respondent No. 5 in Form 26 under Rule 4-A of the Conduct of Election Rules, 1961, as the said form is in violation of The Representation of the People Act, 1951 (for short 'the Act of 1951').

Brief facts of the case

2. It is averred in the petition that the petitioner is a registered voter of Samalkha constituency, and, has been aggrieved by the inaction of the authorities concerned, whereby respondent No. 5 has been enabled to circumvent the provisions of law, besides has also been enabled to contest the elections without any fear of arrest.

3. It is further averred that one company M/s Sai Aaina Farms Pvt. Ltd. (for short '*SAFPL*') (presently known as Mahira Infratech Ltd.), was controlled by the Chhoker family i.e. respondent No. 5 and his sons. The companies of the Chhoker family are known by the name of Mahira Group, which deals in real estate/construction projects. The said company(ies) undertook the project of building flats at Sector-68, Gurugram, under the affordable housing project. The company (supra) became granted licence

No. 106/2017 to build around 1500 flats in an area of about 10 acres, and, the said project was required to be completed by 2021-22. Subsequently, the company (supra) started booking flats and collected about 363 crores from 1500 home buyers. It is further averred thereins, that on a complaint filed by the several landowners, an FIR No. 152 of 1.6.2023 under Sections 420, 467, 468, 471 IPC at P.S. Rajendra Park, Gurugram (Annexure P-3) was registered against respondent No. 5 and his sons, on the allegations, that the accused concerned, by making false promises, thus had induced the landowners/complainants to enter into collaboration agreements, rather for an affordable housing project, to be made on a total area of 10.443 acres of land in District Gurugram, on the understanding that 65% share would belong to the developers and 35% share would belong to the landowners/complainants. However, the accused concerned, with an intention to cause loss to the landowners concerned, rather had without their permission sold 35% stake belonging to the land owners, and, also obtained the licence/permit of the said affordable housing project by forging the signatures of the landowners/complainants. It is also alleged in the FIR (supra) that respondent No. 5 had issued cheques worth 20 crores on behalf of M/s Czar Buildwell Company, which became dishonoured by the bank, and, that respondent No. 5 had also threatened the landowners/complainants.

4. It is further averred in the instant petition that another FIR No. 151 of 31.5.2023 under Sections 420, 467, 468, 471 IPC at P.S. Rajendra Park, Gurugram (Annexure P-4) became registered against M/s Mahira Buildtech Private Limited, on the allegations, that the licences had been obtained by the said company by forging the signatures of the landowners.

5. It is also averred thereins, that on the complaint of the District

Town Planner Enforcement Gurugram, another FIR No. 151 of 5.7.2023 under Sections 120-B, 420, 467, 468, 471 IPC at P.S. Sushant Lok, Gurugram (Annexure P-6), was registered against Mahira Homes Private Limited and its Directors of whom respondent No. 5 was a Director for a certain period), and against Associate Companies and Authorized Signatories, for submitting forged and fabricated plans in respect of two licences i.e. licence No.9 of 2022 and licence No. 61 of 2023. Furthermore, the District Town Planner concerned, got registered another FIR No. 175 of 18.5.2002 under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 at P.S. Rajendra Park, Gurugram (Annexure P-7) against six persons including respondent No. 5 and his son Sikander Singh, on the allegations that SAFPL and the accused persons, had got issued licence No. 106 of 2017 for setting up of Affordable Group Housing Colony by submitting bank guarantees. However, several bank guarantees were found to be fake, and, upon confirmation it was found that the same were never issued by the bank(s) concerned, who had purportedly issued the said bank guarantees. Similar allegations were made in the FIR (supra) with respect to licence No. 66 of 2021.

6. It is further averred that another FIR No. 0084 of 24.5.2019 under Sections 454, 468, 471, 419, 120-B IPC was registered at P.S. Economic Offences Wing, Delhi and that Enforcement Case Information Report (for short 'ECIR') No. ECIR/GNZO/20/2021 (Annexure P-8) was also registered. It is also averred thereins, that the learned Sessions Judge-cum-Special Judge, Gurugram, issued warrants of arrest against respondent No. 5, however, he was not found present at his residence. Subsequently another non-bailable warrant dated 29.9.2023 was issued against respondent

No. 5 by the Special Judge, Gurugram, in CRM-627-2023. The ECIR registered against respondent No. 5 and another, was challenged by filing CRM-M-37710-2023. However, vide order dated 26.2.2024 the said petition was dismissed. Respondent No. 5 also preferred CRM-M No. 26190 of 2024 seeking anticipatory bail in case bearing No. ECIR/GNZO/20/2021 dated 16.11.2021, however, vide order dated 28.5.2024, the said petition also became dismissed.

Submissions of the learned counsels for the petitioner

7. The learned counsels for the petitioner have argued before this Court, that respondent No. 5 has attempted to mislead the Court by stating that he was not Director of Mahira Infratech Pvt. Ltd. In the order dated 28.5.2024, this Court has observed that respondent No. 5 was the Director of six companies belonging to Mahira Group. Furthermore, though respondent No. 5 has also claimed that he is not an accused in FIR No. 151 of 31.5.2003, however, this Court in the order (supra) has also observed that in M/s Mahira Buildtech Pvt. Ltd., the respondent No. 5 was a Director for a period of more than one year and five months, and, that the company (supra) is an accused in the FIR (supra). The accused company has diverted total fund of Rs. 68 crores out of an amount of Rs. 160 crores received from 781 allottees into the account of M/s DS Homes Construction Pvt. Limited, of which respondent No. 5 was a Director for a substantial time. The learned counsels have further argued, that though respondent No. 5 had submitted a defective nomination form, and, thereby had concealed the material information from the voters rather in violation of Section 33-A of the Act of 1951, and, in violation of Article 19(1)(a) of the Constitution of India. Moreover, it is averred that in column Nos. 6A and 8 of the nomination

form, respondent No. 5 has given false undertakings. However, the said defective and self contradictory nomination form was accepted by the Election Commission of India without application of mind despite the fact that 3 FIRs were mentioned before Column 5(i) in the nomination form.

8. The learned counsels for the petitioner have placed reliance upon a judgment rendered by the Apex Court in case titled as ***State of West Bengal and others versus The Committee for Protection of Democratic Rights West Bengals and others***, reported in ***2010(3) SCC 571***. The relevant paragraphs of the judgment (supra) become extracted hereinafter.

> *"35. As regards the power of judicial review conferred on the High Court, undoubtedly they are, in a way, wider in scope. The High Courts are authorised under Article 226 of the Constitution, to issue directions, orders or writs to any person or authority, including any government to enforce fundamental rights and, "for any other purpose". It is manifest from the difference in the phraseology of Articles 32 and 226 of the Constitution that there is a marked difference in the nature and purpose of the right conferred by these two Articles. Whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but "for any other purpose" as well, i.e. for enforcement of any legal right conferred by a Statute etc.*
>
> *x x x x*
>
> *37. In Dwarkanath's case (supra), this Court had said that Article 226 of the Constitution is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. This Article enables the High Courts to mould the reliefs to meet the peculiar and extra-ordinary circumstances of the case. Therefore, what we have said above in regard to the exercise of jurisdiction by thisCourt under Article 32, must apply equally in relation to the exercise of jurisdiction by the High Courts under Article 226 of the Constitution.*
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> *38. Article 21, one of the fundamental rights enshrined in Part III of the Constitution declares that no person shall be deprived of his "life" or "personal liberty" except according to the procedure established by law. It is trite that the words "life" and "personal liberty" are used in the Article as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and not merely the right to the continuance of person's animal existence.*
>
> *x x x x*
>
> *45. In the final analysis, our answer to the question referred is*

that a direction by the High Court, in exercise of its jurisdiction under Article 226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly."

9. Reliance has been also placed upon a judgment rendered by the Apex Court in case titled as ***Public Interest Foundation and others versus Union of India and another***, reported in ***2018 AIR (Supreme Court) 4550***. The relevant paragraphs of the judgment (supra) become extracted hereinafter.

"113. In Resurgence India v. Election Commission of India33, referring to the precedents, this Court ruled thus:-

"20. Thus, this Court held that a voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament and such right to get information is universally recognised natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution. It was further held that the voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Thus, in unequivocal terms, it is recognised that the citizen's right to know of the candidate who represents him in Parliament will constitute an integral part of Article 19(1)(a) of the Constitution of India and any act, which is derogative of the fundamental rights is at the very outset ultra vires.

And again:-

"27. If we accept the contention raised by the Union of India viz. the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated on a par, it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution viz 'right to know', which is inclusive of freedom of speech and expression as interpreted in Assn. for Democratic Reforms.

x x x x

116. Keeping the aforesaid in view, we think it appropriate to issue the following directions which are in accord with the decisions of this Court :-

(i) Each contesting candidate shall fill up the form as provided by the Election Commission and the form must contain all the

> *particulars as required therein.*
>
> *(ii) It shall state, in bold letters, with regard to the criminal cases pending against the candidate.*
>
> *(iii) If a candidate is contesting an election on the ticket of a particular party, he/she is required to inform the party about the criminal cases pending against him/her.*
>
> *(iv) The concerned political party shall be obligated to put up on its website the aforesaid information pertaining to candidates having criminal antecedents.*
>
> *(v) The candidate as well as the concerned political party shall issue a declaration in the widely circulated newspapers in the locality about the antecedents of the candidate and also give wide publicity in the electronic media. When we say wide publicity, we mean that the same shall be done at least thrice after filing of the nomination papers.*
>
> *117. These directions ought to be implemented in true spirit and right earnestness in a bid to strengthen the democratic set-up. There may be certain gaps or lacunae in a law or legislative enactment which can definitely be addressed by the legislature if it is backed by the proper intent, strong resolve and determined will of right-thinking minds to ameliorate the situation. It must also be borne in mind that the law cannot always be found fault with for the lack of its stringent implementation by the concerned authorities. Therefore, it is the solemn responsibility of all concerned to enforce the law as well as the directions laid down by this Court from time to time in order to infuse the culture of purity in politics and in democracy and foster and nurture an informed citizenry, for ultimately it is the citizenry which decides the fate and course of politics in a nation and thereby ensures that 'we shall be governed no better than we deserve, and thus, complete information about the criminal antecedents of the candidates forms the bedrock of wise decision-making and informed choice by the citizenry. Be it clearly stated that informed choice is the cornerstone to have a pure and strong democracy."*

10. The learned counsel for the petitioner has also placed reliance upon a judgment rendered by the Apex Court in case titled as ***Satish Ukey versus Devendra Gangadharrao Fadnavis and another***, reported in ***2019 (4) RCR (Civil) 809***. The relevant paragraphs of the judgment (supra) become extracted hereinafter.

> *"19. A cumulative reading of Section 33-A of the 1951 Act and Rule 4-A of the 1961 Rules and Form-26 along with the letters dated 24.8.2012, 26.9.2012 and 26.4.2014, in our considered view, make it amply clear that the information to be furnished under Section 33-A of the 1951 Act includes not only information mentioned in clauses (i) and (ii) of Section 33-A(1), but also information, that the candidate is required to furnish, under the Act or the Rules made thereunder and such information should be furnished in Form 26,*

> *which includes information concerning cases in which a competent Court has taken cognizance (Entry 5(ii) of Form 26). This is apart from and in addition to cases in which charges have been framed for an offence punishable with imprisonment for two years or more or cases in which conviction has been recorded and sentence of imprisonment for a period of one year or more has been imposed (Entries 5(i) and 6 of Form 26 respectively).*
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> *20. In the light of the view that we have taken and in view of the clear averment made in the complaint to the effect that the First Respondent had knowledge of the two cases against him which had not been mentioned in the affidavit filed by the First Respondent alongwith his nomination papers, we unhesitatingly arrive at the conclusion that the order of the learned trial Court upheld by the High Court by the impugned judgment and order dated 3rd May, 2018 is legally not tenable and the same deserves to be set aside which we hereby do. The complaint of the appellant will be considered afresh by the learned trial Court from the stage where it was interdicted by the order dated 30.5.2016.*"

Submissions of the learned senior counsel for respondent No. 2

11. The learned senior counsel for respondent No. 2 has denied the purported inactions, rather by Directorate against respondent No.5 and has argued that investigations qua commission of offence of money laundering, as defined under Sections 3 and 4 of the Prevention of Money Laundring Act, 2002 (for short 'the PML Act'), thus by M/s Sai Aaina Farms Pvt. Ltd. and its Director, are being carried out expeditiously, and, that multiple actions are being taken by the respondent Directorate to trace respondent No. 5, but respondent No. 5 has been evading the process of law, and, did not appear before the Enforcement Directorate, despite several summons being issued, and, communicated to him. He has further submitted that on an intelligence input, on 5.7.2024, a secret search was made at the premise of respondent No. 5 situated at Gurugram but he was not found there. Therefore, it is prayed that the instant petition is not maintainable against the respondent Directorate, and, the same be dismissed as such.

Submissions of the learned senior counsels for respondent No. 5

12. The learned senior counsels for respondent No. 5 have argued

that the petitioner has not approached with clean hands by not disclosing the correct facts, and, that he has no locus standi to file the present petition as a Public Interest Litigation. They have further argued that the present petition is a motivated petition deliberately filed at the time when the election process has already commenced. The learned counsels has argued that the first prayer made in the instant petition is not maintainable, and, that this Court should not interfere in the investigations through the exercisings of powers under Article 226 of the Constitution of India. They rest the above submission on the ground, that there is no FIR by any of the home buyer against respondent No. 5, and, that respondent No. 5 has given complete disclosures. Furthermore, they have argued that respondent No. 2 has issued summons under Section 50 of the PML Act upon respondent No. 5, and, that respondent No. 5 rather on multiple occasions has joined the enquiry/investigation. Subsequently respondent No. 2 again issued summons under Section 50 of the PML Act, with a view to arrest respondent No. 5, which is contrary to the PML Act, as respondent No. 5 can only be arrested by respondent No. 2, under Section 19 of the PML Act. The learned counsels have also argued, that even after dismissal of the anticipatory bail application of respondent No. 5, respondent No. 2 did not have “material in possession” and “reason to believe” that respondent No. 5 is guilty of an offence under PML Act .

13. Insofar as the second prayer, made in the instant petition, is concerned, the learned senior counsels have argued that the said prayer is also not maintainable, and, that there is a judicial restraint upon this Court to interfere in the election process especially when the same is underway. They rest the said submission on the ground, that respondent No. 5 has given

a complete and fair disclosure with regard to the criminal antecedents and pending cases. Even otherwise, as per Section 33-A of the Act of 1951, respondent No. 5 is only required to furnish information only with regard to the offence for which charges have been framed or he has been convicted and sentenced for more than one year. The learned senior counsels have further argued that the writ jurisdiction cannot be exercised when the election process is commenced, and, when an alternate efficacious remedy is available with the petitioner in case of any grievance arising from any alleged non-disclosure by respondent No. 5.

14. The learned senior counsels have placed reliance, upon, a judgment rendered by the Apex Court in case titled as ***State through CBI versus Dawood Ibrahim Kaskar and others***, reported in ***(2000) 10 Supreme Court Cases 438***. The relevant paragraph of the judgment (supra) becomes extracted hereinafter.

> *"Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167 (3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial*

> *discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Court solely for the production of the accused before the police in aid of investigation."*

15. Reliance has also been placed upon a judgment rendered by the Apex Court in ***Civil Appeal No. 2493 of 2024*** titled as ***Arvind Kejriwal versus Directorate of Enforcement***. The relevant paragraph of the judgment (supra) becomes extracted hereinafter.

> *"40. At this stage, we must consider the arguments presented by the DoE, which rely on judgments regarding the scope of judicial interference in investigations, including the power of arrest. Reference in this regard was made to The King Emperor v. Khawaja Nazir Ahmad, 34 Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria,35 State of Bihar and another . J.A.C. Saldanha and others,36 and M.C. Abraham and another v. State of Maharashtra and others. In our opinion, these decisions do not apply to the present controversy, as the power of arrest in this case is governed by Section 19(1) of the PML Act. These decisions restrict the courts from interfering with the statutory right of the police to investigate, provided that no legal provisions are violated. Investigation and crime detection vests in the authorities by statute, albeit, these powers differ from the Court's authority to adjudicate and determine whether an arrest complies with constitutional and statutory provisions. As indicated above, the power to arrest without a warrant for cognizable offences is exercised by the police officer in terms of Section 41 of the Code.38 Arrest under Section 41 can be made on the grounds mentioned in clauses (a) to (i) of Section 41(1) of the Code, which include a reasonable complaint, credible information or reasonable suspicion that a person has committed an offence, or the arrest is necessary for proper investigation of the offence, etc. The grounds mentioned in Section 41 are different from the juridical preconditions for exercise of power of arrest under Section 19(1) of the PML Act. Section 19(1) conditions are more rigid and restrictive. As such, the two provisions cannot be equated. The legislature has deliberately avoided reference to the grounds mentioned in Section 41 and considered it appropriate to impose strict and stringent conditions that act as a safeguard. The same reasoning will apply to the contention raised by the DoE relying upon the provisions of Section 437 of the Code and the judgment of this Court in Gurcharan Singh and others v. State (Delhi Administration). Section 437 of the Code applies when an accused suspected of committing a non-bailable offence is arrested or detained without warrant by a police officer in charge of a police station or is brought before a court, other than the High Court or the Court of Sessions. It is observed that the accused would be released on bail, except for in cases specified in clauses (i) and (ii) of Section 437(1) of the Code. Section 437(1)(i) applies at the stage of initial investigation where a person has been arrested for an*

offence punishable with death or imprisonment for life. Section 437(1)(ii) imposes certain fetters on the power of granting bail in specified cases when the offence is cognizable and the accused has been previously convicted with death, imprisonment for life, or 7 years or more, or has previously been convicted on two or more occasions for non-bailable and cognizable offences. The power under Section 437(1) of the Code is exercised by the court, other than the High Court or the Sessions Court. In other cases, Section 437(3) of the Code will apply. Gurcharan Singh (supra) distinguishes between the language of two sub-sections of Section 437 – Section 437(1) and 437(7). It is observed that 437(7) does not apply at the investigation stage, but rather after the conclusion of trial and before the court delivers its judgment. Thus, the use of the expression 'not guilty' pertains to releasing the accused who is in custody, on a bond without surety, for appearance to hear the judgment delivered. Notably, Section 437(6) states that if the trial of a person accused of a non-bailable offence is not completed within sixty days from the first date fixed for taking evidence, the magistrate to their satisfaction shall release such person on bail, provided they have been in custody throughout this period. The magistrate may direct otherwise only for reasons recorded in writing. Section 439 of the Code, which relates to the power of the High Court or the Sessions Court to grant bail, remains free from the legislative constraints applicable in cases covered by Section 437(1) of the Code. However, Section 437(3) of the Code when applicable applies.

41. DoE has drawn our attention to the use of the expression 'material in possession' in Section 19(1) of the PML Act instead of 'evidence in possession'. Though etymologically correct, this argument overlooks the requirement that the designated officer should and must, based on the material, reach and form an opinion that the arrestee is guilty of the offence under the PML Act. Guilt can only be established on admissible evidence to be led before the court, and cannot be based on inadmissible evidence. While there is an element of hypothesis, as oral evidence has not been led and the documents are to be proven, the decision to arrest should be rational, fair and as per law. Power to arrest under Section 19(1) is not for the purpose of investigation. Arrest can and should wait, and the power in terms of Section 19(1) of the PML Act can be exercised only when the material with the designated officer enables them to form an opinion, by recording reasons in writing that the arrestee is guilty."

16. The learned senior counsels have also placed reliance upon a judgment rendered by this Court in case titled as ***Sukhdev Singh Patwari versus State Election Commissioner, Punjab and others*** reported in ***2015 SCC Online P&H 5416***. The relevant paragraph of the judgment (supra) becomes extracted hereinafter.

"In view of the above discussion, though the jurisdiction of the High Court is not barred to entertain a writ petition, but it is a judicial

restraint to interfere in the elections once the election process is set in motion. This is so in the line on the interpretation of Article 329 of the Constitution pertaining to elections to the Parliament and Legislative Assemblies and Article 343 ZG in respect of elections to the Municipalities. Therefore, the rule of law, which has been adopted consistently, is that after the election process is set in motion, this Court in exercise of the powers under Article 226 of the Constitution will not interfere in the election process. Though in terms of Prithvi Raj's case (supra), we find that after the elections are concluded, there is power of judicial review, but normally since the Statute has provided effective alternative remedy; it is the said remedy, which should be availed rather than the extra ordinary writ jurisdiction of this Court. Thus, we find that invocation of writ jurisdiction of this Court was misconceived and untenable."

17. Reliance has also been placed upon a judgment rendered by the Apex Court in a case titled as ***State of Jharkhand versus Shiv Shankar Sharma and others*** reported in ***2022 SCC Online SC 1541***. The relevant paragraphs of the judgment (supra) become extracted hereinafter.

"31. We are not for a moment saying that people who occupy high offices should not be investigated, but for a High Court to take cognizance of the matter on these generalized submissions which do not even make prima facie satisfaction of the Court, is nothing but an abuse of the process of the Court. The non- disclosure of the credentials of the petitioner and the past efforts made for similar reliefs as it has been mandated under the Rules, 2010 further discredits these petitions. The petitioner in the PILs did not go with clean hands before the High Court. In our view, such a petition was liable to be dismissed at the very threshold itself. If the petitioner has a genuine reason to pursue the matter, he has his remedies available under the Companies Act or under other provisions of the law where he can apprise the relevant authorities of the misdeeds of the Directors or Promotors of the Companies. But on generalized averments which are nothing but mere allegations at this stage, the Court cannot become a forum to investigate the alleged acts of misdeeds against high constitutional authorities. It was not proper for the High Court to entertain a PIL which is based on mere allegations and half baked truth that too at the hands of a person who has not been able to fully satisfy his credentials and has come to the Court with unclean hands."

Analysis of the submissions (supra)

18. The provisions of Section 19 of the PML Act become extracted hereinafter.

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

19. Insofar as the judgments relied upon by the learned counsel for the petitioner rendered in ***Public Interest Foundation***'s case (supra), the thereins expressed mandate, with respect to a right inhering in a voter to get information about the credentials of the candidate, who contest elections, thus foists the requisite locus standi in the present petitioner. Conspicuously, when the said invested right in a voter is stated thereins to be an ensual of the concept of democracy, and, is stated to be an integral part of Article 19(1)(a) of the Constitution of India. Moreover when it has also been stated thereins that the said right also encompasses the voter's speech or expression, and, in case of elections it also encloses the right to cast his/her vote wherebys the voter speaks out or expresses through his/her casting vote(s). Resultantly, in paragraphs 116 thereof, the underlined thereins

directions were passed, and, it was also stated thereins that the said directions are required to be implemented in true spirit and right, as a measure to strengthen the democratic setup. Likewise are the expostulations of law, as made in a judgment rendered by the Apex Court in ***Satish Ukey***'s case (supra).

20. Be that as it may, since in a judgment rendered by the Apex Court in ***Sukhdev Singh Patwari***'s case (supra), it has been declared that in terms of Article 329 of the Constitution of India, thus with respect to elections to Parliament and to the Legislative Assemblies, rather once the election process is set in motion, therebys there can be no interference in the said set in motion elections processes, rather the remedy to the aggrieved is to file an Election Petition. Consequently, in the exercise of judicial review, the submission of the learned counsel for the petitioner, that certain relevant material became suppressed or withheld, therebys this Court may pass a direction upon respondent No. 3, to re-evaluate the affidavit furnished by respondent No. 5, rather cannot be either entertained nor can be accepted. Conspicuously also when the elections have been concluded, and, respondent No. 5 has been defeated.

21. Be that as it may, the admitted facts stated in the written submissions filed by respondent No. 2, are that one Dharam Singh Chhoker and one Vikas Chokker, have challenged the recording of ECIR, the issuance of summons, the takings of search action and the proceedings in furtherance thereto, through theirs filing CRM-M-37710-2023. On 7.8.2023, this Court passed directions upon the supra to appear before the investigating officer concerned. Subsequently, on 16.8.2023, the Directorate preferred an application before the Special Court, Gurugram, for issuance of

non-bailable warrants against Vikas Chhoker, Dharam Singh Chhoker and Sikandar Singh. Vide order dated 29.9.2023, the learned Special Court concerned, issued open ended non-bailable warrants against the said persons. However, on 7.10.2023, ECIR/GNZO/20/2021 and the order dated 29.9.2023, became challenged by Sikander Singh by filing CRM-M-51250-2023. During the pendency of the petition (supra), this Court vide order dated 13.10.2023, directed accused Sikander Singh to join investigations before the ED. Subsequently vide verdict dated 26.2.2024, passed by this Court upon CRM-M-37710-2023 and upon CRM-M-51250-2023, the supra became dismissed, besides therebys the order dated 29.9.2023, as made by the Special Court concerned, and, therebys also the recording of ECIR became upheld by this Court. Being aggrieved from the order (supra) passed by this Court, accused Dharam Singh preferred SLP (Crl) 3867 of 2024 before the Hon'ble Supreme Court, which was dismissed as withdrawn on 6.5.2024 and, the order dated 26.2.2024 passed by this Court was upheld. The Apex Court had also directed the ED that if it intended to arrest Dharam Singh, it may take the permission of the Hon'ble Supreme Court. Resultantly, ED filed an application seeking permission to arrest the petitioner. However, on the next date after lengthy arguments, as the Apex Court was not inclined to entertain the petition, thereupon the petitioner-Dharam Singh withdrew the SLP, and, as such the SLP stood dismissed as withdrawn.

22. Thereafter on 19.3.2024, ED motioned the Special Court concerned, for the issuance of proclamation under Section 82 Cr.P.C. On 20.3.2024, non-bailable warrants/warrants of arrest were issued against Sikandar Singh and Vikas Chhoker, and, the said warrants were made valid

till 6.4.2024. Subsequently on 5.4.2024, ED preferred 2nd application for the issuance of proclamation under Section 82 Cr.P.C. Vide order dated 6.4.2024 made on the application (supra), non-bailable warrants/warrants of arrest were issued against Dharam Singh Chhoker, Sikandar Singh and Vikas Chhoker, and, the said warrants were made valid till 15.4.2024. On 15.4.2024, the ED moved 3rd application for the issuance of a proclamation under Section 82 Cr.P.C. However, the said Court only issued non bailable warrants/warrants of arrest against Sikandar Singh and Vikas Chhoker, thus through an order made on 29.4.2024.

23. Apparently after dismissal of the SLP (supra), by the Apex Court on 6.5.2024, whereby a challenge was laid to the order made by this Court on 26.2.2024, upon CRM-M-37710-2023 and upon CRM-M-51250-2023, whereby this Court had upheld the recording of ECIR, and, also upheld the order dated 29.9.2023 wherebys open ended non-bailable warrants were issued against Vikas Chhoker, Dharam Singh Chhoker and Sikandar Singh, it appears that the accused Dharam Singh Chhoker rather apprehending his becoming arrested, therebys he filed an application before the Special Court, wherebys he claimed the indulgence of anticipatory bail, but vide order dated 20.5.2024, the said application was dismissed. Moreover, the dismissal order made thereons became challenged by Dharam Singh Chhoker by his filing CRM-M-26190-2024, before this Court, which became also dismissed through an order made thereons on 28.5.2024.

24. Since there is nothing on record to suggest, that the said order passed by this Court on 28.5.2024, upon CRM-M-26190-2024 wherebys became affirmed the dismissal order passed by the Special Court, on an application filed under Section 438 Cr.P.C., by one Dharam Singh Chhoker,

thus has been quashed and set aside by the Hon'ble Supreme Court of India. Resultantly, the investigating officer concerned, even without making any motion before the learned Special Court concerned, thus for the issuance(s) of non-bailable warrants or warrants of arrest against Dharam Singh Chhoker, rather became fully empowered to to arrest the said accused concerned, especially when the said case embodied thereins non-bailable offences. However, he failed to do so.

Submission of the learned senior counsels for respondent No. 5

25. Though, the learned senior counsels for respondent No. 5 have vigorously contended, that in terms of paragraph 41 of the verdict rendered by the Apex Court in ***Arvind Kejriwal***'s case (supra), that the power to arrest, as conferred under Section 19(1)(a) of the PML Act vis-a-vis the Enforcement Officer rather can be validly exercised only when the material with the designated officer, enables him to form an opinion, but by recording reasons in writing that the arrestee is guilty.

26. In sequel, even after the concurrent orders of dismissal becoming passed, respectively by the learned Special Judge concerned, and, by this Court, upon the application filed under Section 438 Cr.P.C. by respondent No. 5, wherebys post the dismissal of the SLP (supra), he claimed the indulgence of anticipatory bail in ECIR/GNZO/20/2-21 dated 16.11.2021, they yet submit that the said orders of dismissal, did also yet require in terms of the expostulations of law (supra), carried in paragraph 41 of the verdict recorded by the Apex Court in ***Arvind Kejriwal***'s case (supra), qua the arresting officer recording reasons to believe, that the arrestee is guilty of the offence. Since the said reasons are not recorded, therebys this Court is not required to be making any mandamus upon the respondent

concerned, to arrest the accused.

Reasons for rejecting the above submission

27. However, the said submission warrants rejection, and, is rejected as such, primarily thus on the ground, that the argument (supra) has been addressed with the counsel concerned, being unmindful, to the expostulation of law made in the hereinbove extracted relevant portion of the verdict rendered by the Apex Court in ***State through CBI versus Dawood Ibrahim Kaskar***'s case (supra), whereins, it has been explicitly stated that though the Magistrate concerned is vested with a discretion to issue warrants for ensuring the production of the accused before him, thus for aiding the investigating agency in making the utmost and efficient investigations in the crime event concerned. Moreover, it is also echoed thereins, that the power vested in the learned Magistrate concerned, to issue production warrants also extends to issue warrants for arresting any escaped convict, proclaimed offender or any person who is an accused qua a non-bailable offence, and, is evading arrest.

28. Though, non-bailable warrants of arrest became issued on multiple occasions by the learned Special Judge concerned, thus on the purported ground, that co-respondent No. 5 was evading his arrest in respect of the offence, and, apparently they also became received by the arresting officer concerned. Moreover, if the said recourse became adopted by the investigating officer concerned, therebys the adoption of the said recourse by the investigating officer concerned, and, also the making of the orders on the relevant applications by the learned Special Judge concerned, relating to the issuance of warrants of arrest against respondent No. 5, who was stated to be evading his arrest, rather per se exhibits, that therebys the investigating

officer concerned, became possessed with sufficient material for his causing the arrest of the said respondent. Conspicuously also, when the order passed by the learned Special Judge for the issuance of non-bailable warrants against the accused concerned, became upheld by this Court.

29. In consequence, the argument (supra) raised by the learned senior counsels for respondent No. 5 is bereft of vigour, and, the same is required to be rejected.

30. The making of concurrent orders of dismissal respectively by the Special Judge concerned, and, by this Court upon the application for anticipatory bail moved by respondent No. 5, to the objective mind of this Court, is a reckoner for further concluding, that therebys this Court had formed an opinion, that prima facie a non-bailable offence has been committed by respondent No. 5. Resultantly, the said concurrently made rejection orders do prima facie also render an opinion that respondent No. 5 had prima facie committed a non-bailable offence, and, as such for aiding the making of investigations into the offence committed by respondent No. 5, thus there were but naturally the requisite reasons to believe with the investigating officer concerned, thus to cause his arrest.

31. In sequel, the effect of the above, especially when the said orders are not demonstrated to be quashed and set aside by the Hon'ble Supreme Court, is that, the investigating officer concerned, becoming encumbered with a duty to forthwith cause the arrest of respondent No. 5. However, despite the passing of the order by this Court on 28.5.2024, wherebys this Court affirmed the dismissal order passed by the learned Special Court, on the application filed under Section 438 Cr.P.C., thus by respondent No. 5, yet the respondent No. 5 remaining unarrested, thus

causes some anguish, besides requires the investigating officer becoming censured.

32. The further startling aspect of the case, is that though the investigating officer concerned, recoursed the provisions cast under Section 73 Cr.P.C., for therebys seeking the arrest of respondent No. 5, on the purported premise, that he was evading his arrest. However, the taking of the said steps, does not yet condone the abysmal failure or inaction on the part of the investigating officer concerned, to cause the arrest of one Dharam Singh Chhoker, who however in the absence of his being arrested rather became ill facilitated to campaign for his candidature vis-a-vis assembly constituency Samalkha. The open campaign run by the said Dharam Singh, thus could not have resulted in the ED motioning the learned Special Court concerned, for the issuance of non-bailable warrants or warrants of arrest nor the ED was required to move an application for declaring the said Dharam Singh Chhoker rather as a proclaimed offender. The reason being is but simple that since he was not an absconder nor he had concealed himself, rather was openly campaigning. Therefore, when the warrants of arrest or the seeking of an order for declaring him a proclaimed offender, rather were respectively required to be passed by the learned Special Court concerned, only on the relevant motion truthfully declaring that the said respondent was concealing or hiding himself. However, the necessity of satiation being effected to said imperative statutory ingredient enshrined in Section 73 Cr.P.C., rather remained grossly overlooked, both by the ED as well as by the Special Court concerned. The said non application of mind also pains the judicial conscience of this Court.

33. Provisions of Section 73 Cr.P.C. are extracted hereinafter.

> "***73. Warrant may be directed to any person***
>
> *(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.*
>
> *(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.*
>
> *(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.*"

34. Conspicuously, besides reiteratedly when he was not concealing or hiding himself but was openly canvassing for his candidature to the assembly seats Samalkha, therebys but obviously the said motions and the consequent thereto passing of the orders, do garner a conclusion, that in the garb of the ED motioning the learned Special Court concerned, for the respective issuances of warrants of arrest, and, for the passing of the orders for declaring him a proclaimed offender, thus intended to camouflage its complete inaction and indolence, in arresting Dharam Singh Chhoker, especially, when his application for anticipatory bail, rather became dismissed by the Special Court concerned, and, the said order also became affirmed by this Court. Moreover, when there is no order on record of this Court, but suggestive, that the said passed order by this Court, has been quashed and set aside by the Apex Court or there has been stay against the said Dharam Singh Chhoker becoming arrested. Enigmatically also since the

order (supra) becoming passed by this Court on 28.5.2024, yet respondent No. 5 remaining unarrested also startles the judicial conscience of this Court.

Final order

35. For all the above stated reasons, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed to the extent that the Enforcement Directorate is directed to, unless the order passed by this Court on 28.5.2024 upon CRM-M-26190-2024, thus is either stayed or quashed by the Apex Court, thus forthwith arrest respondent No. 5-Dharam Singh Chhoker.

36. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 23, 2024
Gurpreet

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