IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED **14.07.2023**

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

H.C.P.No. 1021 of 2023

Megala ... Petitioner

..Vs..

1. The State
Represented by
Deputy Director
Directorate of Enforcement
Chennai.

2. The State Represented by
Assistant Director,
Directorate of Enforcement
Chennai. ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for a direction to the respondents herein to produce the body of the detenueby name Mr. Senthil Balaji, S/o. Velusamy, aged about 48 years, before this Court and set him at liberty.

For Petitioner :: Mr.Kapil Sibal
Senior Advocate
&
Mr. N.R.Elango
Senior Counsel
Assisted by
Mr. N.Bharani Kumar
&
Mr.Agilesh Kumar. S.

For Respondents :: Mr. Tushar Mehta
Solicitor General of India
Assisted by
Mr. Zohebltossain
Special Counsel
&
Mr.Kannu Agarwal
&
Mr.ARL.Sundaresan
Additional Solicitor General
Assisted by
Mr.N.Ramesh
Special Public Prosecutor

ORDER

This Habeas Corpus Petition has been filed by Mrs. Megala, a lady in distress consequent to arrest of her husband V.Senthil Balaji, who was arrested by the respondents in the dark morning of 13.06.2023.

2. V.Senthil Balaji would be called 'the detenue/ accused.'

3. The relief sought in the petition is for a direction against the respondents, in effect, the Directorate of Enforcement at Chennai, represented by both its Deputy Director and Assistant Director, to produce the body of the detenueand for the Court to set him at liberty.

4. This Petition had been filed on 14.06.2023 itself and since it involved proceedings against a sitting Minister, it had been brought to the notice of the Hon'ble Chief Justice. It was listed for hearing before a Division Bench [*M.Sundar & R.Sakthivel,J.*] on 15.06.2023. On that date, when the matter first came up, one of the learned Judges rescued himself. The Division Bench noted as follows:-

"There is recusal by one of us [R.SAKTHIVEL, J.]

Registry to do the needful."

5. On the very same day, taking advantage of the standing instructions issued, there had been a mention before the Coordinate Division Bench [*Mrs.J.Nisha Banu and D.Bharatha Chakravarthy, JJ]* seeking urgent hearing of the matter. It was also listed before the said

Division Bench. They passed interim orders, but this Court is not examining the same, but would be referring to the same during the course of the present order.

6. It is suffice to point out that the Division Bench finally pronounced orders in the Habeas Corpus on 04.07.2023. For reasons which they had substantiated in their respective Judgments, both the learned Judges differed on crucial aspects.

7. *Hon'ble Mrs. Justice J.Nisha Banu* had held as follows:-

> *"**1**. The Writ of Habeas Corpus Petition is maintainable;*
>
> ***2**. Enforcement Directorate is not entrusted with the powers to seek police custody under the Prevention of Money Laundering Act, 2002;*

3. *Miscellaneous Petition filed by Respondent 1 seeking exclusion of the period is dismissed; and*

4. *The detenue is ordered to be set at liberty forthwith."*

8. On the other hand, *Hon'ble Mr. Justice D.Bharatha Chakravarthy* held as follows:-

*"**(i)**. The Habeas Corpus Petition in H.C.P.No. 1021 of 2023 shall stand dismissed*

(ii). *The period from 14.06.2023 till such time the detenu/accused is fit for custody of the respondent shall be deducted from the initial period of 15 days under Section 167(2) of the Code of Criminal Procedure;*

(iii) *The detenu/accused shall continue the treatment at Cauvery Hospital until discharge or for a period of 10 days from today whichever is*

earlier and thereafter, if further treatment is necessary, it can be only at the Prison/Prison Hospital as the case may be;

(iv) *As and when he is medically fit, the respondents will be able to move the appropriate Court for custody and the same shall be considered on its own merits in accordance with law except not to be denied on the ground of expiry of 15 days from the date of remand;*

(v) *However, there shall be no order as to costs."*

9. This necessitated taking recourse Clause 36 of the Letters Patent of the Madras High Court. Clause 36 of the Letters Patent is as follows:-

"Single Judges and Division Courts.- And We do hereby declare that any function which is hereby directed to be performed by the said High Court of Judicature at Madras, in the exercise of its original or appellate jurisdiction, may be

performed by any Judge, or by any Division Court thereof, appointed or constituted for such purpose, in pursuance of Section 108 of the Government of India Act, 1915, and if such Division Court is composed of two or more Judges, and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there shall be a majority, but if the Judges ***should be equally divided they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges*** *and the point shall be decided according to the opinion of the majority of the Judges who have heard the case included who those first heard it."*

10. The Registry had placed the matter before the Hon'ble Chief Justice since the Judges were equally divided in their opinion and had come to different conclusions. This required adjudication of the issues on the points of difference by a third Judge.

11. When the matter was placed before the Hon'ble Chief Justice, it

was directed that the matter should be placed before this court.

12. A reading of Clause 36 of the Letters Patent, extracted above would also indicate that when a Division Bench is equally divided on the reasons with respect to reaching a conclusion on any aspect, it was obligatory on their part to reduce the points of difference in their judgment. Unfortunately, this exercise was not done by the Division Bench. Therefore, when the matter was listed before this Court, a request was placed on the learned Senior Counsel appearing on behalf of the petitioner and the learned Solicitor General, who appeared on behalf of the respondents, to participate in a discussion to reduce the points of difference so that arguments could be focused on those particular points.

13. This Court had taken advantage of the dictum as stated in(***2007) 2 MLJ 129 [All India Anna Dravida Munnertra Kazhagam Vs. State Election Commissioner]*** and more particularly in paragraph No. 182 of the said Judgment, which is as follows:-

*"**182.** Even though Clause 36 of the Letters*

Patent requires that if the opinion of the Judges should be equally divided, "they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case including who those first heard it", no specific point on which difference has arisen has been specified. When the matter was placed before me, at the threshold this aspect was highlighted by me and the learned counsels appearing for all the parties have stated that even though points of difference have not been specifically pointed out by the Division Bench, the difference as apparent from various discussions and conclusions of the two learned Judges should be culled out and should be decided on that basis without returning the matter for spelling out the difference."

14. This provided a small window or a leverage to this Court to frame the points of difference and keeping that in mind, I must place on record my deep appreciation to both the learned Solicitor General and the learned Senior Counsel on behalf of the petitioner for putting in writing the

points of difference on which arguments were heard. Contentions were discussed. Finally, this Court had framed the following three questions which could be culled out from the Judgments of the two learned Judges as the crucial aspects on which they had arrived at differing conclusions:-

(i) *Whether the Enforcement Directorate has the power to seek custody of a person arrested;*

(ii) *Whether the Habeas Corpus itself is maintainable after judicial order of remand has been passed by a Court of competent jurisdiction?; and*

(iii) *Whether as a consequential issue, if Issue No.1 is answered in favour of the respondents owing to the particular circumstances of this case, the Enforcement Directorate would be entitled to seek exclusion of time of the period of hospitalization of the detenue which extended beyond the period of 15 days from the date of first remand and therefore, whether that period of hospitalisation could be excluded while taking into consideration their request for police custody?*

15. The entire issue surrounds the complaint that the acts of search

in the premises of the detenue commenced at around 11.00 a.m., on 13.06.2023, continued right through the day, through out the evening, through the night and finally culminated his arrest at 1.39 a.m., on 14.06.2023.

16. It is the grievance expressed by the petitioner that the entire process from 11.00 a.m., onwards on 13.06.2023, had directly affected the physical and other well being of the detenue. It is also complained that the grounds of arrest were not intimated to the detenue and that his arrest was therefore illegal and violative of his right guaranteed by the constitution to be informed about the grounds of arrest.

17. Contrasting with this particular statement by the petitioner, the respondents have contended that there was complete non co-operation by the detenue and after at the time when the statement under Section 50 of PMLA Act was sought to be recorded and therefore, when it was informed that there were materials to hold that he should be arrested, the detenue had thrown up a tantrum and had actually threatened the officials. It is claimed that they informed him about the grounds of arrest but he refused to

acknowledge receipt of either the grounds of arrest or any document whatsoever. It was claimed that the entire proceedings were conducted in the presence of the two witnesses.

18. It is also contended that since the detenue complained of various illnesses, there was a compulsion to take him to Omandurar Government Multispeciality Hospital and admit him there. It is also contended that efforts to inform the brother and sister-in-law of the detenue through phone could not materialise since the calls were not taken or received by them. It is however contended that messages were sent to the brother of the detenue and electronic mail was also sent to the petitioner herein. These are all issues on facts which will have to be dealt with independently.

19. It was under these circumstance that the Habeas Corpus Petition came to be filed on 14.06.2023. Simultaneously, after the detenue had been admitted at Omandurar Government Multispeciality Hospital, it had also been stated that on that very same day / 14.06.2023 when the Habeaus Corpus had been presented before this Court, a petition seeking

remand of the detenue was filed before the jurisdictional Special Court, namely, the Principal Sessions Court at Chennai. This was around 12.00 in the noon. It was also contended by the respondent that the grounds of arrest were also shown to the learned Principal Sessions Judge.

20. The learned Principal Sessions Judge, in accordance with Criminal Rules of Procedure which necessitates the Magistrate or in this case, the Sessions Judge to go over personally, if the detenue is not in a position to be brought before the Court to visit the detenue for the purposes of the initial remand, the learned Principal Sessions Judge had therefore gone over to the said Hospital and had passed an order of remand remanding the detenue to judicial custody.

21. Once the detenue had been so remanded, the nomenclature changed from the 'detenue' to the 'accused'.

22. Since an order of remand had been passed by the learned Principal Sessions Judge whose jurisdiction and power to pass such an order of remand is not questioned, one of the issues on which the learned

Judges had framed for further discussion and answered was whether the Habeas Corpus Petition itself would be maintainable, or if maintainable, entertainable, since the detenue had now metamorphosised into the character of an accused on remand by the competent Court. The responsibility of the accused stood vested with that Court. An issue will therefore have to be examined whether even if the Habeas Corpus Petition is to be allowed, the respondents herein could realistically produce the detenue/accused before this Court and this Court come set him away at liberty overlooking the order of remand. It has been informed that the order of remand still subsists and has also been extended whenever the period expired.

23. On the very same day, on 14.06.2023, the accused filed an application seeking bail before the learned Principal Sessions Judge. The respondents for good measure also filed an application seeking custody to enable further investigation. The relief so sought was quite distinct from the order of remand to judicial custody.

24. The learned Principal Sessions Judge, in the same evening,

passed an order at around 6.00 p.m., dismissing the Petition seeking rejection of the remand. The Petition seeking custody by the respondents was taken up for hearing the next day/15.06.2023.

25. Parallely, the Habeas Corpus was also taken up for consideration before the co-ordinate alternate bench in accordance with the standing instructions. On 15.06.2023, the Division Bench heard arguments advanced on behalf of the petitioner and also on behalf of the respondents and had framed two questions, which according to them arose for consideration:-

1. *Whether the grounds raised on behalf of the detenue for non compliance is factually correct; and*

2. *Even if they are factually correct whether it would amount to absolute illegality.*

26. These questions were framed on considering the arguments

advanced that the remand by the learned Principal Sessions Judge, was passed even when the Habeas Corpus Petition was pending before the Division Bench. The Habeas Corpus Petition was therefore entertained and notice returnable by 22.06.2023 was directed.

27. Simultaneously, an argument was also placed on behalf of the petitioner that the detenu, who was then taking treatment at Omandurar Government Multispeciality Hospital should be provided with better treatment to his comfort and it was stated that one of his consulting Doctors is working at Kauvery Hospital at Chennai. It was therefore expressed that it would be to the advantage of the detenu, so far as his health condition is concerned, to consider this request to admit him at Kauvery Hospital and that the expenses would be taken care by the family.

28. After examining that particular request, the Division Bench was of the opinion that he could be so shifted to Kauvery Hospital, for emergency treatment as mentioned in the medical bulletin of the Omandurar Government Multispeciality Hospital at Chennai dated 14.06.2023.

29. After that order was pronounced, the Additional Solicitor

General had immediately pointed out and placed a request the period of treatment undergone by the detenue or to be undergone from that particular date by the detenue should be excluded when it comes to the question of granting custody of the detenue to the respondents/Enforcement Directorate.

30. This issue of exclusion of days was kept open, but permission was granted to both the sides to advance arguments on this particular aspect. It is on that basis that a third issue came to be framed by the Division Bench, namely, whether the period undergone in hospitalisation by the detenue/accused should be excluded if custody is to be granted to the respondent.

31. To continue with the proceedings before the learned Principal Sessions Judge, on 16.06.2023, the learned Principal Sessions Judge passed an order granting custody of the accused to the respondent but imposed various conditions. It must be kept in mind that 16.06.2023 was a Friday and this order was passed at around 6.00 p.m.

32. On the next day, on 17.06.2023, the respondents filed a memo

before the said Court through electronic mail complaining and expressing their difficulty in taking physical custody of the accused consequent to his medical condition. A report in writing had also been obtained from the Doctors at Kauvery Hospital.

33. On 19.06.2023/Monday, the respondents filed two Special Leave Petitions before the Hon'ble Supreme Court primarily questioning the conditions under which the custody was granted. The Hon'ble Supreme Court took note of the fact that the Habeas Corpus Petition was listed for hearing on 22.06.2023 before the Division Bench of this Court and therefore relegated all issues to be answered by the Division Bench.

34. On 21.06.2023, the petitioner filed additional grounds and sought that they may also be considered while examining the questions framed by the Division Bench.

35. Arguments were advanced on 22.06.2023 before the Division Bench. The order was pronounced on 04.07.2023 and as aforesaid, both the learned Judges had expressed reasons to hold that they would not agree with

the views expressed by the other.

36. This narration above is in so far as the proceedings before the Division Bench and the learned Principal Sessions Judge are concerned, commencing from 14.06.2023 onwards.

37. Before I delve further into the entire facts, it would only be appropriate that the facts necessitating registration of what is termed as ECIR by the respondents under PMLA Act, 2002 are stated to complete the narration.

38. In this regard, I am fortunate that the issues had actually been examined with relation to the facts of this very case by the Hon'ble Supreme Court.

39. The Judgment of the Hon'ble Supreme Court had been reported in ***2023 SCC Online SC 645 [Y.Balaji Vs. Karthik Desari and Another]***. The Judgment was actually rendered on a string of criminal appeals. Let me refer to the Judgment to throw light on the back ground facts so far as this

particular case is concerned.

40. I would willingly adopt the words of the Hon'ble Supreme Court itself.

> *"**Background Facts***
>
> ***6.*** *The background facts necessary to understand the complexities of the batch of cases on hand are as follows:*
>
> ***(i)*** *In November 2014, the Metropolitan Transport Corporation, wholly owned by the State of Tamil Nadu issued five Advertisements, in Advertisement Nos. 1/2014 to 5/2014, calling for applications for appointment to various posts such as Drivers (746 posts), Conductors (610 posts), Junior Tradesman (Trainee) (261 posts), Junior Engineer (Trainee) (13 posts) and Assistant Engineer (Trainee) (40 posts);*
>
> ***(ii)*** *After interviews were held on 24.12.2014 and the Select List got published,*

one Devasagayam lodged a complaint on 29.10.2015 with the Chennai PS CCB against 10 individuals, alleging that he paid a sum of Rs. 2,60,000/- to a Conductor by name Palani for getting the job of Conductor in the Transport Corporation for his son. However, his son did not get a job and when he confronted Palani, he was directed to several persons. When he demanded at least the refund of money, he did not get it. Therefore, he lodged a complaint which was registered as FIR No. 441 of 2015 for alleged offences under Sections 406, 420 read with Section 34 of the Penal Code, 1860 . In this complaint, the accused who are now before us, including the one who is holding the post of Minister in the Government of Tamil Nadu were not implicated.

(iii) *Similarly, one Gopi gave a petition dated 07.03.2016 to the Commissioner of Police claiming that he had applied for the post of Conductor and that after the interviews, he was approached by one Ashokan claiming to be the brother and one Karthik claiming to*

be the brother-in-law of the Minister Senthil Balaji, demanding a bribe for securing appointment and that he had paid a sum of Rs. 2,40,000/- to those persons. Complaining that the Police did not register his complaint, the said Gopi filed a petition in Crl. OP No. 7503 of 2016 on the file of the High Court of Judicature at Madras under Section 482 of the Criminal Procedure Code, 1973 seeking a direction to the Commissioner of Police to register his complaint and investigate the same.

(iv) *The said Crl. OP No. 7503 of 2016 filed by Gopi was disposed of by a learned Judge of the High Court by an Order dated 20.06.2016. In the said order, it was recorded that according to the Additional Public Prosecutor, 81 persons had given similar complaints to the Police and that the complaint given by Devasagayam had been registered as FIR No. 441 of 2015. The Additional Public Prosecutor took a stand before the High Court in the said petition filed by Gopi that all the 81 persons including Gopi will be enlisted as*

witnesses in the complaint registered at the instance of Devasagayam.

(v) *When it was stated by the Additional Public Prosecutor at the time of hearing of the petition filed by Gopi that all 81 persons including Gopi will be cited as witnesses, in the complaint filed by Devasagayam, the petitioner Gopi objected to the same on the ground that Devasagayam had already been won over by the accused. In fact, it was pointed out that the Minister did not figure as an accused in the complaint of Devasagayam. A specific grievance was projected by Gopi that the Police are not going beyond the lower level officers. Accepting his statement, the High Court passed an Order dated 20.06.2016 in Crl. OP No. 7503 of 2016 filed by Gopi, holding that the Police is duty bound to probe beyond the lower level minions to find out where the money had gone. After so holding, the Court directed the Assistant Commissioner of Police, Central Crime Branch (Job Racketing) to take over the investigation in FIR No. 441 of 2015 and also directing the Deputy*

Commissioner of Police to monitor the same. The Court also held that since a FIR has already been registered at the behest of Devasagayam, it is not necessary to have another FIR registered on the complaint/representation made by Gopi.

(vi) *Despite the direction issued by the High Court on 20.06.2016 to the Police to go beyond lower level officers and find out where the money trail ends (more than about 2 crores allegedly given to the Minister during January and March, 2015) and despite Gopi making specific averments against the brother and brother-in-law of the Minister, the Police filed a Final Report on 13.06.2017 under Section 173(2) of the Code, only against 12 individuals including those 10 persons named by Devasagayam. Upon the filing of the Final Report, the case got numbered as Calendar Case No. 3627 of 2017 in FIR No. 441 of 2015. Neither the Minister nor his brother or brother-in-law, were cited as accused, in the Final Report. The accused named in the Final Report were charged only for the offences*

under Sections 406, 420 and 419 read with Section 34 IPC and not under any provisions of the Prevention of Corruption Act, 1988 .

(vii) One V. Ganesh Kumar then lodged a criminal complaint in FIR No. 298 of 2017 on 09.09.2017 with the Chennai PS CCB, against four persons including the Minister Senthil Balaji. It was stated in his complaint that he was an employee of the Transport Department and that one of his colleagues by name Annaraj and his friend R. Sahayarajan were taken by one Prabhu (a relative of the Minister) to the house of the Minister Senthil Balaji and that the Minister instructed them to collect money from persons aspiring to get appointment as Drivers and Conductors. It was further stated in the complaint that as per the directions of the Minister, an amount totaling to Rs. 95 lakhs was collected during the period from 28.12.2014 to 10.01.2015 and that though the amount was given to Prabhu and Sahayarajan, the persons who parted with money did not get appointed. Therefore, persons who paid money started exerting

pressure upon V. Ganesh Kumar forcing him to lodge a complaint on 09.09.2017. Even this complaint, registered as FIR No. 298 of 2017, was only for offences under Sections 406, 420 and 506(1). A Final Report was filed on 07.06.2018 in FIR No. 298 of 2017, against the Minister Senthil Balaji and three others, only for offences punishable under Sections 420 and 506(1) read with Section 34 IPC. This Final Report was filed before the Special Court and the case was numbered as CC No. 19 of 2020. Despite specific allegations, the offences under the PC Act were not included.

(viii) *Another complaint was lodged by one K. Arulmani, on 13.08.2018 with the Commissioner of Police, Chennai City, complaining that a huge amount of Rs. 40,00,000/- was collected by his friends who wanted to get employment in the Transport Corporation and that the money was actually paid to Shanmugam, PA to the Minister at the residence of the Minister in the first week of January, 2015. It was further stated in the complaint that after money was paid to Shanmugam, the complainant also met Ashok*

Kumar (brother of the Minister) and Senthil Balaji (Minister) and that the Minister assured to get appointment orders issued. This complaint was registered by Chennai CCB PS as FIR No. 344 of 2018, again for offences only under Section 406, 420 and 506(1) IPC. We do not know why the State Police were averse to the idea of including the offences punishable under the PC Act, in any of the three FIRs. While one may be averse to corruption, one cannot be averse to the PC Act.

(ix) *As had happened in respect of the other two complaints, the complaint in FIR No. 344 of 2018 was also investigated (or not investigated) and a Final Report was filed on 12.04.2019. Even this Final Report, taken on record in Calendar Case No. 25 of 2021 did not include the offences under the PC Act.*

(x) *At this juncture, a person by name R.B. Arun Kumar, working as a Driver in the Metropolitan Transport Corporation and who was cited as witness LW 47 in the Final Report in CC No. 3627 of 2017 arising out of FIR No.*

441 of 2015 (Devasagayam's complaint) moved the Madras High Court by way of a petition under Section 482 of the Code in Crl. O.P No. 32067 of 2019, seeking further investigation in the case, on the ground that the State Police have not acted as per the directions issued by the High Court in its order dated 20.06.2016 in Crl. O.P. No. 7503 of 2016 to go beyond the lower level officers. In his petition, R.B. Arun Kumar also pointed out that the specific allegation of a huge amount of more than Rs. 2 crores, having been paid to the Minister Senthil Balaji, had been completely suppressed by the investigating agency and that a dummy charge-sheet had been filed against minions. Therefore, by an order dated 27.11.2019, the High Court directed the Assistant Commissioner of Police, CCB (Job Racketing) to conduct further investigation in CC No. 3627 of 2017 and to complete the same within six months.

(xi) *Emboldened by the non-inclusion of the offences under the PC Act in any of the*

three charge-sheets, Minister Senthil Balaji, arrayed as Accused No. 1 in CC No. 19 of 2020 arising out of FIR No. 298 of 2017 lodged by V. Ganesh Kumar, filed a petition in Criminal M.P. No. 7968 of 2020 seeking his discharge in CC No. 19 of 2020. But the Special Court dismissed the petition for discharge, by an order dated 26.08.2020. Against the said order dismissing his discharge petition, the Minister filed a criminal revision petition in Crl. R.C. No. 224 of 2021 on the file of the High Court.

(xii) *But in the meantime, a Final (further) Report under Section 173 (8) of the Code was filed in C.C. No. 24 of 2021 against 47 persons including the Minister Senthil Balaji and Shanmugam (PA to the Minister) in which the offences under the PC Act were included.*

(xiii) *Upon coming to know of the way in which the entire recruitment of candidates to various posts in the Transport Corporation had gone on, candidates who appeared for the*

selection but did not get selected started filing writ petitions, challenging the entire selection. A writ petition in WP No. 9061 of 2021 was filed by one A. Nambi Venkatesh seeking to set at naught, the appointment of Junior Engineers. Similarly, one P. Dharmaraj and M. Govindarasu filed a writ petition in WP No. 8991 of 2021, with regard to the post of Assistant Engineers.

(xiv) *In May, 2021 the political climate in the State changed. Though the principal actors changed, the script remained the same for the victims and the political fortunes of the Minister continued, as he got a berth in the Cabinet, even in the new dispensation.*

(xv) *Thereafter, the person alleged to be the PA to the Minister, namely, Shanmugam, who was arrayed as Accused No. 3 in CC No. 25 of 2021 arising out of FIR No. 344 of 2018 lodged by Arulmani, filed a petition in Crl.O.P No. 13374 of 2021 on the file of the High Court seeking to quash CC No. 25 of 2021. He claimed in the*

said petition that a compromise had been reached between the victims (Arulmani and others and the accused) and that, therefore, the complaint may be quashed. Following suit, R. Sahayarajan who was Accused No. 3 in CC No. 19 of 2020 also filed a quash petition in Crl.O.P No. 13914 of 2021, enclosing a joint compromise memo seeking to quash CC No. 19 of 2020. Similarly, one Vetrichelvan (Accused No. 10) filed Crl. O.P No. 6621 of 2021 for quashing the proceedings in CC No. 24 of 2021.

(xvi) *By an order dated 30.07.2021, the High Court quashed CC No. 25 of 2021 on the basis of the Joint Compromise Memo. This order was passed completely overlooking the nature of the allegations, the offences for which the accused ought to have been charged as well as the previous orders passed by the High Court itself.*

(xvii) *Just a day before the High Court passed orders quashing CC No. 25 of 2021, the ED registered an Information Report on*

29.07.2021 in ECIR/MDSZO/21/2021 and issued summons to the Minister Senthil Balaji.

(xviii) *At this stage, Devasagayam who filed the first complaint in FIR No. 441 of 2015 and in whose case a Final Report was filed in CC No. 3627 of 2017, filed a very strange petition on the file of the High Court in Crl.O.P. No. 15122 of 2021 seeking de novo investigation in CC No. 24 of 2021. It must be recalled at this stage that Devasagayam's complaint was registered as FIR No. 441 of 2015 dated 29.10.2015 and a Final Report was filed therein on 13.06.2017 leading to Calendar Case No. 3627 of 2017. But by the orders of the High Court, the complaint of Gopi and others got clubbed with the investigation in Devasagayam's case leading to the registration of a separate Calendar Case in CC No. 24 of 2021. The clubbing actually happened after an allegation was made before the High Court by Gopi, (petitioner in Crl. O.P No. 7503 of 2016) to the effect that Devasagayam had*

been won over. While ordering the complaint of Gopi to be clubbed with the investigation in FIR No. 441 of 2015, the High Court did not perhaps realize that it may enable Devasagayam to derail (incidentally he had retired from Railways and the word "derail" suits him) even the proceedings in CC No. 24 of 2021.

(xix) Finding that the offences under the PC Act were included only in one of the cases and not in others and that it had enabled the High Court even to quash one of the four calendar cases on the basis of a Joint Compromise Memo, candidates who were unsuccessful in the recruitment and who had filed writ petitions in the High Court challenging the process of selection, filed impleadment petitions, both in the quash petitions in other cases as well as in the petition filed by Devasagayam for de novo investigation.

(xx) *At this stage, ED filed miscellaneous petitions in CC Nos. 19/20,*

24/21 and 25/21 before the Trial Court seeking certified copies of the FIR, statements of witnesses, Final Report, etc. By an order dated 09.11.2021, the Trial Court directed the supply of certified copies of the FIRs, complaints and the statements under Sections 161 and 164 of the Code. However, the Trial Court refused to issue certified copies of unmarked documents.

(xxi) *As against the order dated 30.07.2021 passed by the Madras High Court quashing CC No. 25 of 2021 on the basis of the Joint Compromise Memo, a special leave petition was filed by one P. Dharmaraj. It may be recalled that he was one of the unsuccessful candidates and he had filed a writ petition seeking to quash the entire selection.*

(xxii) *An NGO by name Anti-Corruption Movement also filed a special leave petition against the order of the High Court quashing CC No. 25 of 2021.*

(xxiii) *Aggrieved by one portion of the order of the Trial Court refusing to grant certified copies of unmarked documents, the ED filed petitions before the High Court. By an order dated 30.03.2022 the High Court permitted ED to conduct an inspection under Rule 237 of the Criminal Rules of Practice, 2019 and thereafter to make third party copy applications for supply of copies of documents. The High Court also noted that under Rule 238, ED was entitled even to take extracts and thereafter file a fresh third party copy application before the Special Court. Challenging the limited relief granted by the High Court to ED in its order dated 30.03.2022, a person who is Accused No. 3 in CC No. 3627 of 2017 (CC No. 24/2021) has come up with a special leave petition which forms part of the present batch of cases.*

(xxiv) *Thereafter, three writ petitions came to be filed, one by Minister Senthil Balaji and another by Shanmugam, alleged*

to be his Secretary and the third by Ashok Kumar (brother of the Minister), challenging the summons issued by ED. These writ petitions were allowed by the High Court by an order dated 01.09.2022, primarily on the ground that one of the four calendar cases had already been quashed by the High Court by order dated 30.07.2021 on the basis of a Joint Compromise Memo and that further proceedings in the other calendar cases had been stayed by the High Court.

(xxv) *But by a Judgment dated 08.09.2022, this Court overturned the order of the High Court dated 30.07.2021 and not only restored the calendar cases back to file but also directed the inclusion of the offences under the PC Act.*

(xxvi) *Despite the Judgment of this Court dated 08.09.2022, the High Court passed an order dated 31.10.2022 allowing the petition filed by Devasagayam and ordered a de novo investigation.*

(xxvii) *Therefore, challenging the order of the High Court dated 01.09.2022 quashing the summons issued by them, ED has come up with three appeals and the candidate who was unsuccessful in the selection and who has filed a writ petition before the High Court has come up with one appeal.*

(xxviii) *Challenging the order of the High Court dated 31.10.2022 directing de novo investigation, the ED has come up with one appeal, two candidates who were unsuccessful in the selection have come up with two separate appeals, Anti-Corruption Movement has come up with one appeal, the person who compromised the matter with the accused and supported the accused before the High Court for quashing the complaint has come up with one appeal and one of the accused has come up with another appeal.*

(xxix) *In other words, we have four appeals on hand arising out of the order of the High Court dated 01.09.2022 quashing*

the summons issued by ED. Similarly, we have six appeals challenging the order dated 31.10.2022 passed by the High Court directing de novo investigation.

(xxx) *We have two more appeals, which do not form part of the main stream. One of them is by an accused challenging the order of the High Court dated 30.03.2022, permitting the ED to conduct an inspection of the documents before the Trial Court under Rule 237 of the Rules, 2019. Another appeal is filed by the unsuccessful candidate challenging an order passed by the High Court dismissing a petition for extension of time to complete investigation.*

(xxxi) *Thus, we have on hand 12 appeals, four of them challenging the quashing of summons issued by ED, six of them challenging the order for de novo investigation, one of them challenging an order permitting ED to have inspection of documents and the last arising out of the order refusing to grant further time for*

completion of investigation.

(xxxii) *Other than the appeals, we also have two contempt petitions filed by the Anti-Corruption Movement, complaining willful disobedience by the State of the directions issued by this Court in the order dated 08.09.2022 in Criminal Appeal Nos. 1515-1516 of 2022.*

(xxxiii) *We also have an application in IA No. 26527 of 2023 filed by the appellant in one of these appeals, who is an unsuccessful candidate. The prayer in this application is for the constitution of a Special Investigation Team to undertake a comprehensive investigation into the entire scam and for the appointment of a senior lawyer of repute as the Special Public Prosecutor to prosecute the accused. This application is taken out on the ground that a similar prayer made in Criminal Appeal Nos. 1514-1516 of 2022 was turned down by this Court, in the order dated 08.09.2022, in the hope that the State Police would act fairly*

and impartially. According to the applicant/appellant, the State Police had belied the hope expressed by this Court and that therefore it is now time to constitute a Special Investigation Team."

41. I must point out that the above is a reduction of the facts by the Hon'ble Supreme Court to decide the appeals therein. They however give a fair indication as to the journey travelled by the detenue and the officials who, had conducted enquiry or investigation into the allegations in the complaints mentioned therein.

42. Quite briefly the aforementioned facts state that in November 2014, the Metropolitan Transport Corporation, which had issued an advertisement for any appointments to various post of drivers, conductors, junior tradesmen, Junior Engineers and Assistant Engineers. The detenue at that relevant point of time was the Minster of Transport. As seen from the facts narrated by the Hon'ble Supreme Court extracted above, complaints were made of demand of bribe offering jobs and the central complaint was by one Devasagayam, consequent to which FIR in Crime No. 441 of 2015

had been registered by the Central Crime Branch at Chennai against ten individuals. The detenue herein was not one of the accused. There were further complaints given by other individuals. The matter meandered around. Finally when a final report was filed, as noted by the Hon'ble Supreme Court, the defacto complainant Devasagayam, who should have been contended with the fact that a final report was finally filed by the Investigating Agency had found fault with the final report and claimed that the persons whom he had not mentioned as accused/ the detenue herein had been implicated as accused in the said final report and therefore, turned around and filed a petition before the High Court to conduct de novo investigation which would mean to wiping out that particular final report and to start investigation once again. The Hon'ble Supreme Court had commented upon the order passed on that application and for completion of narration, I must point out their opinion.

43. It had been stated that ***"what was compromised between the complainant and the accused is not just their disputes,but justice, fair play and good conscience and the fundamental principles of criminal jurisprudence".***

44. The Hon'ble Supreme Court further stated ***"in fact the case on hand is one where there are two teams just for the purpose of record, no one knows who is playing for which team and where the match was fixed".***

45. The Hon'ble Supreme Court further stated in paragraph No. 36 of the aforementioned Judgment ***"the investigation and trial of a criminal case cannot be converted by the complainant and the accused into a friendly match. If they are allowed to do so, it is the Umpire who will lose his wicket***."

46. This is the background under which the Hon'ble Supreme Court proceeded to hear the criminal appeals. The Judgment was delivered on 16.05.2023. The fundamental aspect on which the Hon'ble Supreme Court adjudicated was a Judgment of a learned Single Judge of this Court, who had practically wiped out the earlier orders of the Hon'ble Supreme Court and a fresh investigation had been directed to be conducted. That order of the learned Single Judge was set aside and the Hon'ble Supreme

Court stated that all the three Writ Petitions challenging initiation of proceedings by Enforcement Directorate shall stand dismissed, which in effect gave a green flag for the respondents herein to proceed further on the ECIR which they had registered.

47. I must also point out a further observation of the Hon'ble Supreme Court, in paragraph No. 40 wherein it had been stated *"**it is an irony that persons, who are victims of a huge jobs for cash scam are alleged to have come to Court with unclean hands by persons, whose hands were allegedly tainted with corruption money".***

48. I must also point out the observation at paragraph No.18. ***"It is seen from the above averment of Devasagayam that he was virtually pleading the case of the accused and seeking de novo investigation. But alas, Devasagayam was not the only one to be blamed. He had a silent partner in the prosecution which we shall see now"***.

49. These are telling observations by the Hon'ble Supreme Court. They go to the root of the matter. These facts are be stated required to be

stated to understand why a search was conducted on 13.06.2023 and why the conduct of the detenue, as stated by the respondents, was threatening in nature.

50. In paragraph No. 17, the Hon'ble Supreme Court had further observed that ***"it appears that Devasagayam, originally seems to have had a genuine grievance against the culprits at the bottom of the layer but he later turned out to be a trojan horse, willing to sabotage the investigation against the influential people".***

51. There is yet another observation made and which had been extracted narrating the facts as stated by the Hon'ble Supreme Court in (xiv) above, wherein the Hon'ble Supreme Court took judicial note of one peculiar fact, namely, ***"in May 2021, the political climate in the State changed. Though the principle actors changed, the script remained the same for the victims and the political fortunes of the Minister continued, as he got a berth in the cabinet, even in the new dispensation".***

52. With this as the background, the facts stated in the Habeas Corpus Petition will have to be examined.

53. I must also point out that this Judgment of the Hon'ble Supreme Court was not brought to the notice of this Court by either of the learned Senior Counsels for the petitioner or by the learned Solicitor General. There is only a passing extract from it in the written notes presented by the learned Solicitor General.

54. That Judgment gave the facts leading to the registration of the ECIR by the respondents herein and also speaks upon the conduct of the detenue.

55. In the Habeas Corpus Petition, the petitioner had stated that a case has been registered against the detenue which is now pending as C.C.Nos. 19 24 and 25 of 2021 before the Additional Special Court for Trial of MP's / MLA's. It was also stated that in the final reports, the offences alleged were under Sections 406, 409, 420, 506(i) read with 34 of IPC. It was also stated that the said offences were alleged to have been committed in the year 2014 when the detenue was Minister for Transport, Government of Tamilnadu.

56. It had been further stated in the affidavit that the allegation was that some of the employees of the detenue had received money for appointments in the Transport Corporation. She further stated that there was no direct allegation against the detenue and none of the witnesses had implicated him in those cases.

57. This statement has to be balanced with the facts as stated by the Hon'ble Supreme Court in the Judgment referred supra which had presented a distinctly different view.

58. It had also been stated in the affidavit that the respondent/ Enforcement Directorate had registered an Enforcement Case Information Report/ ECIR on the basis of the allegations in aforementioned Calendar Cases.

59. It had then been further stated that on 13.06.2023, the respondents suddenly came to the official residence of the detenue at

Greenways Road in Chennai in the morning and commenced interrogation at 7.30 a.m. She further stated that she reliably learned that the interrogation was conducted for a period of 16 hours and that the detenue he was not provided food or water and that he suddenly fell sick, suffered severe chest pain and breathing trouble, consequent to which he was admitted in the Tamilnadu Government Multi Super Specialty Hospital and was getting treatment.

60. She also stated in the affidavit that his official residence was searched and his office at the Secretariat was also searched. She also stated that he was illegally detained in his house and was not allowed to meet any of his relatives, friends and advocates. She finally stated that he was under the illegal custody by the respondents.

61. She further stated that she reliably learnt that he gave his fullest co-operation for the enquiry conducted by the respondents and that the respondents had detained him without following due process of law. She also stated that she had come to understand that the detenue was arrested at around 1.30 a.m., on 14.06.2023 for the offence under Section 4 of the

PMLA Act 2002. She further claimed that she came to know about this arrest only when the electronic media flash a news that he was arrested.

62. Let me at this juncture take the case of the respondents, who stated that just after, after 8.00 a.m., on 14.06.2023 itself, an electronic mail had been sent to the from the petitioner. This fact was suppressed in the Habeas Corpus Petition.

63. She further enlightened the provisions of Section 4 of PMLA Act. She also stated about Section 41(A) of the Code of Criminal Procedure and also stated that she had been advised to state that the Hon'ble Supreme Court in ***Satender Kumar Antil vs. Central Bureau of Investigation and Another [2021 SCC Online SC 3302]*** had emphasised that there should be compliance of the procedure under Section 41-A of the Code of Criminal Procedure. She also reproduced the relevant paragraphs of the said Judgment for *easy reference* of the Division Bench which had heard the Habeas Corpus Petition and also for quick reference of this Court.

64. She also brought to the notice about Article 22(1) of the Constitution of India and stated that in accordance with the same, no

person, who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.

65. She also referred to Sections 50 and 50 A of Cr.P.C., and though she stated that she is extracting the same, the provisions had is not been extracted in the petition.

66. She also referred to Section 60-A of the Code of Criminal Procedure.

67. She also stated that she had been advised to bring to the notice of the Division Bench, the ruling of the Hon'ble Supreme Court in ***Madhu Limaye and Others 1969 1 SCC 292*** and extracted paragraph Nos. 11 and 12 of the said Judgment.

68. She finally claimed that the detenue/ her husband was illegally detained from 7.00 a.m., on 13.06.2023 till 2.00 a.m., on 14.06.2023 and

was also incidentally manhandled by the respondents and their Officers and that he became seriously ill and after the arrest for getting medical fitness certificate for the purpose of remand, he was taken to Omandurar Government Multispeciality Hospital at Chennai about 2.00 a.m. She also extracted the opinion of the Doctors of the hospital. They had referred to the detenue as *Hon'ble Minister Thiru. V.Senthil Balaji*, aged 47 / male, presented with C/o. Chest on 14.06.2023 at 2.10 a.m. They then proceeded to certify that at that time he had suffered from *Tachycardia with Acceleration Hypertension and Abnormal ECG changes*. They also stated that he had been admitted in the hospital and was under constant observation in Cardiac ICU. They also stated that he was under the critical case of the Management of the hospital.

69. The petitioner also stated in her affidavit that the action of the respondents had a political motive. She charged the respondents as being an agency of the Union Government, used to defame and demoralise the detenu, who according to her was a successful Minister of the Government of Tamil Nadu.

70. She stated that she had sent a report on 14.06.2023 to the respondents but complained that the same was not considered.

71. It was under those circumstances calling upon the Court to issue a writ of Habeas Corpus seeking to produce the body of the detenue/ her husband that she had presented the Habeas Corpus Petition on 14.06.2023 itself.

72. The above, in effect are the allegations under which the Habeas Corpus Petition came to be filed.

73. Even before examining other facts or the arguments advanced by, it would only be appropriate that a brief outlay is given as to what exactly are the scope and objects of the Act which is now under consideration, namely, the Prevention of Money Laundering Act, 2002 and also incidentally about the locus or status of the respondents.

74. It is quite interesting to note that the Enforcement Directorate was established as early as on 01.05.1956. This would evidently mean as an organisation or as an entity it has been in the public field for more than half a century. It is stated to be a law enforcement agency, charged with

responsibility to prevent economic loss and to fight economic crime. The Act as such, namely, PMLA 2002 was granted the assent of the His Excellency, the President of India on 17.01.2023.

75. In the objects, it had been stated that it is an Act to prevent money laundering and to provide for confiscation of property derived or involved in money laundering and for matters connected there to or incidental there to. It had been enacted consequent to two resolutions adopted by the United Nations General Assembly to which India is also a signatory.

76. In the said Act, Sub-Section 2 is the definition provision. A few relevant provisions are extracted:-

77. Section 2(a) defines an Adjudication Authority as follows:-

"Adjudicating Authority" means an Adjudicating Authority appointed under sub-

section (1) of section 6;"

78. Section 2(1)(b) defines an Appellate Tribunal, as follows:-

> *""Appellate Tribunal" means the Appellate Tribunal referred to in section 25;"*

79. Section 2(n)(a) defines investigation as follows:-

> *""investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorized by the Central Government under this Act for the collection of evidence;"*

80. Section 3 in Chapter II gives the definition of the offence of money laundering. It is as follows:-

> *"Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or*

activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

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

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or

indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."

81. Section 4 gives the punishment for money laundering. It is as follows:-

"Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."

82. Chapter 3 of the said Act deals with attachment of the property involved in money laundering and Section 5 and Section 6 are about

adjudicating authorities. Section 8 is about the actual adjudication. Section 16 gives the power of survey. It is as follows:-

> *"**(1)**Notwithstanding anything contained in any other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—*
>
> ***(i)** within the limits of the area assigned to him; or*
>
> ***(ii)** in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,*
>
> *at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—*
>
> ***(i)** afford him the necessary facility to inspect such records as he may require and which may be available at such place;*

(ii) *afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and*

(iii) *furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.*

Explanation*—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.*

(2) *The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with 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 reasons and material for such period as may be prescribed.*

(3) *An authority acting under this section may—*

(i) *place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from,*

(ii) *make an inventory of any property checked or verified by him, and*

(iii) *record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act."*

83. Section 17 relates to search and seizure. It is as follows:-

*"**(1)** Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—*

(i) *has committed any act which constitutes money-laundering, or*

(ii) *is in possession of any proceeds of*

crime involved in money-laundering, or

(iii) *is in possession of any records relating to money-laundering, or*

(iv) *is in possession of any property related to crime,*

then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) *enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;*

(b) *break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;*

(c) *seize any record or property found as a result of such search;*

(d) *place marks of identification on such record or property, if required or make or cause to be made extracts or copies therefrom;*

(e) *make a note or an inventory of such record or property;*

(f) *examine on oath any person, who is*

found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

2 * * * * 3(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:*

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.

***(2)** The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with 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 reasons and material for such period, as may be prescribed.

(3) *Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:*

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section. 4[(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing

served under sub-section (1A), before the Adjudicating Authority.]"

84. Section 19 gives the power to arrest. It is as follows:-

*"**19. Power to arrest.—***

***(1)** If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

***(2)** The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.*

***(3)** Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a 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 Magistrate's Court."

85. Section 24 gives the burden of proof. It is as follows:-

*"**24. Burden of proof**.—In any proceeding relating to proceeds of crime under this Act,—*

***(a)** in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and*

***(b)** in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]"*

86. Section 43 provides about Special Courts to try offences under the Act. Section 44 relates to the offences triable by the Special Court. Section 45 provides that the offences shall be cognizable and non bailable.

87. Chapter 9 deals with authorities under the Act. Section 50 gives the powers of the authorities to issue summons, for production of documents and to give evidence.

88. Section 62 which comes under Chapter 10 relates to miscellaneous provisions and gives the punishment of vexatious search.

89. Section 65 is as follows:-

> *"**65. Code of Criminal Procedure, 1973 to apply.**—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act."*

90. Section 71 states that the Act shall have a overriding effect. It is as follows:-

> *"**71. Act to have overriding effect.**—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."*

91. In the schedule part -A relates to offences under the Indian Penal Code. Thereafter, various other enactments are also given and where there is information about commission of such offence and there is further information about proceeds of crime consequent to commission of such offences or allegation of commission of such offences, a right accrues under this particular Act to launch an independent enquiry relating to the proceeds of crime and such enquiry can also determine where it had been secreted. The aim is to confiscate such proceeds of crime with the hope that atleast some portion of the same could be returned back to the victims or complainants.

92. Rules had also been framed. I would only refer to *PMLA (Restoration of Property Rules 2016)* which had been brought into effect on 26.09.2016. It defines the word claimants as follows:-

> *"**2(b)** "claimant" means a person who has acted in good faith and has suffered a quantifiable loss as a result of the offense of Money-laundering despite having taken all reasonable precautions, and is not involved in the offense of money-*

laundering;"

93. A perusal of the aforementioned definition shows that a claimant could be a person, who had suffered a quantifiable loss, as a result of the offence of money laundering, despite having taken all reasonable precautions, and is not involved in the offence of money laundering. In effect, means a victim of crime, who had suffered monetary loss.

94. This particular Rule gives a small window to such person, a victim or claimant to seek return of the money if it is confiscated by the respondents. It requires a restoration order to be passed by the Special Court.

95. I must point out with much anguish that though arguments had been advanced holding that the detenue a sitting Minister is the victim, not one word was even whispered was about the plight of the actual victims in what has to be called the predicate offences. A predicate offence is the basis on which the respondents registered the ECIR.

96. In the instant case, the predicate offence was that the detenue or persons working under him either directly or indirectly, with his knowledge or without his knowledge or in some other manner had received bribe amounts from various individuals holding out a promise that they would be given employment in the Transport Department. The detenue was incidentally the Minister for Transport in the State Government.

97. As seen from the facts as reduced by the Hon'ble Supreme Court, the defacto complainant himself, who complained that he had given such money and suffered personal loss subsequently turned around and complained against the final report filed and had sought a de nova investigation.

98. Let me not go back to the observations of the Hon'ble Supreme Court but a reading of the same would be extremely revealing. This Court has not forgotten their words. Even if the victims therein are hidden from this proceeding and even if it is taken that they had willingly parted with bribe money to those whom are now categorised as accused in the various

Calendar Cases, still, it should not be forgotten that such money would have been given by selling the bangles of the lady in the house, by mortgaging the house itself, by putting aside necessary expenses for the family and by borrowing money and falling into a debt trap. They suffered loss with the hope that a job would be given. Eventhough the legality of their act is not examined, their shadow should also be taken into consideration by this Court while examining the various arguments advanced on behalf of the petitioner herein. It should be first stated that as the pre-condition for registration of an ECIR under the PMLA 2002, there must be a predicate offence and it should be one where there are proceeds of crime.

99. In the instant case, the calendar cases are predicate offences. There are allegations of huge amounts being paid whether the amount were received or were not received or received and laundered requires further examination.

100. There is one further argument which had been advanced and I would like to clear the air about that and then go forward with the actual arguments advanced by both the learned Senior Counsel for the petitioner and by the learned Solicitor General. This is with respect to the nature of investigation / enquiry under the Act. It had been contended on behalf of

the petitioner that enquiry in this Act cannot be termed as an investigation as is stated under the Code of Criminal Procedure.

101. However, the word "*investigation"* has been defined in the Act and had also been used in several places in the Act.

102. It is for that purpose, that I would state that the object of the Act is two fold. One is to determine the trail of the tainted amount and to confiscate it and if possible return it back to the victim. The other is to punish the accused for the offence of money laundering. Then Sections 3 and 4 comes into play. That is a penal procedure.

103. While determining the flow of money, there are Authorities established under the Act and there is an Appellate Tribunal. The matter moves forward through that process.

104. Simultaneously, to examine whether an offence is made out

under Section 3, as punishable under Section 4, an independent line of enquiry or investigation is required.

105. Thus, though both are independent procedures one overlaps the other. The end object is different. One results ultimately in recovering the tainted money and if possible in returning it to the lawful claimants, the other results in imposing of punishment of maximum of 7 years as provided under the Act. This distinction must be kept in mind.

106. The provisions of the Act as stated above, also provides for recording of a statement under Section 50 of the Act. It had been argued that this particular statement is admissible in a Court of law. It is recorded prior to the actual arrest of the individual or a person. Subsequent to arrest, the provision under Section 50 does not come into play but that can never imply that the respondents are precluded from recording statements or continuing with enquiry / investigation.

107. Let me state an alternate phrase forensic accounting to enquiry/ investigation which would indicate a combination of accounting

and investigating techniques used to discover financial crimes.

108. This forensic accounting or enquiry/investigation is required because the tainted money had been laundering into various transactions and has finally disappeared.

109. To take the instant case let me take the case of Devasagayam. He complained that he had given a sum of Rs.2,40,000/- with the hope that he would be given a job. The legality of that is to be discussed elsewhere. To determine where this sum of Rs.2,40,000/- actually went and whether it had been brought into the main stream as legal money is the purpose of this particular Act and if it is found that the money had been laundered, and put through various transactions then, if it is to be recovered, it could be returned back and restored to Devasagayam if he is willing to take it. As a fact he had however turned himself to the side of the accused therein. For that particular act of money laundering, by converting the money, an independent prosecution is also permissible under the Act leading to punishment of the persons involved in such money laundering.

110. Thus, these two aspects will have to be kept in mind before entering into a discussion, on the facts of this particular Habeas Corpus Petition.

111. Let me just fall back to one particular Judgement shall would touch on the concept of restoration of money. That is a Judgment of the House of Lords, **R Vs May** reported in **[2005 EWCA Crime 97]** equivalent to ***[2008] UKHL 28*.**

112. Let me not enter into a discussion on that particular Judgment but cite it to give a guideline as to the restoration concept. The accused therein, 16 in number, were charged with evasion of customs and vat duty. The amount involved was finally recovered. A restoration order was passed that each one of them should pay back the proceeds of the Crime.

113. An argument was advanced that this would enrich the State 16 times over as the same amount is to be paid by each one of them. This argument was rejected by the House of Lords and the concept was that each one of them had participated equally in the crime and therefore, was responsible when an order of confiscation and restoration is passed to pay

back the entire amount by each of them.

114. This concept provides a guideline as to the seriousness with which restoration and confiscation is taken.

115. Let me now address the points of difference between the two learned Judges.

(i) Whether the Enforcement Directorate has the power to seek custody of a person arrested?

116. Mr.Kapil Sibal, the learned Senior Counsel appearing on behalf of the petitioner had placed reliance on a Judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary Vs. Union of India, [2022 SCC Online 929]*** which had been examined in detailed. This had on PMLA 2002.

117. It is the contention of the learned Senior Counsel that to take custody, the respondents should be first categorised as Police Officers. It is

asserted that they are not Police Officers.

118. This assertion is correct.

119. The respondents are not Police Officials. They have never been categorised as Police Officials anywhere in the Act.

120. They need not be. The authorities under the Act to recaptulate, had been given various nomenclatures. They have been stated to be Director, Additional Director, Joint Director, Deputy Director of the Enforcement Directorate. This assertion of the learned Senior Counsel is also not denied or disputed by the respondents.

121. In this case, an application was filed by the respondent seeking custody of the detenue. On the date when such application was filed, the nomenclature of the detenue had metamorphorsised to an accused consequent to an order of remand being passed by the learned Principal Sessions Judge at Chennai. The learned Principal Sessions Judge had

granted such custody.

122. Let me also extract Sections 167(1) and also (2) of the Code of Criminal Procedure.

> *"**(1)** Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*
>
> ***(2)** The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the*

case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-

.....

123. In the instant case, the fact remains that the detenue herein had been arrested by the respondents. While examining whether the respondents have a right to seek custody or whether such right is vested or whether such right is vested owing to the nature of the official duties which the respondent discharge, it must be kept in mind that the person has been arrested and is under judicial custody. The legality of the remand will be examined independent of this particular issue.

124. Section 167(1) as stated provides that when any person is arrested and detained in custody, which would mean that the person so arrested had not been released on bail by the Police Official himself but detained in custody, if investigation had not been completed within a period of 24 hours. then, he should be produced before the jurisdictional Magistrate within a period of 24 hours. The Police Officials, who had so

arrested the accused must have grounds to believe that the persons so arrested is required for further examination.

125. Sub-clause (2) of Section 167 then provides that the said Magistrate to whom this particular accused is produced on being arrested, shall authorise the detention of the accused in such custody as the Magistrate deems fit. This detention shall be only for 15 days from the date of the first initial remand by the Magistrate. It could be less, but it cannot be more.

126. The term *'such custody*' since it is to be exercised within a period of 15 days has been alternatively stated to be just judicial custody but custody to the Officers, who so produce the accused. Conditions are imposed.

127. The Legislature, in none of the enactments have stated about police custody. It could be stated in the Rules like the Police Stating Orders. It could be there among the guidelines given to the Police Officials, who take the accused on custody. But in the Principal enactment, Legislature had never thought it would be advisable to specifically provide 'Police Custody' as a provision of law.

128. The custody of a particular individual can be granted to the police for further investigation. It is only an ancillary provision in the Rules or in the Police Standing Orders that such police custody is actually indicated and responsibility is thrust on the police official to whom such custody is granted. This is because the fundamental principle on which this particular provision will have to be tested is on the basis of the Constitution which guarantees life and liberty to every individual which should not be restricted except by due process of law.

129. This provision has been read by the learned Senior Counsel Mr.Kabil Sibal in conjunction the definition of a police officer as given in the Code of Criminal Procedure under Section 2(o) which relates to an Officer in Charge of a police station. Both these provisions, namely Section 2(o) and Section 167 are to be read in conjunction with each other and it is the contention of the learned Senior Counsel that unless the respondents are police officers, they cannot, in their wildest dream contemplate grant of an order of custody of an accused to them.

130. Let me state the argument put forth by the learned Solicitor General on this aspect.

131. It is the contention of the learned Solicitor General that when a person is arrested under the PMLA 2002 under Section 19 of the said Act, there is an in built provision which necessitates production of the said person before a competent Court within a period of 24 hours. It is stated that the power to further examine is in built with the right vest with the respondents.

132. The learned Solicitor General wondered if Section 167 were to be read not applicable in entirety and if a person is arrested and there is an obligation to produce him before the Magistrate within a period of 24 hours and if the offence under the PMLA 2002 is non bailable and therefore, the person arrested can not be let out on bail, the only option is to remand him to judicial custody. When that is permissible, it is contended that custody is required to conduct further investigation or enquiry.

133. To examine this line of argument further, Section 19 of the Act

will have to be looked into. Section 19 of the PMLA 2002 gives the power to arrest. It had been extracted above. It is extracted again:-

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

134. The learned Senior Counsel Mr.Kabil Sibal read this particular provision and argued that a statement under Section 50 had already been recorded. Search had already been conducted. Materials had already been collected. On the basis of those materials, an arrest can be done only when those materials give a reason for the respondents to believe that the person is guilty of the offences.

135. This would impliedly mean that the precondition of arrest is availability of sufficient materials. It is a restraint and such restraint is legalised by the word 'arrest' and the person is handed over to judicial custody. The detention alone is regularised but materials had already been gathered and these materials have given a reason to believe that the person is guilty. It is therefore contented that since all the materials have been collected, no further enquiry is required into the offence and therefore, custody cannot be granted or cannot be sought as a matter of right and even

if sought should be rejected because the respondents are not police officials.

136. There is one small fallacy in the said argument.

137. Chapter V of the Act deals with summons, searches and seizures etc., which expands the scope of those three words to any logical conclusion. Section 16 first provides the power of survey. It provides the authority on the basis of existing materials, and it can be safely stated that the existing material should be the materials gathered from the predicate offence, has reason to believe that an offence under Section 3 had been committed, then the respondents in this case, or the authority can enter into any place within the area assigning to him and require any person to provide facilities to inspect records, to provide facilities to verify proceeds of crime or any transaction and to furnish such information as is required. This is a survey consequent to information already in possession of the respondents.

138. After this survey is done, Section 16 itself provides that a copy of the same of whatever is recovered or whatever is observed during the

pre-survey should be forwarded to the Adjudicating Authority in a sealed envelope.

139. The authority who conducts the survey also has the right to make an inventory for proper verification by him and to record the statement for any person present in the place. This provides for survey and survey alone and not for seizure of materials. It is the verification of whatever records are found in the place where such survey is conducted.

140. The next provision under Section 17 relates to search and seizure. This provides that when there are reasons to believe on the basis of information that any person has committed money laundering or was in possession of proceeds of crime, then the person authorised, in contrast to the power of survey where it is only stated that the authority can conduct survey, can also search and seize, this person authorised is the Director or any officer authorised by him not below the rank of Deputy Director.

141. The nature of the officials therefore changes. The object of the entering into the place is also different. The first one is to conduct survey

which is a preliminary examination by an authority. Section 17 relates to search and seizure by a Director or anybody authorised by him. This Director or any person can enter, on the basis of information, while conducting search and seizure, any building and he can also break open the lock of any door of any box, of any locker, of any safe, of any almirah or any other receptacle wherein he believes certain materials have been secluded. Not only can he break open the lock, he can also seize any record or property which is fundamental to such search. He then has to make a note of the inventory, and examine any person and as a matter of fact, seize those properties. This power is given under Section 17 of the Act. This process of seizure and the result of such seizure shall be communicated to the Adjudicating Authority in a sealed envelope.

142. The next provision under the said chapter is search of persons. This is by an authority under the Act.

143. After these provisions, Section 19 comes in to play. Section 19 again does not state about authority but specifically mentions the Director, a Deputy Director and Assistant Director or any other Officer authorised

specifically in this regard. If such officer has reasons to believe and he must record those reasons in writing that any person is guilty of an offence punishable under the Act, he may arrest such person. The distinction lies in that he must have formed an opinion that the person involved is guilty of an offence punishable under the Act. Once the word punishment comes in then it has to be only by a penal procedure. That penal procedure has to be only under Sections 3 and 4 of the Act. Once we relate this particular arrest to Sections 3 and 4, then this person, who is so arrested will have to subjudicate himself to the laws of trial of an offence punishable and such trial should be under the provisions of the Code of Criminal Procedure.

144. It has been very specifically stated that the procedure before the Special Court for conducting trial will be as given under the Code of Criminal Procedure.

145. Once it is stated that the Code of Criminal Procedure applies, then these persons, namely, the Director, the Deputy Director, the Assistant

Director, who are not police officials can take advantage of every provision under the Code of Criminal Procedure to obtain, in their opinion a logical conclusion to the trial process. If that step requires further investigation then they have every right to seek custody.

146. Enquiry would be with respect to the ultimate finding about the proceeds of crime and its confiscation and restoration. Investigation leads to punishment of an offence. The terms can be used independently. They can be used alternatively. In every place in the Act, the word investigation alone is used. When once the procedures under the provisions under the Criminal Procedure Code are applicable, then the provisions relating to all aspects of investigation would become applicable. These would be become applicable so long as they are not inconsistent of this Act. If they are in consistent, then, the provisions of this Act alone would apply.

147. This observation is placed by me on record since an argument had also been advanced relating to the applicability or non applicability of Section 41-A of the Code of Criminal Procedure qua Section 19 of PMLA 2002 relating to the procedure to be adopted during and after the course of arrest.

148. Let me now go to the Judgments under this particular provision.

149. The Judgment which has been relied on by the learned Senior Counsel on behalf of the petitioner is ***Vijay Madanlal Choudhary Vs. Union of India, [2022 SCC Online 929]***.

150. A batch of Petitions had been filed before the Hon'ble Supreme Court questioning the virus of the Act.

151. It should be kept in mind that any statement recorded under Section 50 of PMLA 2002 is admissible only because it is recorded prior to the arrest of the person.

152. It had been contended before the Hon'ble Supreme Court the Officials of the Enforcement Directorate are Police Officials and therefore, if they were to record a statement under Section 50 of the Act, such statement should be considered to be inadmissible.

153. The Hon'ble Supreme Court after a detailed discussion held

that the officials of the Enforcement Directorate are not police officials. They had therefore stated that a statement referred under Section 50 of the Act is admissible. This statement is recorded prior to arrest but when such person is under custody of the officials of the Enforcement Directorate.

154. It had been stated by the Hon'ble Supreme Court that any material collected after survey and after search and seizure and already available can be used by the respondent / Enforcement Directorate to *bolster* their complaint relating to the offence under the money laundering Act. This would indicate that these materials so collected can also form an additional part of the materials filed when preferring a complaint before the competent Court. If they were to be part of the complaint, then each and every material so collected, should be independently admissible in evidence.

The analysis of such evidence is a different issue which is a matter of trial process but they could form part of the complaint and therefore, the said statements can be taken into consideration. This has to be contradicted with

any statement recorded by the respondents after the arrest of the individual. Such statement cannot be made admissible even if they are not police officials since the person is under arrest.

155. It is for that purpose that the word 'bolster' referred supra assumes significance. It also envisages the usage of the words enquiry and investigation alternatively.

156. One enquiry / investigation is with respect to the recovery of money, attachment and adjudication by the Appellate Authority with final object to return back the money to the victim. The other aspect is respect to the punishment for the offence of money laundering. This aspect of trial for the offence of money laundering is within the jurisdiction of the Special Court. Confiscation of the property is within the jurisdiction of the Appellate Authority which is independently constituted. The Special Judge may examine an application for actual restoration of the property by the defacto complainant or claimant.

157. There is a slight distinction in the application. It has to be made also clear that money laundering is an independent offence in itself. But it requires a predicate case before a ECIR is registered by the

respondents.

158. Let me now state the rationale of the Hon'ble Supreme Court.

159. In ***2022 SCC OnLine SC 929, Vijay Madanlal Choudhary vs. Union Of India***, the Hon'ble Supreme Court had held as follows:

> *"**246.** We would now elaborate upon the meaning of "investigation" in Clause (na) of Section 2(1). It includes all proceedings under the Act conducted by the Director or an authority authorised by the Central Government under this Act for collection of evidence. The expression "all the proceedings under this Act" unquestionably refers to the action of attachment, adjudication and confiscation, as well as actions undertaken by the designated authorities mentioned in Chapter VIII of the Act, under Chapter V of the Act, and for facilitating the adjudication by the Adjudicating Authority referred to in Chapter III to adjudicate the matters in issue, including until the filing of the complaint by the authority authorised in that behalf before the Special Courts constituted under Chapter VII of the Act. The expression "proceedings", therefore, need not be given a narrow meaning only to limit it to proceedings before the Court or before the Adjudicating Authority as is*

contended but must be understood contextually. This is reinforced from the scheme of the Act as it recognises that the statement recorded by the Director in the course of inquiry, to be deemed to be judicial proceedings in terms of Section 50(4) of the 2002 Act. Needless to underscore that the authorities referred to in Section 48 of the Act are distinct from the Adjudicating Authority referred to in Section 6 of the 2002 Act. The Adjudicating Authority referred to in Section 6 is entrusted with the task of adjudicating the matters in issue for confirmation of the provisional attachment order issued under Section 5 of the 2002 Act, passed by the Authority referred to in Section 48 of the Act. The confirmation of provisional attachment order is done by the Adjudicating Authority under Section 8 of the 2002 Act, and if confirmed, the property in question is ordered to be confiscated and then it would vest in the Central Government as per Section 9 of the 2002 Act subject to the outcome of the trial of the offence under the 2002 Act (i.e., Section 3 of offence of money-laundering punishable under Section 4). Suffice it to observe that the expression "proceedings" must be given expansive meaning to include actions of the authorities (i.e., Section 48) and of the Adjudicating Authority (i.e., Section 6), including before the Special Court (i.e., Section 43). 247. The task of the Director or an authority authorised by the Central Government under the 2002 Act for the collection of evidence is the intrinsic process

of adjudication proceedings. In that, the evidence so collected by the authorities is placed before the Adjudicating Authority for determination of the issue as to whether the provisional attachment order issued under Section 5 deserves to be confirmed and to direct confiscation of the property in question. The expression "investigation", therefore, must be regarded as interchangeable with the function of "inquiry" to be undertaken by the authorities for submitting such evidence before the Adjudicating Authority.

.....

248. In other words, merely because the expression used is "investigation" — which is similar to the one noted in Section 2(h) of the 1973 Code, it does not limit itself to matter of investigation concerning the offence under the Act and Section 3 in particular. It is a different matter that the material collected during the inquiry by the authorities is utilised to bolster the allegation in the complaint to be filed against the person from whom the property has been recovered, being the proceeds of crime. Further, the expression "investigation" used in the 2002 Act is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act, including collection of evidence for being presented to the Adjudicating Authority for its consideration for confirmation of provisional attachment order. We need to keep in mind that the expanse of the provisions of the 2002 Act is of prevention of

money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof, including vesting of it in the Central Government and also setting up of agency and mechanism for coordinating measures for combating money-laundering.

.....

324. *This argument clearly overlooks the overall scheme of the 2002 Act. As noticed earlier, it is a comprehensive legislation, not limited to provide for prosecution of person involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering. It also provides for prosecuting the person involved in such activity constituting offence of money-laundering. In other words, this legislation is an amalgam of different facets including setting up of agencies and mechanisms for coordinating measures for combating money-laundering. Chapter III is a provision to effectuate these purposes and objectives by attachment, adjudication and confiscation. The adjudication is done by the Adjudicating Authority to confirm the order of provisional attachment in respect of proceeds of crime involved in money-laundering. For accomplishing that objective, the authorities appointed under Chapter VIII have been authorised to make inquiry into all matters by way of survey, searches and seizures of records and property. These provisions in no way invest power in the Authorities referred to in Chapter*

VIII of the 2002 Act to maintain law and order or for that matter, purely investigating into a criminal offence. The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However, it is essentially an inquiry to collect evidence to facilitate the Adjudicating Authority to decide on the confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of Section 9 of the 2002 Act. ***In other words, the role of the Authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the 2002 Act before the Special Court, if the fact situation so warrant.*** *It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money-laundering.* ***It is also not unusual to provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity****. The respondent has rightly adverted to somewhat similar provisions in other legislations, such as Section 35 of FERA and Section 102 of*

Customs Act including the decisions of this Court upholding such power of arrest at the inquiry stage bestowed in the Authorities in the respective legislations. In Romesh Chandra Mehta Vs. State of West Bengal, (1969) 2 SCR 461, the Constitution Bench of this Court enunciated that Section 104 of the Customs Act confers power to arrest upon the Custom Officer if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 of that Act. Again, in the case of Union of India Vs. Padam Narain Aggarwal, (2008) 13 SCC 305 while dealing with the provisions of the Customs Act, it noted that the term "arrest" has neither been defined in the 1973 Code nor in the Penal Code, 1860 nor in any other enactment dealing with offences. This word has been derived from the French word "arrater" meaning "to stop or stay". It signifies a restraint of a person. It is, thus, obliging the person to be obedient to law. Further, arrest may be defined as "the execution of the command of a court of law or of a duly authorised officer". Even, this decision recognises the power of the authorised officer to cause arrest during the inquiry to be conducted under the concerned legislations. While adverting to the safeguards provided under that legislation before effecting such arrest, the Court noted as follows:

"Safeguards against abuse of power

36. From the above discussion, it is amply clear that power to arrest a person by a Customs Officer is statutory in character and cannot be interfered with. Such power of arrest can be exercised only in those cases where the Customs Officer has "reason to believe" that a person has been guilty of an offence punishable under Sections 132, 133, 135, 135-A or 136 of the Act. Thus, the power must be exercised on objective facts of commission of an offence enumerated and the Customs Officer has reason to believe that a person sought to be arrested has been guilty of commission of such offence. The power to arrest thus is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer.

37. The section 534 also obliges the Customs Officer to inform the person arrested of the grounds of arrest as soon as may be. ***The law requires such person to be produced before a Magistrate without unnecessary delay.***

38. The law thus, on the one hand, allows a Customs Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. ...."

.....

435. We are conscious of the fact that the expression used in Section 2(1)(na) of the 2002 Act is "investigation", but there is obvious distinction in the expression "investigation" occurring in the 1973 Code. Under Section 2(h) of the 1973 Code, the investigation is done by a "police officer" or by any person (other than a Magistrate) who is authorised by a Magistrate thereby to collect the evidence regarding the crime in question. ***Whereas, the investigation under Section 2(1)(na) of the 2002 Act is conducted by the Director or by an authority authorised by the Central Government under the 2002 Act for the collection of evidence for the purpose of proceeding under this Act****. Obviously, this investigation is in the nature of inquiry to initiate action against the proceeds of crime and prevent activity of money-laundering. In the process of such investigation, the* ***Director*** *or the authority authorised by the Central Government referred to in Section 48 of the 2002 Act* ***is empowered to resort to attachment of the proceeds of crime and for that purpose, also to do search and seizure and to arrest the person involved in the offence of money-laundering****. While doing so, the prescribed authority (Director, Additional Director, Joint Director, Deputy Director or Assistant Director) alone has been empowered to summon any person for recording his statement and production of documents as may be necessary by virtue of Section 50 of the 2002 Act. Sensu stricto, at this stage (of issuing*

summon), it is not an investigation for initiating prosecution in respect of crime of money-laundering as such. ***That is only an incidental matter and may be the consequence of existence of proceeds of crime and identification of persons involved in money-laundering thereof.*** *The legislative scheme makes it amply clear that the authority authorised under this Act is not a police officer as such. This becomes amply clear from the speech of the then Finance Minister delivered in 2005, which reads thus:*

> *"Sir, the Money-Laundering Act was passed by this House in the year 2002, and number of steps have to be taken to implement it. Sir, two kinds of steps were required. One was to appoint an authority who will gather intelligence and information, and the other was an authority to investigate and prosecute. This Act was made to implement the political declaration adopted by the Special Session of the UN General Assembly in 1999. Section 1(3) of the Act stipulates that the Act will come into force on such date as the Central Government may by notification appoint. While we were examining the question of notifying the Act, I found that there was certain lacunae in the Act. I regret to say that not enough homework had been done in the definitions, and in the division of responsibility and authority. So, in*

consultation with the Ministry of Law, we came to the conclusion that these lacunae had to be removed. Broadly, the reasons for the amendment are the following.

Under the existing provisions in Section 45 of the Act, every offence is cognizable. ***If an offence is cognizable, then any police officer in India can arrest an offender without warrant. At the same time, under Section 19 of the Act, only a Director or a Deputy Director or an Assistant Director or any other officer authorised, may arrest an offender. Clearly, there was a conflict between these two provisions.*** *Under Section 45(1)(b) of the Act, the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint made in writing by the Director or any other officer authorised by the Central Government. So, what would happen to an arrest made by any police officer in the case of a cognizable offence? Which is the court that will try the offence? Clearly, there were inconsistencies in these provisions.*

They have now been removed. ***We have now enabled only the Director or an officer authorised by him to investigate offences****. Of course, we would, by*

rule, set up a threshold; and, below that threshold, we would allow State police officers also to take action.

The second anomaly that we found was that ***the expression "investigation officer" and the word "investigation" occur in a number of sections but they were not defined in the Act. Consequently, one has to go to the definition in the Criminal Procedure Code and that Code provides only "investigation by a police officer or by an officer authorised by a magistrate". So, clearly, there was a lacuna in not enabling the Director or the Assistant Director under this Act to investigate offences.*** *That has been cured now.*

....

What we are doing is, we are inserting a new Section, 2(n)(a) defining the term, 'investigation'; making an amendment to Sections 28, 29 and 30, dealing with tribunals; amending Sections 44 and 45 of the Act to make the offence non-cognisable so that only the Director could take action; and also making consequential changes in Section 73. I request hon. Members to kindly approve of these amendments so that the Act could be amended quickly and we could bring it

into force."

436. From this speech, it is more than clear that the intention of the Parliament was to ***empower the prescribed Authority*** *under Section 48 including the class of officers appointed for the purposes of this Act* ***to investigate the matters falling within the purview of the Act*** *and in the manner specified in that regard. By inserting Section 45(1A) in the 2002 Act vide amendment Act 20 of 2005, was essentially to restrict and explicitly disable the police officer from taking cognizance of the offence of money-laundering much less investigating the same. It is a provision to restate that only the Authority (Section 48) under this Act is competent to do investigation in respect of matters specified under the 2002 Act and none else. This provision rules out coextensive power to local police as well as the authority authorised. As aforementioned, the officer specifically authorised is also expected to confine the inquiry/investigation only in respect of matters under this Act and in the manner specified therein.*

437. ***The purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering.*** *It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any*

proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.

444. The petitioners, however, have pressed into service exposition of this Court in the recent decision in Tofan Singh691, which had occasion to deal with the provisions of the NDPS Act wherein the Court held that the designated officer under that Act must be regarded as a police officer. The Court opined that the statement made before him would be violative of protection guaranteed under Article 20(3) of the Constitution. This decision has been rightly distinguished by the learned Additional Solicitor General on the argument that the conclusion reached in that judgment is on the basis of the legislative scheme of the NDPS Act, which permitted that interpretation. However, it is not possible to reach at the same conclusion in respect of the 2002 Act for more than one reason. In this decision, the Court first noted that the Act (NDPS Act) under consideration was a penal statute. In the case of 2002 Act, however, such a view is not possible. The second aspect which we have repeatedly adverted to, is the special purposes and objects behind the enactment of the 2002 Act. As per the provisions of the NDPS Act, it permitted both a regular police officer as well as a designated officer, who is not

a defined police officer, to investigate the offence under that Act. This has resulted in discrimination. Such a situation does not emerge from the provisions of the 2002 Act. The 2002 Act, on the other hand, authorises only the authorities referred to in Section 48 to investigate/inquire into the matters under the Act in the manner prescribed therein. The provision inserted in 2005 as Section 45(1A) is not to empower the regular police officers to take cognizance of the offence. On the other hand, it is a provision to declare that the regular police officer is not competent to take cognizance of offence of money-laundering, as it can be investigated only by the authorities referred to in Section 48 of the 2002 Act. The third aspect which had weighed with the Court in Tofan Singh692 is that the police officer investigating an offence under the NDPS Act, the provisions of Sections 161 to 164 of the 1973 Code as also Section 25 of the Evidence Act, would come into play making the statement made before them by the accused as inadmissible. Whereas, the investigation into the same offence was to be done by the designated officer under the NDPS Act, the safeguards contained in Sections 161 to 164 of the 1973 Code and Section 25 of the Evidence Act, will have no application and the statement made before them would be inadmissible in evidence. This had resulted in discrimination. No such situation emerges from the provisions of the 2002 Act. Whereas, the 2002 Act clearly authorises only the authorities under the 2002 Act referred to in Section 48 to step in

and summon the person when occasion arises and proceed to record the statement and take relevant documents on record. For that, express provision has been made authorising them to do so and by a legal fiction, deemed it to be a statement recorded in a judicial proceeding by virtue of Section 50(4) of the 2002 Act. A regular police officer will neither be in a position to take cognizance of the offence of money-laundering, much less be permitted to record the statement which is to be made part of the proceeding before the Adjudicating Authority under the 2002 Act for confirmation of the provisional attachment order and confiscation of the proceeds of crime for eventual vesting in the Central Government. That may entail in civil consequences. It is a different matter that some material or evidence is made part of the complaint if required to be filed against the person involved in the process or activity connected with money-laundering so as to prosecute him for offence punishable under Section 3 of the 2002 Act. The next point which has been reckoned by this Court in the said decision is that in the provisions of NDPS Act, upon culmination of investigation of crime by a designated officer under that Act (other than a Police Officer), he proceeds to file a complaint; but has no authority to further investigate the offence, if required. Whereas, if the same offence was investigated by a regular Police Officer after filing of the police report under Section 173(2) of the 1973 Code, he could still do further investigation by invoking Section 173(8) of the 1973 Code. This,

on the face of it, was discriminatory.

.....

448. Indeed, in the original 2002 Act, as enacted, the offence of money-laundering was made cognizable as a result of which confusion had prevailed in dealing with the said crime when the legislative intent was only to authorise the Authority under the 2002 Act to deal with such cases. That position stood corrected in 2005, as noticed earlier. The fact that the marginal note of Section 45 retains marginal note that offences to be cognizable and non-bailable, however, does not mean that the regular Police Officer is competent to take cognizance of the offence of money-laundering. ***Whereas, that description has been retained for the limited purpose of understanding that the offence of money-laundering is cognizable and non-bailable and can be inquired into and investigated by the Authority under the 2002 Act alone****.*

.....

456. As per the procedure prescribed by the 1973 Code, the officer in-charge of a police station is under an obligation to record the information relating to the commission of a cognizable offence, in terms of Section 154 of the 1973 Code703. There is no corresponding provision in the 2002 Act requiring registration of offence of money-laundering. As noticed earlier, the mechanism for proceeding against the property being proceeds of crime

predicated in the 2002 Act is a sui generis procedure. No comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence governed by the provisions of the 1973 Code. In the scheme of 2002 Act upon identification of existence of property being proceeds of crime, the Authority under this Act is expected to inquire into relevant aspects in relation to such property and take measures as may be necessary and specified in the 2002 Act including to attach the property for being dealt with as per the provisions of the 2002 Act. We have elaborately adverted to the procedure to be followed by the authorities for such attachment of the property being proceeds of crime and the follow-up steps of confiscation upon confirmation of the provisional attachment order by the Adjudicating Authority. For facilitating the Adjudicating Authority to confirm the provisional attachment order and direct confiscation, the authorities under the 2002 Act (i.e., Section 48) are expected to make an inquiry and investigate. ***Incidentally, when sufficient credible information is gathered by the authorities during such inquiry/investigation indicative of involvement of any person in any process or activity connected with the proceeds of crime, it is open to such authorities to file a formal complaint before the Special Court naming the concerned person for offence of money-laundering under Section 3 of this Act.*** *Considering the scheme of the 2002 Act, though the offence of money-laundering is otherwise regarded as*

cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under 1973 Code to deal with other offences (other than money-laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money-laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money-laundering offence much less investigation thereof. The dispensation regarding prevention of money-laundering, attachment of proceeds of crime and inquiry/investigation of offence of money-laundering upto filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. ***To wit, regarding survey, searches, seizures, issuing summons, recording of statements of concerned persons and calling upon production of documents, inquiry/investigation, arrest of persons involved in the offence of money-laundering including bail and attachment, confiscation and vesting of property being proceeds***

of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money-laundering would then be governed by the provisions of the 1973 Code - as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.

(Emphasis Supplied).

160. The above extracts would indicate that the expression investigation is interchangeably used with enquiry which also relates to collection of evidence for presenting to the adjudicating authority for the confirmation of provisional attachment. The Hon'ble Supreme Court had very categorically stated that the materials so collected can be used in the complaint to bolster the facts stated therein. But after arrest the provisions of the Code of Criminal Procedure alone is applicable which includes remand to *such custody* by the Magistrate.

161. The learned Solicitor General had placed reliance on the

judgment of the Hon'ble Supreme Court reported in ***1994 3 SCC 440***, ***Directorate of Enforcement Vs. Deepak Mahajan and another***. Reliability on this judgment had been put to much criticism by Mr. Kapil Sibal, learned Senior Counsel who stated that the fact therein dealt with Foreign Exchange Regulation Act (FERA) for short and therefore, could not be made applicable. It was also pointed out that under FERA, there is a specific provision for the police officials to investigate. It had however, been stated by the learned Solicitor General that the word police official is not specifically given under the PMLA Act, since there is only one offence involved and such offence is cognizable and non-bailable and the word police official is used in the ancillary or Special Acts. Since there is also within the structure of those acts offences which are bailable and that a station officer who has power to arrest, has also been given such power to release on bail.

162. These two arguments takes us nowhere.

163. I would rest with the reasoning given in the judgment of the Hon'ble Supreme Court reported in ***2022 SCC OnLine SC 929, Vijay***

Madanlal Choudhary vs. Union Of India, wherein, even though it had been stated that the respondents are not police officials, the procedure under the Code of Criminal Procedure alone would apply post arrest which would mean Section 167 Cr.P.C., would apply, which would mean the respondents have a right to seek custody on remand. The arrest is on the basis of the existing material, but if there is further necessity, the respondents have every right to seek custody.

164. Reference had also been drawn to earlier orders, wherein custody had been granted by Courts. It had pointed out on behalf of the petitioner that in those orders, an argument that the respondents were not police officials had not been advanced and therefore such orders were passed overlooking this particular Court.

165. It would not lie in the mouth of the petitioner to state that an order passed by the Hon'ble Supreme Court affirming custody had been passed without examining the fundamental aspect as to whether the person to whom such custody is granted has authority to take custody of the

individual. Any order is passed only after taking into consideration all aspects, whether argued or not argued.

166. Even in this judgment, the earlier judgment of the Hon'ble Supreme Court relating to the detenue / accused had not been cited, but the Court has every right to look into it. It is to be understood that an overall view is taken into consideration by the Court when pronouncing any order directing custody in the hands of the respondents. The respondents have a right vested in them to take custody. It is to be understood that this aspect had considered.

167. It had been conclusively held that they are not police officials, but nowhere it had been stated in ***Vijay Madanlal Choudhary,*** referred *supra* that they have no right to take custody, if investigation required custody. The custody is to be granted. It had been positively asserted that after arrest, the Code of Criminal Procedure alone applies.

168. In the instant case, the facts as stated, would show that the accused/detenue, as a matter of fact, had taken steps to ensure that the defacto-complainant filed an application complaining that the investigation was not proper only because the detenue had been shown as an accused.

The detenue/accused cannot weep, merely because he has been granted custody to the respondents. He has a duty to abide with the rule of law. It is for that reason that I had extracted the judgment of the Hon'ble Supreme Court with relation to this very detenue/ accused and a reading of the facts and his previous conduct is very revealing.

169. There is a right vested with every accused to face the charges, to face trial, to question every witness and to establish innocence during the course of trial. But no accused has a right to frustrate investigation or enquiry.

170. Even though his medical condition necessitated hospitalization, even prior to that he had refused to receive the ground of arrest, which is a statement made by the respondents. His claim of innocence that the grounds of arrest were not informed cannot be considered by this Court. Such statement can be stated to be a falsity and therefore, I would reject that contention.

171. In ***2022 SCC OnLine 1465, Dr. Manik Bhattacharya Vs.***

Ramesh Malik and Others, the Hon'ble Supreme Court was presented with a representation that the petitioner therein was protected from an order of arrest, but still independently the Enforcement Directorate had taken him to custody. The Hon'ble Supreme Court had categorically stated that money laundering is an independent offence and stated as follows:

> *"7. We cannot hold the arrest of the petitioner by the Enforcement Directorate illegal as the issue of money-laundering or there being proceeds of crime had not surfaced before the Single Judge or the Division Bench of the High Court. Before us, however, it had been brought to our notice by Mr. Rohatgi in course of hearing on the question of interim order passed in the instant special leave petitions, that the petitioner had been cooperating with investigation by the Enforcement Directorate and the CBI. While testing the legality of an arrest made by an agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money-laundering, we do not think a general protective order directed at another investigating agency could have insulated the petitioner from any coercive action in another proceeding started by a different agency, even if there are factual similarities vis-a-vis the allegations. Under The Prevention of Money-Laundering Act, 2002 ("2002 Act"), money-laundering is*

an independent offence and in the event there is any allegation of the Enforcement Directorate having acted beyond jurisdiction or their act of arrest is not authorized by law, the petitioner would be entitled to apply before the appropriate Court of law independently. But that question could not be examined in a Special Leave Petition arising from the proceedings in which the question of Money Laundering were not involved.

172. It had been stated that money laundering is an independent offence and a general protective order directed against another Investigating Agency could not insulate the petitioner from any coercive action in another proceedings started by a different agency. It had been accepted that the arrest is a step in investigation. When arrest is possible, then seeking custody for further investigation is permissible.

173. In ***(2019) 9 SCC 24, P.Chidambaram Vs. Directorate of Enforcement***, the primary issue was with respect to the power to grant anticipatory bail with respect to an offence of money laundering. The contention that pre-arrest bail should be granted was rejected with the following reasons:

*"**84**. In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma [State v. Anil Sharma, (1997) 7 SCC 187 : 1997 SCC (Cri) 1039] , success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 CrPC is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the Department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order [P. Chidambaram v. CBI, 2019 SCC OnLine Del 9703] . Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion*

to grant anticipatory bail to the appellant.

85. In the result, the appeal is dismissed. It is for the appellant to work out his remedy in accordance with law. As and when the application for regular bail is filed, the same shall be considered by the learned trial court on its own merits and in accordance with law without being influenced by any of the observations made in this judgment and the impugned order [P. Chidambaram v. CBI, 2019 SCC OnLine Del 9703] of the High Court."

174. The duty of the Court during the process of investigation of a cognizable offence, had also been set out by the Hon'ble Supreme Court in the following paragraphs:

"61. The investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds. In exercise of its inherent power under Section 482 CrPC, the Court can interfere and issue appropriate direction only when the Court is convinced that the

power of the investigating officer is exercised mala fide or where there is abuse of power and non-compliance of the provisions of the Code of Criminal Procedure. However, this power of invoking inherent jurisdiction to issue direction and interfering with the investigation is exercised only in rare cases where there is abuse of process or non-compliance of the provisions of the Criminal Procedure Code.

64. Investigation into crimes is the prerogative of the police and excepting in rare cases, the judiciary should keep out all the areas of investigation. In State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , it was held that : (SCC p. 258, para 47)

> *"47. ... The investigating officer is an arm of the law and plays a pivotal role in the dispensation of criminal justice and maintenance of law and order. ... Enough power is therefore given to the police officer in the area of investigating process and granting them the court latitude to exercise its discretionary power to make a successful investigation...."*

66. As held by the Supreme Court in a catena of judgments that there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. It must be left to the discretion of the investigating agency to decide the course of investigation. If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused.

67. It is one thing to say that if the power of investigation has been exercised by an investigating officer mala fide or non-compliance of the provisions of the Criminal Procedure Code in the conduct of the investigation, it is open to the court to quash the proceedings where there is a clear case of abuse of power. It

is a different matter that the High Court in exercise of its inherent power under Section 482 CrPC, can always issue appropriate direction at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide and not in accordance with the provisions of the Criminal Procedure Code. However, as pointed out earlier that power is to be exercised in rare cases where there is a clear abuse of power and non-compliance of the provisions falling under Chapter XII of the Code of Criminal Procedure requiring the interference of the High Court. In the initial stages of investigation where the Court is considering the question of grant of regular bail or pre-arrest bail, it is not for the Court to enter into the demarcated function of the investigation and collection of evidence/materials for establishing the offence and interrogation of the accused and the witnesses.

175. It had been contended that this case has been decided prior to ***Vijay Madanlal Choudhary*** referred *supra* wherein, it had been very

specifically stated that the respondents were not police official.

176. But, it cannot be denied or disputed that the respondents have a right to investigate further. The factum of arrest is only a step in investigation. There cannot be a foreclosure of investigation or further enquiry, merely because a person has been arrested. Investigation or enquiry into the offence can continue, till a complaint is lodged and even thereafter, if further materials are collected investigation or enquiry can continue. The respondents have a right to conduct investigate / enquiry after arrest. This can never be denied to the respondents herein. If such enquiry / investigation is to be done only by taking the person arrested into custody, then this Court cannot sit as an appellate authority to examine the reasons stated therein. It is the Special Court which has the privilege to examine that particular aspect and pass orders.

177. In the instant case, an order had been passed by the learned Principal Sessions Judge. Therefore, since that had been passed after examining all the facts and after hearing both the sides, I would hold that the respondents herein have a right to take into custody.

178. In view of this particular reasoning, I would align myself with the opinion given by the Hon'ble Mr. Justice D. Bharatha Chakaravarthy, in this case, insofar as this point is concerned.

179. Let me answer the third issue and then come back to the 2nd issue. The 3rd point of difference is about exclusion of the days spent in hospitalization by the detenue/ accused while calculating the 15 days from the date of initial remand.

180. The law, in this point is crystallized in the judgment of the Hon'ble Supreme Court reported in ***1992 3 SCC 141, Central Bureau of Investigation, Special Investigation Cell – I, New Delhi Vs. Anupam J. Kulkarni***. Mr. Kapil Sibal, learned Senior Counsel appearing on behalf of the petitioner, placed this aspect as an argument to be taken only if the Court holds that the respondents have a right of custody of the detenue/ accused.

181. Having held so, it must be examined whether the relief sought by the respondents to exclude the period of hospitalization from the period

of 15 days from the date of initial arrest can be granted to an investigation agency.

182. To determine this aspect, the facts leading to the arrest of the individual will have to be examined. There are two versions.

183. The petitioner claims that the grounds of arrest had not been furnished and therefore, the arrest itself stands vitiated. It is also contended that even though custody had been granted by the leaned Principal Sessions Judge, by an order dated 16.06.2023, irrespective of the fact whether such order is right or wrong, workable or not, an obligation was placed on the respondents to take custody of the detenue/ accused wherever he is. It is contended that taking physical custody does not mean that he should be physically taken in the arms of the respondents, but at least the respondents must place their hand on his shoulder. It had been stated by the learned Senior Counsel that the respondents should have first taken custody irrespective of the medical condition of the detenue/ accused and irrespective of the conditions imposed by the learned Special Judge and thereafter complain that the medical condition does not provide them with

an adequate opportunity of effective interrogation or questioning of the detenue/ accused.

184. It had been stated that the respondents in this case have not even attempted to taken custody of the detenue/ accused. It had been therefore stated that even without resorting to that particular first step, which is required, the respondents had filed an appeal before the Hon'ble Supreme Court on 19.06.2023.

185. On the side of the respondents, however, it is contended that in view of the medical condition of the detenue/ accused and in view of the conditions imposed, the entire custody would only be an exercise in futility, in fact a mockery. The detenuewas actually facing severe medical ailment and required immediate treatment / operation / surgery.

186. It had been orally stated by Mr. N. R. Elango, learned Senior Counsel for the petitioner that the detenue/ accused was waiting and had postponed his operation and was awaiting the entry of the respondents to take him to the custody.

187. I am not able to understand that particular line of arguments advanced, taking into consideration, the conduct to the detenue/ accused right from the time, when the statement under Section 50 had to be recorded and when he had knowledge that he would be taken into custody. There is a statement made in writing presented before the Court that he refused the grounds of arrest. A reasonable presumption can be drawn that any official act done in the course of official duty had been done in proper manner.

188. Section 114 (e) of the Indian Evidence Act, 1872 is reads as follows:-

> *114. Court may presume existence of certain facts. — The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.*
> *(e) that judicial and official acts have been regularly performed;*

189. The respondents have consistently asserted that the detenue/ accused refused to sign the papers, refused to sign the acknowledgement of

the grounds of arrest and a panchnama was therefore drawn in the presence of two witnesses. These issues can be examined in independent proceedings. The accused after arrest, was taken to the hospital not only for a mere medical check up prior to production for remand, but to actually examine whether he had to be admitted as an in patient. Even in the petition, one prime ground on which it was urged this Court should interfere with the custody of the detenue/ accused was placed on the report of the hospital authorities at Omandurar Government Medical Hospital, where he was first taken. It had been very categorically stated and there are no reasons advanced to question the bonafide of the doctors for their statement that he had been admitted with C/o. Chest on 14.06.2023 at 2.10 am and had *Tachycardia with Acceleration Hypertension and Abnormal ECG changes*. It had also been stated that he had been admitted and was in observation in cardiac ICU and was under Critical Care of the Management of the hospital.

190. Hon'ble Mr. Justice D. Bharatha Chakaravarthy had wondered as to the proprietary of the respondents to even seek custody when this was the medical condition of the detenu/accused, though ultimately, he did state that the period of hospitalization should be excluded only for a period of 10 days.

191. The provision of the Act overrides every other aspect. It had been very specifically stated in ***1992 3 SCC 141***, ***Anupam J. Kulkarni***, referred *supra* the ratio of which has to be followed, that custody should be applied for within the period of 15 days from the date of first remand. The date of remand in this case was on 14.06.2023. The time for calculating 15 days starts from 14.06.2023. The respondents had no other option, whatever be the medical condition of the detenue/ accused. They had to present an application within 15 days. They presented an application. An order was passed. The order was passed after the order of remand to the judicial custody by the learned Principal Sessions Judge. That an order of judicial custody was passed after the learned Principal Sessions Judge visited the accused and remanded him in the hospital premises. Therefore, the learned Principal Sessions Judge was directly aware of the medical condition of the accused. It is for that reason that a series of conditions had been imposed. Whether those conditions are workable or not is a different issue, but that the detenue/ accused required medical treatment is obvious. He had been operated on 21.06.2023. I do not give any credence to the statement that he was waiting for the respondents to come and take him into custody. His

prior conduct belies that statement. They could never have done it. He was in the ICU both at Omandurar and Cauvery hospitals. Some respect should be shown to the medical condition of the individual. At the same time this has to be balanced with custody which has to be effective. It could be effective only when he is in a position to understand the questions put and answers the same. Custody cannot be a mere formality.

192. A reference had been made, quite apart from the judgment in ***Anupam J. Kulkarni***, referred *supra* to a three bench judgment of the Hon'ble Supreme Court ***Budh Singh Vs. State of Punjab*** reported in ***(2000) 9 SCC 266***. The facts in that particular case was that on 02.01.2000, on the request of the investigating agency, one day police remand was granted to the police and it was further extended to one further day on 03.01.2000. On 04.01.2000, a further application was made to extend the remand for a further period of seven days. That was rejected. The State had filed a revision before the Sessions Judge and the same was dismissed. They filed an application under Section 482 Cr.P.C., before the High Court. A learned Single Judge of the High Court had directed the Judicial Magistrate to grant police remand for a further period of seven days. That order was questioned

before the Hon'ble Supreme Court. The Hon'ble Supreme Court had held as follows:

> *"5. In the face of facts, as noticed above, the order of the learned Judicial Magistrate, dated 4-1-2000, in our opinion, did not require any interference. The mandate of Section 167 of the Criminal Procedure Code, 1973 postulates that there cannot be any detention in police custody, after the expiry of the first 15 days, so far as an accused is concerned. That period of 15 days had in this case admittedly expired on 4-1-2000. The impugned order of the High Court violates the statutory provisions contained in Section 167 CrPC since it authorises police remand for a period of seven days after the expiry of the first fifteen days' period. In CBI v. Anupam J. Kulkarni [(1992) 3 SCC 141 : 1992 SCC (Cri) 554] this Court considered the ambit and scope of Section 167 CrPC and held that there cannot be any detention in police custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise committed by an accused in the same transaction come to light at a later stage. The Bench, however, clarified that the bar did not apply if the same arrested accused was involved in some other or different case arising out of a different*

transaction, in which event the period of remand needs to be considered in respect to each of such cases. The impugned order of the High Court, under the circumstances, cannot be sustained. The direction to grant police remand for a period of seven days by the High Court is, accordingly, set aside. The appeal, therefore, succeeds and is allowed to the extent indicated above."

193. It had been very specifically held that the impugned order of the High Court violated the statutory provisions contained in Section 167 of Cr.P.C., since it authorized police remand for a period of seven days after the expiry of the first fifteen days period. Reliance was placed on ***Anupam J. Kulkarni*** referred *supra*. The issue whether the period of 15 days owing to non-taking of custody and owing to the circumstance and situation, which was beyond the control of the respondent was not examined in that particular judgment.

194. On the side of the respondents, reliance had been placed on ***Central Bureau of Investigation Vs. Vikas Mishra*** reported in ***2023 SCC OnLine 377.*** In that particular case, two Judges of the Hon'ble Supreme Court had taken into consideration the facts of that particular case, wherein again the accused had admitted himself in hospital and had come to an opinion that the period of hospitalization must be excluded.

195. In ***Anupam Kulkarni*** case, it had been very categorically stated that even if subsequent materials are obtained after the period of 15 days, custody cannot be granted to the investigating agency. It had been very specifically stated that police custody can be granted only within the period of the first fifteen days from the date of initial remand. In that case, when the accused was being physically taken for custody, he complained of medical illness and was admitted to the hospital and there could not be effective custody and therefore, an extension was sought. Here custody had not been taken at all.

196. A perusal of all the three judgments show that, there is application of this particular provision depending on the facts and circumstances. As a rule and as law laid down, an application seeking custody will necessary have to be filed within the period of fifteen days. It cannot be filed after the period of fifteen days from the date of first remand. If it is filed within the period of first fifteen days and if, it is impossible to have effective custody, then the issue is whether that period of impossibility consequent to hospitalization can be excluded or not.

197. Reliance had also been made on a judgment of the Hon'ble Supreme Court in ***S.Kasi Vs. State***, reported in ***2021 12 SCC 1***. There an application was made for extension or exclusion consequent to the Covid-19 Pandemic, which had imposed lock down. The Hon'ble Supreme Court refused to extend the time.

198. It is therefore evident, that each case will have to be examined on a case to case basis on the facts of each case. The fundamental aspect is filing of application within the period of fifteen days from the date of first remand. Thereafter, it is the learned Magistrate or in this case, the learned Principal Sessions Judge who would have to apply mind and pass necessary orders either to grant custody or refusing to grant custody.

199. In the instant case, custody has granted but on conditions. On the date, when the custody was granted, the accused was still in hospital. He was then operated on 21.06.2023. A series of conditions had been imposed making it impossible for the respondents to conduct any effective interrogation or investigation or enquiry. They could not even talk to him in

the absence of medical persons. It has to be an effective enquiry. It has to be an enquiry, which should lead, if possible to further discovery of facts. This Court must view such statement by the respondents also by taking into consideration his earlier conduct to scuttle any enquiry. That fact must be taken into consideration by this Court. The attempts to scuttle arrest by claiming the grounds of arrest was not furnished, when there is a specific averment on the side of the respondents that the accused had refused to receive the grounds of arrest is a significant fact. An E-mail was sent but had not been disclosed in the petition by the petitioner.

200. Taking all these facts into consideration, I would go with the opinion of the Hon'ble Justice Mr. D. Bharatha Chakravarthy, that there should be exclusion of the period of hospitalization.

201. The learned Judge had stated that custody should be granted within a period of 10 days from the date of that particular judgment, which was on 04.07.2023 and stated that the accused should be shifted to prison and if at all custody is to be taken after exclusion of this particular period, the investigation or enquiry could be done in prison or in prison hospital. The only remit of this Court is to examine whether there could be exclusion

of the period of hospitalization and to that extent, I would concur with the view of the Hon'ble Justice Mr. D. Bharatha Chakravarthy.

202. The second issue in which actually there is not much divergent of views is whether the HCP is maintainable after a judicial order of remand had been passed by a Court of competent jurisdiction.

203. This issue could be divided into two segments namely, maintainability of the petition irrespective of the fact whether judicial order of remand had been passed or not and maintainability, after the remand order had been passed.

204. Both the learned Judge have stated the petition is maintainable. A clarification had been made by Hon'ble Justice Mr. D. Bharatha Chakravarthy, that if a judicial order of remand had been passed, then the petition would be maintainable only in exceptional circumstances. Hon'ble Justice Ms. J. Nisha Banu however stated that since the order of remand itself stands vitiated, the petition is maintainable.

205. In this connection, the order of remand will have to be first examined to determine whether it withstands scrutiny and whether it had been passed in manner known to law or whether it should be interfered with by this Court.

206. The main reason under which it is questioned and challenged as being non-est and as an order which should be ignored by this Court, is the fact that when the accused was brought for remand, objections had also been filed on behalf of the accused. It is complained that in the order of the learned Principal Sessions Judge, she had only examined whether there was a necessity to remand the accused and thereafter, had stated that as a consequence thereof, the objections are rejected. Even, Hon'ble Justice Mr. D. Bharatha Chakravarthy in the course of his judgment stated that such procedure may not be entirely proper.

207. But the issue is whether that vitiates the order of remand itself. It would so vitiate, if the reasons granting remand are also bad in law and the order passed is completely irrational. That line of argument had not

been projected.

208. When the learned judge had compared two petitions, one seeking remand and the other seeking rejection of remand, the learned Session Judge has to pass an order, which in the opinion of the learned Sessions Judge is a more probable lawful order.

209. In the instant case, an order had been passed on the application seeking remand. It is not for this Court to examine whether those reasons are right and withstand scrutiny of this Court. Those reasons have not been questioned. The competency of the Court to remand the accused has not been questioned. The only grievance is that the application seeking rejection or what may be called objection for remand had not been considered at all. It had been stated in the order that since the remand had been granted, the objections are refused. It had not been however contended that the reasons for remand itself violates any legal principle.

210. The only principle which had been stated is that the grounds of arrest had not been informed to the petitioner herein and that he did not know why he was arrested. But there again, I would reject that particular

argument, since an offence under the Act, though is a specific offence, is a fall out or continuation of an earlier predicate offence. Therefore, it is not a stand alone offence with no background at all and which has surfaced and the accused was caught unawares as to why he was being arrested. He knows the reasons. The respondents were in his house right from the morning on 13.06.2023. They had been conducting search. They had been seized various documents. He cannot proclaim innocence and ignorance and seek indulgence of this Court. The learned Principal Sessions Judge, in her order may have made a procedural irregularity in passing a detailed order on the objections, but when balancing both the petitions, if there are probable reasons for remand and that outweighs the reasons given to reject such remand, then naturally an order of remand follows. That order will have to stand. It is not for this Court to sit in revision or appeal over it.

211. There is yet another factor. The detenue/ accused himself had applied for bail and raised objections. Once he had applied for bail and raised objections, then he had submitted to the concept of arrest. There cannot be a bail without there being a arrest. There cannot be a remand without there being an arrest. Once he had participated in those judicial

proceedings, then it must be taken that he had submitted himself to judicial process. If a judicial order had been passed consequent to such judicial process and is said to be unlawful or without following the procedure, naturally, the remedy is to file a revision or appeal against it.

212. It is however pointed out that additional grounds have been filed before this Court and there is a remit to find out whether the order of remand would be sustainable and withstand scrutiny of this Court. The order of remand had been examined and re-examined during the course of arguments. The balances have been examined. The necessity has been examined. The stipulations of the provisions have been examined and finally it had been concluded by the learned Sessions Judge that remand is required. Once there is an order of remand, the custody of the accused is taken away from the respondents and now stood vested with the Court granting remand. The respondents have no control over the person of the accused/detenu. It stood vested with the Sessions Court. For instance, if there is need to change in the hospital, the detenue/ accused need not apply to the respondents seeking change of hospital. They will have to apply to the learned Sessions Judge for further treatment or for better treatment in

another hospital, if need arises. Therefore, it is the Court which now has custody of the accused and that custody stood vested with the Court consequent to an order of remand.

213. Reliance had been placed on the judgment of the Hon'ble Supreme Court in ***Madhu Limaye and Others*** reported in ***(1969) 1 SCC 292***. The facts there are extremely distinct. The FIR itself was lodged after the petition was filed. It was therefore being contended that the very basis for arrest cannot withstand the scrutiny of the Court.

214. The facts are totally distinguishable and I am not able to align those facts with the facts of this particular case.

215. Here the First Information Report was initially lodged on a complaint of the year 2015. Pursuant to investigation conducted a final report had been filed. The final report had been taken cognizance and a calender cases are pending before the competent Court. They are predicate cases / offences.

216. Subsequently on the basis of the such offence an ECIR had been registered by the respondent. The competency of the respondent to so register an ECIR has not been questioned. Even prior to the judgment of the Hon'ble Supreme Court delivered on 16.05.2023, notices and summons for appearance been issued to the accused. He had appeared. He had also not appeared. He had appeared through his Chartered Accountant. These are issues which this Court need not to examine. But the legality of the registration of ECIR has never been questioned. Once that legality has not been questioned, the consequent investigation or enquiry cannot also be questioned because a right is vested to so enquire or to so investigate into the offence of money laundering also, quite apart from detecting the trial of the proceeds of crime. Among other powers are vested, the respondents had the power to search, to seize, to arrest. Once an arrest has been initiated and it is stated by the respondents that the detenue/accused had refused to receive the copy of the memo of arrest and also the ground of arrest but it was informed to the brother and the petitioner herein, a reasonable strong presumption can be drawn that efforts had been taken to so inform the grounds of arrest. Therefore, once arrest is legal, remand is legal. A Habeas Corpus Petition would never lie.

217. I would therefore, concur with the view of the Hon'ble Justice Mr. D. Bharatha Chakravarthy, that the petition though maintainable cannot be entertained after remand, and in this case can certainly not be entertained.

218. In the result, I would answer the points of difference as follows:

(i) Whether Enforcement Directorate has the power to seek custody of a person arrested?

The answer given by this Court is 'Yes' in alignment with the views / opinion expressed by the Hon'ble Justice Mr. D. Bharatha Chakravarthy.

(ii)Whether the Habeas Corpus Petition itself is maintainable after a judicial order of remand is passed by a Court of competent jurisdiction?

The Petition would be maintainable in exceptional circumstances, but this case does not attract any exceptional circumstance and consequently since an order of remand had been passed by a Court of competent

jurisdiction, the relief sought in the petition cannot be granted. I would align with the view expressed by the Hon'ble Justice Mr. D. Bharatha Chakravarthy, with respect to this issue.

(iii)The consequential issue is as to whether Enforcement Directorate would be entitled to seek exclusion of time for the period of hospitalization beyond the first 15 days from the date of initial remand.

I would again align with the views of the Hon'ble Justice Mr. D. Bharatha Chakravarthy, but leave it to the wisdom of the Division Bench to actually determine the first date of such custody and the days for which exclusion should be granted, since the date of that judgment was 04.07.2023 and the conditions stipulated by Hon'ble Justice Mr. D. Bharatha Chakravarthy had long since lapsed. It is for the original Division Bench to re-examine the starting date of custody. But as a finding, I would hold that exclusion of time as sought is permissible. It is the prerogative of the learned Judges to determine as to when the first date of custody would begin and the manner in which it should be granted. The concept whether the period of hospitalization can be excluded or not alone can be answered by

this Court and I would answer that the period of hospitalization has to be excluded.

219. In view of the findings returned, the Registry may place the records relating to HCP.No.1021 of 2023 along with a copy of this judgment before the Hon'ble Chief Justice to be further placed before the Division Bench who may take note of the concurrence of this Court aligning itself with the views expressed by the Hon'ble Justice Mr. D. Bharatha Chakravarthy dismissing the petition and pass necessary orders giving a quietus to the petition. This is an order which can be passed only by the Division Bench, since there was a split verdict and they will now have to take this judgment into consideration and pass necessary orders. It is hoped that the Registry would place the record before the Hon'ble Chief Justice at the earliest, so that the case which is kept open as on date, would be drawn to its logical conclusion.

14.07.2023

vsg/smv

Index: Yes/No

Internet: Yes/No
Speaking / Non Speaking Order

To

1. The Deputy Director
   Directorate of Enforcement
   Chennai.

2. The Assistant Director,
   Directorate of Enforcement, Chennai.

C.V.KARTHIKEYAN, J.,

vsg/smv

H.C.P.No. 1021 of 2023

14.07.2023