IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 02.02.2024
Pronounced on : 08.02.2024

1. CRM-M-2191-2024 (O&M)

Dilbag Singh @ Dilbag Sandhu ...Petitioner

Versus

Union of India and another ...Respondents

2. CRM-M-3385-2024 (O&M)

Kulwinder Singh ...Petitioner

Versus

Union of India and another ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Chetan Mittal, Sr. Advocate with
Mr. Anshul Mangla, Advocate and
Mr. Udit Garg, Advocate and
Mr. Himanshu Gupta, Advocate and
Mr. Vinay Arya, Advocate and
Mr. Ritvik Garg, Advocate for the petitioner(s).

Mr. Zoheb Hossain, Special Counsel for ED (through VC)
Mr. Jagjyot Singh Lalli, DSG,
Mr. Lokesh Narang, Sr. Panel Counsel ED
Mr. Simon Benjamin, SPP, ED and
Mr. Manish Verma, Advocate and
Mr. Vivek, Advocate and
Mr. Kartik Sabharwal, Advocate and
Ms. Abhipriya Raj, Advocate for ED.

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VIKAS BAHL, J. (ORAL)

1. Present order shall dispose of two petitions filed under Section

482 of the Code of Criminal Procedure, 1973 (for short 'CrPC') i.e. CRM-M-2191-2024 filed by Dilbag Singh @ Dilbag Sandhu and CRM-M-3385-2024 filed by Kulwinder Singh, since common questions of law and facts arise in both the cases and also since both the petitions arise from the same ECIR.

2. This judgment has been divided into the following sections: -

3. The following prayers have been made in the case of petitioner Dilbag Singh @ Dilbag Sandhu: -

"It is, therefore, most respectfully prayed that the present petition may kindly be allowed and the (a) Impugned Arrest Order dated 08.01.2024 (Annexure P-3) passed by respondent No.2; (b) Impugned Arrest Memo dated 08.01.2024 (Annexure P-4) prepared by respondent No.2; (c) Impugned Order dated 09.01.2024 (Annexure P-7) passed by Sessions Judge-cum-Special Judge (under PMLA, 2002), Gurugram passed in application vide CRM No.35 of 2024 (Annexure P-6) in ECIR No.GNZO/19/2023 dated 23.09.2023 under Section 65 of the PMLA Act, 2002 may kindly be set-aside since the petitioner was illegally arrested and remanded to ED Custody in gross abuse and violation of the provisions of Prevention of Money-Laundering Act, 2002 {PMLA, 2002} in view of the law laid down by the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*** *2022 LiveLaw (SC) 633;* ***V. Senthil Balaji vs. The State represented by Deputy Director and others,*** *2023 LiveLaw (SC) 611; and* ***Pankaj Bansal v. Union of India & Ors.*** *Criminal Appeal Nos.3051-3052 of 2023 D/d 03.10.2023.*

It is further prayed that appropriate interim orders/directions may kindly be issued to the respondents to release the petitioner forthwith from the custody during the pendency of the present petition.

It is further prayed that this Hon'ble Court may pass any other order or direction which it may deem fit and appropriate in the facts and circumstances of the present case."

4. Prayers in the case of petitioner Kulwinder Singh are as follows: -

"It is, therefore, most respectfully prayed that the

present petition may kindly be allowed and the (a) Impugned Arrest Order dated 08.01.2024 (Annexure P-2) passed by respondent No.2; (b) Impugned Arrest Memo dated 08.01.2024 (Annexure P-3) prepared by respondent No.2; (c) Impugned Order dated 09.01.2024 (Annexure P-7) and 16.01.2024 (Annexure P-9) passed by Sessions Judge-cum-Special Judge (under PMLA, 2002), Gurugram passed in application vide CRM No.35 of 2024 (Annexure P-6) in ECIR No.GNZO/19/2023 dated 23.09.2023 under Section 65 of the PMLA Act, 2002 may kindly be set-aside since the petitioner was illegally arrested and remanded to ED Custody in gross abuse and violation of the provisions of Prevention of Money-Laundering Act, 2002 {PMLA, 2002} in view of the law laid down by the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.*** *2022 LiveLaw (SC) 633;* ***V. Senthil Balaji vs. The State represented by Deputy Director and others,*** *2023 LiveLaw (SC) 611; and* ***Pankaj Bansal v. Union of India & Ors.*** *Criminal Appeal Nos.3051-3052 of 2023 D/d 03.10.2023.*

It is further prayed that appropriate interim orders/directions may kindly be issued to the respondents to release the petitioner forthwith from the custody during the pendency of the present petition.

It is further prayed that this Hon'ble Court may pass any other order or direction which it may deem fit and appropriate in the facts and circumstances of the present case."

BRIEF FACTS OF THE CASE:-

5. 8 FIRs were registered at Police Station Yamuna Nagar, District Haryana. The details of the said FIRs as given in para 1 of the reply dated

22.01.2024 filed in the case of petitioner Dilbag Singh @ Dilbag Sandhu are given herein under:-

S.No.	FIR	Schedule Offence
1.	0226 dt. 14.10.2022	Sections 120-B & 420 of India Penal Code, 1860
2.	0116 dt. 23.03.2023	Sections 120-B, 411, 420 of India Penal Code, 1860
3.	0111 dt. 01.06.2023	Sections 420, 467 & 471 of India Penal Code, 1860
4.	0206 dt. 19.09.2022	Section 420 of India Penal Code, 1860
5.	0216 dt. 30.09.2022	Section 471 of India Penal Code, 1860
6.	0204 dt. 14.09.2022	Sections 120-B & 420 of India Penal Code, 1860
7.	0033 dt. 10.02.2023	Sections 420, 467 & 471 of India Penal Code, 1860
8.	0054 dt. 16.02.2023	Sections 420, 467 & 471 of India Penal Code, 1860

6. It is not in dispute that both the petitioners have till date, muchless till the date of arrest i.e. 08.01.2024, not been made an accused in the above-said FIRs. In Para A(1) of the reply dated 22.01.2024, filed in the case of petitioner Dilbag Singh @ Dilbag Sandhu, averments have been made to indicate that even the petitioners were accused in the eight FIRs, but on a specific query raised, both learned senior counsel for the petitioners as well as learned counsel for the respondents have fairly stated that the petitioners till date have not been made an accused in any of the said eight FIRs. In the reply dated 30.01.2024 filed in the case of petitioner Kulwinder Singh, the facts have been correctly stated and the word “petitioner” has not been mentioned in the said paragraph i.e. A(1). Since the above-said FIRs were registered under Sections 120-B, 411, 419, 420, 467 and 471 IPC, which are scheduled offences under Part A Paragraph I of the Schedule

appended to The Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the 2002 Act), the Directorate of Enforcement recorded an ECIR bearing No.GNZO/19/2023 dated 23.09.2023 against various accused persons, Screen Plants and Stone Crushers in order to investigate the commission of the offence of money laundering as defined under Section 3 and punishable under Section 4 of the 2002 Act. A search was carried out from 04.01.2024 (0825 hours) to 08.01.2024 (1300 hours), at the residential premises of the petitioner Dilbag Singh @ Dilbag Sandhu and Rajinder Singh, located at 410, Friends Colony, Yamuna Nagar and another search was also carried out from 04.01.2024 to 08.01.2024 at the premises of petitioner Kulwinder Singh, House No.62, Sector 14, HUDA, Yamuna Nagar. It is the case of the petitioners that they were illegally detained/arrested on 04.01.2024. It is the case of the prosecution that petitioner Dilbag Singh @ Dilbag Sandhu was arrested on 08.01.2024 at 12.15 PM from the above-said house and the petitioner Kulwinder Singh was arrested on 08.01.2024 at 02.20 PM from House No.62, Sector 14, HUDA, Yamuna Nagar. It is the case of the prosecution that searches were carried out at other places also. As per the case of the prosecution, the written grounds of arrest were given to both the petitioners on 08.01.2024. In the grounds of arrest with respect to petitioner Dilbag Singh @ Dilbag Sandhu, reference was made to the above-said 8 FIRs, more so, FIR No.226 dated 14.10.2022, in which, it was alleged that the Plant & Machinery of one Om Guru Unit was dismantled a year ago, but on the examination of sale-purchase record, it was found that purchases had been made from 10.05.2022 to 17.06.2022 and the sellers with respect to the same were M/s

Mubarikpur Royalty Company, PS Buildtech and the quantity involved in the same was 168830 MT (value of approx. Rs.8.4 crore) and the purchase records were not found on e-Rawana portal, which indicated that the above purchases were done through fake e-Rawana. In the said grounds of arrest, it was further stated that it had been found that an order was passed by the NGT on 31.05.2022 directing both JSM Foods Pvt. Ltd. and PS Buildtech not to mine boulder and gravel on the mining sites in question and vide order dated 18.11.2022, huge penalties were imposed against M/s Development Strategies India Private Limited, Delhi Royalty Company and Mubarikpur Royalty Company and that during investigation, it was revealed that petitioner Dilbag Singh @ Dilbag Sandhu was the authorized signatory in two of the bank accounts of Development Strategies India Private Limited and his wife & son had invested huge amounts in Delhi Royalty Company. It was further stated that petitioner Dilbag Singh @ Dilbag Sandhu had willfully adopted an attitude of non-cooperation by either evading the queries or giving misleading/part evasive replies. Similarly, as per the case of the prosecution, the grounds of arrest in writing were given to the petitioner Kulwinder Singh on 08.01.2024, in which also, the above said background was given and thereafter, it was stated that the said Kulwinder Singh through his relatives and close persons was also involved in the said mining activities.

7. On 09.01.2024, both the petitioners were produced before the Special Court (PMLA) Gurugram, Haryana and two separate applications were filed by respondent No.2, under Section 65 of the 2002 Act read with Section 167 of the CrPC seeking remand of the petitioners, in which, vide

two separate orders dated 09.01.2024, seven days custody of both the petitioners was granted to the Enforcement Directorate by the Special Judge, Gurugram. On 16.01.2024, both the petitioners were produced before the Special Court (PMLA) Gurugram, Haryana for extension of custody of both the petitioners and two separate applications were filed on 16.01.2024 under Section 65 of 2002 Act read with Section 167 of the CrPC for the said purpose. The Special Judge (PMLA), Gurugram, vide a common order dated 16.01.2024 was pleased to extend the remand custody of both the petitioners for a further period of 7 days. On 23.01.2024, both the petitioners were produced before the Additional Sessions Judge, Gurugram and vide a common order dated 23.01.2024, both the petitioners were remanded to judicial custody till 06.02.2024 and since then, both the petitioners are in judicial custody, being lodged in Bhondsi Jail. It is in the said background that the present two petitions have been filed.

ARGUMENTS ON BEHALF OF THE PETITIONERS

8. Learned Senior Counsel for the petitioners has first submitted that as per the provisions of Section 19(2) of the 2002 Act, the concerned officer immediately after arresting the accused persons under Sub-Section (1) of the said Section is required to forward a copy of the order along with material in his possession to the Adjudicating Authority in a sealed envelope in the manner which may be prescribed and the said Adjudicating Authority is required to keep the said order and the material for such period as may be prescribed. It is further submitted that in exercise of the powers conferred by Sub-Section (1) read with Clauses (a) and (b) of Sub-Section (2) of Section 73 of the 2002 Act, the Central Government has framed The Prevention of

Money-Laundering (the Forms and Manner of Forwarding a Copy of the Order of Arrest of a Person along with the Material to the Adjudicating Authority and the Period of Retention) Rules 2005 (hereinafter to be referred as "the 2005 Rules(I)" and as per Sub-Rules (2) & (4) of the said Rules, the arresting officer is required to place an acknowledgment slip in Form-1 appended to the (2005 Rules (I)) inside the envelope before sealing it and is also required to place the sealed envelope inside the outer envelope along with an acknowledgment slip in Form-II appended to the Rules and send the copy of the order of arrest and the material to the Adjudicating Authority after complying with the said procedure. It is submitted that as per Rule 4, the Adjudicating Authority or in his absence, the designated officer of the office of the Adjudicating Authority upon receipt of the outer sealed envelope along with Form-II is required to fill in and sign the Form-II and also affix its seal and, thereafter forward the Form-II to the Arresting Officer as a token of receipt of the sealed envelope. It is submitted that the entire procedure has been provided under Rules 3 and 4 and the said provisions read along with Section 19(2) of 2002 Act would clearly show that the copy of the order of arrest and the material is to be supplied to the Adjudicating Authority immediately after arresting the person concerned. It is argued that in the present case, there is total non-compliance of Section 19(2) inasmuch as there is neither any reference of the compliance of the said provision in the application under Section 65 of the 2002 Act read with Section 167 CrPC filed by the respondent authorities seeking custody of the petitioners to the Directorate of Enforcement nor is there any such mention of its compliance in the grounds of arrest, in the personal search memo, arrest

memo, arrest order or even panchnama. It is submitted that in none of the said documents, even a remote reference has been made to the compliance of the provisions of Section 19(2) nor any fact has been mentioned to reflect the said compliance. It is further argued that a perusal of the order dated 09.01.2024 (Annexure P-7), vide which, the Special Court (PMLA) Gurugram had allowed the application of the Directorate of Enforcement under Section 65 of the 2002 Act read with Section 167 CrPC and had remanded the petitioners to the custody of the Enforcement Directorate for a period of seven days, would also show that in the said order, there is complete non-application of mind with respect to compliance of the provisions of Section 19(2) of 2002 Act and that no reference has been made in the said order as to when the copy of the order along with the material in the possession of the Arresting Officer was forwarded to the Adjudicating Authority in a sealed envelope. No record has been referred to show that the material has been forwarded in the manner as it is required to be done under the 2005 Rules (I). It is submitted that although, a specific plea has been raised by the petitioners in the grounds of the petitions, yet in the reply dated 22.01.2024 filed by the respondents, no specific reference has been made to even remotely show the compliance of the provisions of Section 19(2) of 2002 Act.

9. Learned Senior Counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in ***V. Senthil Balaji Vs. State represented by Deputy Director and others,*** reported as ***2023 SCC Online SC 934*** to argue that the compliance of the provisions of Section 19 including that of Section 19(2) is a solemn function of the arresting authority

which brooks no exception. It is submitted that in the said judgment, it has further been observed that the Magistrate concerned before whom the case has come up for the purpose of remand has to satisfy himself about the compliance of the safeguards provided/enshrined under Section 19 of the PMLA Act, 2002. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Pankaj Bansal Vs. Union of India and others*** reported as ***2023 SCC Online SC 1244*** to contend that in the said judgment, it has been specifically observed by the Hon'ble Supreme Court that the Court which is seized of the exercise under Section 167 Cr.P.C. of remanding the person arrested by the ED has a duty to verify and ensure that the conditions under Section 19 of the 2002 Act are duly satisfied and that arrest is valid and lawful and that in the eventuality, the court fails to discharge its duties, the order of remand would have to fail on the said ground alone. Learned Senior Counsel for the petitioners has further placed reliance upon the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Chaudhary and others Vs. Union of India and others***, reported as ***2022 SCC Online SC 929*** more so paras 322 and 325 in support of his arguments that the conditions as mentioned in Section 19 including Section 19(2) are stringent and of high standard and the same are required to be complied with and it is the safeguards in the said premises which ensure that the authorized officers do not act arbitrarily. It is submitted that it comes about clearly in the abovesaid judgment that rendering the due compliance of the provisions of Section 19 including section 19(2) is required to be adhered to by the Arresting Officer.

10. Learned Senior Counsel for the petitioners has further submitted

that even a perusal of the order dated 16.01.2024, vide which, the Directorate of Enforcement was granted an additional custody of seven days of the petitioners, would show that there is no observation/finding with respect to the compliance of any of the provisions of Section 19 much less of Section 19(2). It is submitted that on account of the said ground alone, the present petitions deserve to be allowed and the arrest order dated 08.01.2024 as well as the remand order dated 09.01.2024 and 16.01.2024 deserve to be set aside and the petitioners deserve to be released.

11. Learned Senior Counsel for the petitioners has next submitted that as per the provisions of Section 19(1) of 2002 Act, when the officer concerned, on the basis of the material in his possession and after having reason to believe (which reason is required to be recorded in writing) is of the opinion that the persons concerned are guilty of the offence punishable under this Act, then the officer concerned has the power to arrest the said persons and is required to inform the said persons of the grounds of arrest and is further required to produce the said persons within 24 hours before the Special Court or Judicial Magistrate or Metropolitan Magistrate having jurisdiction as per Section 19(3) of the 2002 Act. It is submitted that a reading of the said provisions would show that from the date of their arrest, the persons concerned are required to be produced before the Court within a period of 24 hours as has been detailed in Section 19(3) of the abovesaid Act. It is argued that in the present case, both the petitioners were illegally detained on 04.01.2024 and were not permitted to go out of their house and thus, in effect, they were arrested on 04.01.2024 itself. It is argued that the fact that the petitioners were illegally detained in the premises in which

search was conducted is clear from the documents on record and also from the reply filed on behalf of the respondent authorities, specific reference being made to para 29(h), 35 and 29(b) of the said reply. It is submitted that in the said reply, averments have been made that the petitioners were free in their residence from 04.01.2024 to 08.01.2024 and they were permitted to loiter within the said premises during the search period which continued from 04.01.2024 to 08.01.2024. Reliance has also been placed upon panchnama with respect to both the petitioners. The Panchnama in the case of petitioner Kulwinder Singh which has been annexed as Annexure P-1 along with CRM-M-3385-2024 has been highlighted to show that in the same, it was specifically mentioned that all the persons who were present at the premises were also allowed proper rest, food breaks and washroom breaks. It is submitted that to the similar effect are the averments made in the panchnama with respect to the petitioner-Dilbag Singh @ Dilbag Sandhu and that averments made in the present petitions, reply as well as the facts which emerged from the documents on record would clearly show that the petitioners were confined to the premises in question where the search was taking place for a period of more than four days and were not permitted to leave the premises and were thus, kept in forced custody. Learned Senior Counsel for the petitioners has relied upon a judgment of the Division Bench of this Court in ***Pranav Gupta Vs. Union of India and others*** reported as ***2023 SCC Online P&H 3598*** to contend that in such a situation, the date of arrest is not to be construed as the date on which the petitioners are formally arrested but is to be construed as the date when restraint is placed on the petitioner. Reliance has also been placed upon the judgment of the Bombay

High Court in the case of ***Ashak Hussain Allah Detha @ Siddique and another Vs. The Assistant Collector of Customs (P) Bombay and another***, reported as ***1990 SCC Online Bombay 3*** to contend that it has been observed in the said judgment that the word "arrest" has not been defined in the Code of Criminal Procedure or any other law and the true meaning of the said word "arrest" is when the arrester takes a person into his custody or by action or words restrains him from moving anywhere beyond his control and in case there is any restraint on the personal liberty of the person, then the same would come within the meaning of detention/arrest. Reliance has also been placed upon a judgment of the Andhra Pradesh High Court in ***Mrs. Iqbal Kaur Kwatra Vs. DGP,*** reported as ***1996(1) APLJ 370 (HC) Andhra Pradesh***. It is argued that the restraint from 04.01.2024 to 08.01.2024 would in effect be house arrest/illegal detention and thus, period of 24 hours within which the petitioners were required to be produced before the concerned Court having jurisdiction would commence from 04.01.2024 itself and not from 08.01.2024. On the aspect of house arrest, reliance has been placed upon the judgment passed by the Hon'ble Supreme Court in ***Gautam Navlakha Vs. National Investigation Agency,*** reported as ***(2022) 13 SCC 542*** to contend that it has been observed by the Hon'ble Supreme Court in para 60 of the said judgment that house arrest is also custody and forced detention. It is argued that since, the petitioners admittedly were not produced before the Court of competent jurisdiction within 24 hours of their arrest/illegaldetention/wrongful confinement i.e., from 04.01.2024, thus, their arrest and all subsequent proceedings thereafter are illegal and against law.

12. Learned senior counsel for the petitioners has further submitted that as per the provisions of Section 19(3) of the 2002 Act, every person who has been arrested under Sub-Section (1) of the said provision is mandatorily, within 24 hours of the said arrest required to be produced before the Special Court, Judicial Magistrate or the Metropolitan Magistrate as the case may be, having jurisdiction. It is submitted that Section 167(2) of the Cr.P.C. uses the term "whether he has or he does not have the jurisdiction to try the case" whereas the provisions of Section 19 specifically require that the Special Court / Judicial Magistrate / Metropolitan Magistrate should have jurisdiction with respect to the case in question. It is further argued that the Special Courts to try offence under the 2002 Act are to be constituted under the provisions of Section 43 of the Act and explanation to Section 44 of the 2002 Act provides that the jurisdiction of the Special Courts while dealing with the offence under the Act during investigation, enquiry or trial would not be dependent upon any orders passed in respect to the scheduled offence. It is argued that in exercise of powers conferred under Section 43, the Central Government has issued a notification dated 19.01.2021 (Annexure P-8) as per which for the offences which have been committed in the revenue district of Yamuna Nagar, the competent Court of jurisdiction is the Court of Sessions Judge, Ambala and not Sessions Judge, Gurugram where the petitioners have been produced. It is argued that for the purpose of compliance of Section 19(3), the competence of the Court was to be seen on 09.01.2024 itself when the petitioners were first produced before the said Court. Learned senior counsel for the petitioners has submitted that a perusal of the application for remand in both the cases as well as the other

documents including the grounds of arrest do not even remotely show that any part of the offence has been committed within the territorial jurisdiction of the Special Court at Gurugram. It is submitted that the offence for which the petitioners are being prosecuted is the offence of money laundering and thus, for the Court to have jurisdiction for the purposes of Section 19(3) and also for the purpose of trying the same, the offence of money laundering should have been committed within the jurisdiction of the said Court. It is further submitted that a perusal of the order dated 09.01.2024 (Annexure P-7) would show that even a passing reference with respect to the compliance of provisions of Section 19(3) of the 2002 Act has not been remotely made by the Special Court, PMLA, Gurugram while allowing the application of the Enforcement Directorate under Section 65 of the 2002 Act read with Section 167 CrPC. It is argued that even while passing the order dated 16.01.2024, the Special Judge has erroneously observed that the said aspect can only be determined at the time of taking cognizance on the complaint, if any, filed by the Directorate Enforcement without considering that as per settled law, it is the duty of the Magistrate to peruse the record and satisfy itself that the mandatory requirements of Section 19 including Section 19(3) of the 2002 Act have been met. It is submitted that a perusal of paragraph 12 of the said order dated 16.01.2024 would show that the sole plea raised on behalf of the respondent authorities was that certain raids were conducted at Faridabad and thus, the Sessions Court at Gurugram had jurisdiction. It is submitted that merely because raids are conducted at various places, without there being any material referred to in the impugned order or in the application for remand to show that the offence in question i.e., money

laundering has been committed within the jurisdiction of the Court, it would not confer jurisdiction to the said Court where the alleged raid has been conducted. It is submitted that at any rate, since there is no application of mind by the Magistrate on the said aspect while passing of the order on first remand although as per the judgments of the Hon'ble Supreme Court in ***V. Senthil Balaji*** (supra), ***Pankaj Bansal*** (supra) and ***Vijay Madanlal Choudhary*** (supra), it was incumbent upon the Magistrate to have considered the said aspect, the impugned action of the authorities deserves to be set aside on the said ground alone.

13. Learned Senior counsel for the petitioners has further submitted that the grounds of arrest with respect to both the petitioners do not disclose the actual material upon which the arresting officer has reached the conclusion that the petitioners are guilty of any offence under the 2002 Act. It is further submitted that the grounds of arrest are absolutely vague, inasmuch as, it is not even stated in the same as to what is the connection of the two petitioners who were not even accused in any of the FIR with the said FIRs, which have been tabulated in the grounds of arrest, nor any specific statement has been referred to, nor any specific material has been referred to, much less, annexed along with the grounds of arrest so as to show/inform the petitioners as to what is the case against them. It is stated that such vague grounds of arrest violate the right of the petitioners under Article 22 of the Constitution of India as well as the right of the petitioners to defend themselves and to overcome the stringent provisions of Section 45 of the 2002 Act to be released on bail. It is argued that since the petitioners have not been supplied with a copy of the ECIR, thus, the grounds of arrest

are the most important document on the basis of which the petitioners are to be informed about the case against them so as to enable the petitioners to prepare their defence and set up a case to agitate before the Courts that the petitioners' case satisfies the conditions of Section 45 of the 2002 Act. It is further argued that even if the grounds of arrest of both the petitioners are taken on their face value, still, no person including the Arresting Officer could come to a conclusion that there is reason to believe that the petitioners are guilty of the offences committed under the 2002 Act. Learned senior counsel for the petitioners has made a specific reference to the applications filed in both the cases and has submitted that the grounds of arresting the petitioners were stated to be their non-cooperation and the petitioners having given vague and evasive replies. It is stated that in the present case, no notice under Section 50 had been issued to either of the two petitioners before the search had been conducted and it is impossible to know as to on what basis the said plea had been taken in the grounds of arrest. It is further submitted that it has been repeatedly held that merely by stating that the petitioners were evasive cannot be made the basis of arresting the petitioners as the Enforcement Directorate cannot expect an admission of guilt from them. Specific reference has been made to the judgment of the Hon'ble Supreme Court in ***Pankaj Bansal's case*** *(supra)* in support of the said argument. Further reliance has been placed upon the judgment of the Division Bench of this Court in case titled as '***Roop Bansal Vs. Union of India and others***, reported as ***2023 SCC Online P&H 3597***. Learned senior counsel for the petitioners has further referred to the application under Section 65 of the 2002 Act read with Section 167 CrPC filed by the

authorities with respect to both the petitioners and has submitted that the same do not reflect the compliance of Section 19(1) of the 2002 Act. It is argued that even a perusal of the impugned order would show that there is no finding in the said order to the effect that the Court had satisfied itself and had perused the grounds of arrest to ascertain whether the Enforcement Directorate had recorded the reasons to believe that the petitioners were guilty of an offence under the 2002 Act and there was proper compliance of the mandate of the said section. It is argued that in ***Pankaj Bansal's case (supra)***, it was specifically observed that it is the duty of the magistrate to carry out the said exercise and come to a finding regarding the said aspect, which has not been done in the present case and thus, the impugned action of the authorities deserves to be set aside on the said ground also. It is further stated that even as per the additional reply filed, more so, para No.3(a) to (d), it has been stated by the authorities that on 10.01.2024 the officer of the Directorate preliminary scrutinized all the seized material. It is argued that the petitioners even as per the case of the respondent authorities were arrested on 08.01.2024 and the remand applications were filed and granted on 09.01.2024, whereas, even as per their own pleadings, the first occasion on which they scrutinized the seized material is on 10.01.2024 and thus, it is apparent that the arrest has been made and remand has been sought without even scrutinizing the material on record and thus, the mandatory requirement of Section 19(1) of the authorities forming the reason to believe that both the petitioners were guilty of the offence has not been not complied with. It is further submitted that from the said averment, it is clear that the material was never produced before the Special Court before the remand was ordered

on 09.01.2024 as it is their own case that they have scrutinized the material on 10.01.2024. It is also pointed out that neither in the pleadings nor in the grounds of arrest nor in the applications of remand, it has been averred by the respondents that the Arresting Officer had recorded the reasons in writing of his belief based on the material in his possession that the petitioners were guilty of the offence punishable under the 2002 Act.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

14. Learned counsel for the respondents has first referred to Section 19(3) of the 2002 Act and has submitted that both the petitioners in both the petitions had been produced before the competent Special Court having jurisdiction, both with respect to subject matter as well as territorial within 24 hours as provided by Section 19(3) of the 2002 Act. Reference has been made to Annexure R-2 annexed along with the additional reply dated 29.01.2024 filed on behalf of the respondents, which is the Panchnama dated 05.01.2024. It is submitted that a perusal of the said Panchnama shows that the officers of the Enforcement Directorate had conducted search at House no.816, Sector 15-A, Faridabad and the said search had started at 08:25 AM on 04.01.2024 and concluded at 02:20 AM on 05.01.2024 and several recoveries including cash of Rs.7,74,600/- had been found out of which an amount of Rs.7.50 lacs was seized and balance amount of Rs.24,600/- was released for household expenses. It is submitted that the said house belongs to one Raman Ojha who, as has been averred in paragraph 2 of the said additional reply, was also a member of the syndicate and was 50% partner in Delhi Royalty Company which was the partnership firm in which huge amounts of proceeds of crime were deposited in cash in the bank account of

Delhi Royalty Company and said Raman Ojha was the authorised signatory in the bank account no.50200034561986 of the Delhi Royalty Company. Learned counsel for the respondents has further pointed out that it has been averred in paragraph 2 that the money was routed to the accounts of petitioner Dilbag Singh, his family members and their businesses. It is argued that the said Delhi Royalty Company, as stated in paragraph 2 of the additional reply is the same company, regarding which reference has been made in the grounds of arrest of the petitioner Dilbag Singh and it has also been stated in the said grounds of arrest that the wife of petitioner Dilbag Singh namely Neetu Kaur and his son namely Uday Singh Sandhu have invested huge amounts in the said Delhi Royalty Company. It is argued that thus, a part of the cause of action for the offence of money laundering had arisen in Faridabad which is under the jurisdiction of the Gurugram Special Court. Learned counsel has referred to the provisions of Section 177 and 178 of the Cr.P.C. 1973 to highlight the fact that in a situation where the offence consists of several acts done in different local areas, then the same can be tried in any of the Courts having jurisdiction over any such local areas. It is argued that since the offence of money laundering as has been defined in Section 3, is very wide and it includes concealment, possession, acquisition and use of the proceeds of crime, thus, any Special Court having jurisdiction other than the place where the proceeds of crime are either concealed or possessed and thereafter recovered, would have jurisdiction to try the said offence and would also be the competent Court of jurisdiction within the meaning of Section 19(3) of the 2002 Act. In support of his arguments, learned counsel for the respondents has relied upon the judgments of the

Hon'ble Supreme Court in ***Rana Ayyub vs. Directorate of Enforcement through its Assistant Director*** reported as ***2023 SCC Online SC 109*** and has highlighted paragraphs 3 to 6, 18, 38 to 40 and 45 of the said judgment. Further reference has been made to Section 462 of the Cr.P.C. 1973 to argue that no finding, sentence or order of any Criminal Court is to be set aside merely on the ground that the inquiry, trial or other proceedings took place in a wrong sessions division, district or sub division unless it appears that such error has in fact occasioned a failure of justice.

15. Learned counsel has submitted that although the Gurugram Court has jurisdiction as a part of the crime was committed within its jurisdiction but even assuming that a part of the crime was not committed within the jurisdiction of the Gurugram Court, then also the same would not call for setting aside the orders of remand as the same would be saved in view of the provisions of Section 462 Cr.P.C., moreso when the petitioners have not been able to show any prejudice caused to them or that there has been any failure of justice in the petitioners being produced before the Gurugram Court. For the said aspect, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***Krishna Kumar Variar vs. Share Shoppe,*** reported as ***(2010)12 SCC 485*** as well as the judgment of the Hon'ble Supreme Court in ***Kaushik Chatterjee vs. State of Haryana & Ors.*** reported as ***(2020) 10 SCC 92.*** Learned counsel for the respondents has also referred to Section 46 and Section 65 of the 2002 Act to highlight the fact that the provisions of the Code of Criminal Procedure, which are not inconsistent with the provisions of the 2002 Act, are to apply to the proceedings under the 2002 Act also and that since there is nothing

inconsistent to the provisions of Sections 177, 178 and 462 of the Cr.P.C. in the 2002 Act, thus, the said provisions would apply to the 2002 Act with full vigour. Learned counsel for the respondents has further submitted that without prejudice to the arguments already raised, the correct interpretation of the provisions of Section 19(3) of the 2002 Act would be that a person, who has been arrested under sub-section (1) of Section 19, could be produced before any Special Court and the use of the word "jurisdiction" in the said sub section would only be in a situation where the said persons are to be produced before the Judicial Magistrate or Metropolitan Magistrate. Since the Judicial Magistrate or the Metropolitan Magistrate would otherwise have no jurisdiction to try the offence as it is only a Special Court, (which has been notified by the Central Government in consultation with the Chief Justice of the High Court under Section 43 to be a Special Court) which is competent to hold the trial with respect to offences under the 2002 Act and the said Court has to be a Court of Sessions and cannot be a Court of Judicial Magistrate or Metropolitan Magistrate. It is submitted that Section 44 of the 2002 Act also supports the said interpretation. It is next contended by learned counsel for the respondents that the order dated 16.01.2024 has not been assailed by the petitioner Dilbag Singh in his petition and the plea with respect to jurisdiction was specifically raised in the said order and the Special Judge vide the said order has rejected the said plea and the same has not been challenged in the petition by the petitioner Dilbag Singh. With respect to the said, reliance has been placed upon the judgment of the Hon'ble Supreme Court in case titled as "***Mumbai International Private Limited*** ***Vs***. ***Golden Chariot Airport and another***",

reported as ***(2010) 10 SCC 422***, more so paras No.45, to contend that once the petitioner had elected to raise the plea before the Special Court and after having suffered an order, the non-challenge of the same would bar the petitioner from raising the said plea in view of the doctrine of election. Further reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in case titled as "***State of Punjab and others Vs. Gurdev Singh"***, reported as ***1991(4) SCC 1*** to contend that even an order which is a nullity has to be challenged. It has been further pointed out that the reliance sought to be placed upon paragraph 3(d) of the additional affidavit on behalf of the petitioner to contend that for the first time, the respondent authorities had scrutinized the material on 10.01.2024, is incorrect, inasmuch as, there is no admission in the said paragraph stating that the authorities for the first time scrutinized the material and whereas, a perusal of Annexure R-2 annexed along with the additional affidavit shows that the panchnama is dated 05.01.2024 with respect to the search carried out in the premises at Faridabad and the same is prior to 09.01.2024, the date on which the petitioners were produced before the Special Court. Reference has also been made to an order dated 09.01.2024, more so, paragraph 7 to show that the material was also produced before the Special Court and the argument with respect to the said material being produced was raised before the Special Court. It is thus submitted that the pleas raised by the petitioner are misconceived and deserve to be rejected.

16. To rebut the argument made on behalf of the petitioners with respect to their illegal detention from 04.01.2024, learned counsel for the respondents has referred to page 12 of the petition of Dilbag Singh to

highlight that as per the case of the petitioners, they were detained in custody since 04.01.2024. It is argued that the said averments have been specifically replied in para 29(b) of the first reply dated 22.01.2024 filed in the case of Dilbag Singh in which it has been stated that no person was detained during the search proceedings and all the persons were given proper rest and food during the course of the said proceedings. Para 35 of the said reply has also been highlighted to show that in response to the averments made in ground (c) in petition, it has been submitted that there were no restrictions imposed upon the petitioners until their arrest on 08.01.2024 and the petitioners and other persons were free to loiter within (wrongly mentioned as with) their own premises during the duration of search as per general practice and the same cannot be termed as detention and that Section 17 of PMLA which deals with search and seizure mandates certain requirements which were duly complied with. Learned counsel for the respondents has further referred to the additional reply dated 29.01.2024 to show that it has been averred therein that by virtue of Rule 3 sub rules 7 and 8 of The Prevention of Money-laundering (Forms, Search and Seizure [or Freezing] and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention) Rules 2005 (hereinafter referred to as “2005 Rules II), the petitioners and other persons who were present at the premises were in possession/control of the locker, safe, almirah, documents etc. and thus, it was important to secure their presence within the premises in order to have access to, inspect/examine their contents and to avoid any sort of tampering with the potential proceeds of crime and also that they were allowed to

follow their daily routine and were not detained or compulsorily retained in the premises. It has further been averred that the petitioners were there within the premises on their own will and themselves offered to be in the premises during the course of the search.

17. Learned counsel has referred to the 2005 Rules (II) more so, Rule 3 Sub Rule 7 and Sub Rule 8 as well as Rule 4 Sub Rule 2 in support of his arguments to the effect that since, the occupant of the building has been permitted to attend the search and also the respondent authorities have the power to require any person who is the owner or is in immediate possession to open the locker or safe and also to allow access to inspect the same, thus, keeping the petitioners in the premises was necessary for carrying out the search. It is further submitted that even as per Rule 4 Sub Rule 2, the seizure memo was to be delivered to the occupant of the building and the provisions of Sub Rules 3 and 4 are also to the similar effect and thus, the presence of the petitioners who are owners/occupants of the building was required for the said purpose. Learned counsel has also relied upon the provisions of Section 100 of Cr.P.C. more so sub sections 6 and 7 to argue that since the occupant of the place searched was to be permitted to attend the search and thereafter the copy of list prepared of the seized materials was to be delivered to the said persons thus, it was necessary for the said persons to be present at the time of search and inspection. On the said aspect, reliance has been placed upon the judgment of the Delhi High Court in ***Gautam Thapar Vs. Directorate of Enforcement***, reported as ***2021 SCC Online Delhi 4599*** and also the judgment of the Hon'ble Supreme Court in ***Sundeep Kumar Bafna Vs. State of Maharashtra and another*** reported as ***2014(16) SCC***

623. It is submitted that on the basis of the abovesaid facts and law laid down in the abovesaid judgments, it cannot be said that the petitioners were in illegal custody.

18. Learned counsel for the respondents has further submitted that the plea on the aspect of grounds of arrest which has been raised by the petitioners is in ground 3 and the averment in the said ground is only to the effect that in the grounds of arrest, the arresting officer had stated that the petitioners did not cooperate with the investigation and had given vague and evasive replies on account of which the petitoners have been arrested. It is submitted that the said reason is not the sole reason for arresting the petitioners and the reasons for arresting the petitioners are clearly coming from the grounds of arrest which have been annexed along with the petition and in the said grounds of arrest, the details of the FIR which are pertaining to the scheduled offences had been mentioned and the background of the case had been given and every such aspect has been mentioned which in accordance with law was required to be mentioned in the grounds of arrest. It is stated that in paragraph 13, it has also been stated by the Assistant Director that on the basis of the material placed on record, he had reason to believe that the petitioners in both the cases are guilty of the offence of money laundering as defined under Section 3 and punishable under Section 4 of the PMLA. It is argued that the petitioners have not laid any specific challenge to the said grounds of arrest and have not even averred that the said grounds of arrest are insufficient or that by reading the grounds of arrest, the offence is not made out. It is argued that since the petitioners had filed the petitions, the onus to show that the contents of the grounds of arrest

were incorrect and that the petitioners were not linked to the facts and circumstances which had been mentioned in the grounds of arrest, was on the petitioners, which they have failed to discharge. It is thus submitted that the said ground of challenge is also absolutely misplaced and deserves to be rejected.

19. On the aspect of non-compliance of the conditions contained in Section 19(2) of the 2002 Act, learned counsel for the respondents has referred to para No.325 of the judgment in ***Vijay Madanlal Chaudhary's case*** *(supra)* to contend that reference was only made to 'pre-conditions' to be fulfilled by the authorized officer before effecting arrest. It is argued that provisions of Section 19(2) of the 2002 Act deal with a situation which is subsequent to the arrest and thus, intent of the Hon'ble Supreme Court while observing that the conditions in Section 19 of the 2002 Act are stringent and are of a higher standard, is with reference to the provisions of Section 19(1) of the 2002 Act and not with reference to Section 19(2) of the 2002 Act. It is further argued that the condition under Section 19(1) of the 2002 Act is referable to Article 22 of the Constitution of India, but the compliance of Section 19(2) of the 2002 Act is not referable to the same and thus, delay in compliance of the same would be a mere irregularity and not an illegality. It is further submitted that even in case compliance of Section 19(2) of the 2002 Act is taken to be mandatory, then, also breach of the same cannot be the basis for setting aside the impugned order and for holding the arrest of the petitioners to be illegal, as no prejudice has been shown by the petitioners on account of the said alleged breach. Learned counsel has further referred to paragraph No.39 of ***V. Senthil Balaji's case*** *(supra)* to

contend that it had been observed in the said para that any non-compliance of the mandate of Section 19(1) of the 2002 Act would vitiate the very arrest itself, but although with respect to sub-section 19(2), it had been stated that the same is a solemn function of the arresting authority which brooks no exception, yet the consequence of the same has not been mentioned in the said paragraph. Further reliance has been placed upon the judgment of the Hon'ble Delhi High Court in the case of ***Neeraj Singal Vs. Directorate of Enforcement***, pronounced on 08.01.2024, to contend that in the said case, the accused was arrested on 09.06.2023 at 10:25 PM, which was a Friday night and the compliance of Section 19(2) of the 2002 Act was done on 12.06.2023 on account of the fact that 10.06.2023 and 11.06.2023 were Saturday and Sunday, on which dates the office of the Adjudicating Authority was closed, was accepted as due compliance of Section 19(2) of the 2002 Act. Learned counsel has further referred to Section 157 of the Code of Criminal Procedure to highlight the fact that even in the said provision there is a requirement that the police officer concerned is required to forthwith send a report i.e. FIR to the Magistrate. It is stated that the said provisions are similar to the provisions of Section 19(2) of the 2002 Act and the Hon'ble Supreme Court in the case of ***Sheo. Shankar Singh Vs. State of Uttar Pradesh***, reported as ***(2013) 12 SCC 539,*** in paras No.30 and 31, had observed that mere delay in sending the FIR to the magistrate by itself would not have any effect on the case of the prosecution unless serious prejudice was demonstrated to have been suffered by the accused therein. On the said aspect, reliance has also been placed upon a judgment of the Hon'ble Supreme Court in case titled as "***State of Rajasthan Vs. Daud***

Khan", reported as ***2016(2) SCC 607.*** It is argued that in the present case, no such prejudice has been demonstrated. Learned counsel for the respondents has further referred to para No.3 of the additional reply dated 29.01.2024 (at internal page 16) to contend that the reasons for delay in compliance of the provisions of Section 19(2) of the 2002 Act have been detailed in the said para and the said reasons are sufficient to show the compliance of Section 19(2) of the 2002 Act. Reference was also made to the remand order passed by the Special Court dated 09.01.2024 to contend that the Court had considered the remand papers and other relevant material and the allegations made by the prosecution including the fact that the petitioners' attitude was non-cooperative and after considering everything had observed that a prima facie case for the commission of the offence under the 2002 Act had been found and thereafter granted seven days custody to the Directorate of Enforcement. It is submitted that compliance of Section 19(2) is not required to be shown to the Magistrate as the same is to be forwarded to the Adjudicating Authority. It is further submitted that the said order is legal and in accordance with law and reflects due application of mind and thus, deserves to be upheld. It is further submitted that in the present case since no personal search of the petitioners has been done before arrest, thus, Section 18 of the 2002 Act has not been invoked.

ARGUMENTS OF LEARNED SENIOR COUNSEL FOR THE PETITIONERS IN REBUTTAL

20. Learned senior counsel for the petitioners in rebuttal has submitted that the facts of the present case would clearly reveal that there was illegal detention of both the petitioners from 04.01.2024 to 08.01.2024.

It is submitted that respondent no.2 has filed an additional reply dated 29.01.2024 in the case of the petitioner-Dilbag Singh @ Dilbag Sandhu which cannot be read to contradict the averments which have been made in the first reply dated 22.01.2024 as no amendment of the first reply has been sought nor the same has been allowed. It is stated that even if in case the said additional reply is taken into consideration, then also a perusal of Ground F (at internal page 18) of the reply would show that reliance has been placed by the respondent authorities on Rule 3(7) and (8) of the 2005 Rules (II) and it has been averred in the said reply that the petitioners and other persons present in the premises were in possession / control of locker, safe, almirah, documents etc. and hence it was important to secure their presence within the premises. Learned senior counsel has highlighted the words “to secure their presence within the premises” and has submitted that the said expression used in the reply furthers the case of the petitioners that they were illegally detained from 04.01.2024 till 08.01.2024 in the house against their wishes and were not permitted to go out. In support of the said argument, learned senior counsel for the petitioners has referred to Section 17 of the 2002 Act which deals with search and seizure and also ‘the 2005 Rules’ which have been relied upon by the respondent. It is argued that as per sub rule 8 of Rule 3 of the 2005 Rules (II), an occupant or some person on his behalf has been given the right to attend the search and the said provision alone would show that the petitioners or any person who is an occupant could not have been detained in the premises for carrying out the search as staying in the premises is an option with the occupant or a person on his behalf. It is argued that the said provision completely demolishes the

stand of the respondent authorities to the effect that for the purpose of search, they have the right to keep the petitioners and others persons in the premises so as to further their search. It is argued that even in sub Rule 7, which has been relied upon by the respondent authorities, the expression "may" and not "shall" has been used and thus, a person, who is the owner and is in possession, may be required to open the same and allow access and where such person fails to comply with any such requirement, then the authorities are entitled to break open the lock of such box, locker, safe etc. and thus, even reading of the said provisions shows that even in case of non-presence or non-compliance of the order of the authorities, the authorities would have a right to break open the box etc., thus, not hampering their search.

21. Learned senior counsel has further referred to the Panchnama in both the cases to further argue that even a perusal of the said two Panchnamas would clearly show that no such direction was ever given to the petitioners and the other persons on 5th, 6th, 7th and 8th January, 2024 and there is no document placed on record to show that the authorities have ever directed either of the two petitioners to open any box, locker, safe, almirah etc. for the purpose of search and inspection. It is argued that as per Panchnama (Annexure P-1) in the case of petitioner-Dilbag Singh @ Dilbag Sandhu, it has been mentioned that search had started from 08:25 hours on 04.01.2024 and had concluded on 08.01.2024 at 13:00 hours and the details of the acts done at the time of the said search have been mentioned and it has been stated that the actual search had started at 08:40 hours on 04.01.2024 and it is only on 04.01.2024 that the officer had searched the premises by

checking the documents in the cupboard / almirahs, drawers etc. and there is no such averment in the said Panchnama with respect to any subsequent search of compounds/almirahs etc. on any subsequent date after 04.01.2024 and thus, keeping the petitioners in the premises without their consent for the purpose of the search would amount to illegal detention. Reference has also been made to the Panchnama in the case of petitioner-Kulwinder Singh which has also been annexed as Annexure P-1 in the said petition and it has been argued that even in the said case, the search had started on 04.01.2024 and it is only on 04.01.2024 when the lock of the room, the key of which was not available, was broken by calling a locksmith and the said person was called by Rakesh Kumar, Assistant Director and the breaking of the lock was done in the presence of one Manoj Kumar son of Bhim Singh, who had been working as Accountant for the last 5 years for Kulwinder Singh. It is submitted that it has been further recorded in the said panchnama that on the same day, the almirah which was in the said room, was also opened by breaking the lock of the same and thereafter, no such incident has been mentioned on the subsequent dates i.e., 05th, 6th, 7th and 8th January, 2024. In the concluding part of the said Panchnama in the case of petitioner-Kulwinder Singh, it has been specifically mentioned that “everyone present at the premises was allowed proper rest, food break and washroom break” and from the same, it is apparent that there was complete control of the respondent on the movements of the petitioners and their family members and it is the respondent authorities who were allowing the petitioners and family members to take rest, food and washroom breaks. Learned senior counsel for the petitioners has submitted that in case the plea of the

respondent authorities to the effect that the respondent authorities are entitled to secure the presence of the petitioners and to keep them in the premises for the purpose of search, is taken to be true, then in such a situation the said act would also violate Section 18 of the 2002 Act which as per the case of the respondent authorities has not been invoked in the case of the petitioners. It is argued that a perusal of Section 18 of the 2002 Act would show that in case an authority has reason to believe which has to be recorded in writing that any person has secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which may be useful for or relevant to any proceedings under the Act, then the said authority is entitled to search that person and seize such record or property which may be useful for or relevant to any proceedings under the Act and in case of his doing so, it is incumbent to take the said person within twenty four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate and also as per sub section (4) of the said Section, the person cannot be detained by the authorities for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate and under sub section (5) after the said person has been produced before the Gazetted Officer or a Magistrate in case the said officer sees no reasonable ground for search, then the said person is to be immediately discharged. It is submitted that since it is the admitted case of the respondent authorities that Section 18 has not been invoked, thus, the plea as sought to be raised in the reply and during the course of arguments, would be violative of the mandatory provisions of Section 18 of the 2002 Act. Learned Senior counsel for the petitioners on the

said aspect has relied upon a judgment of the Hon'ble Chhattisgarh High Court in case titled as "***Subhash Sharma Vs. Directorate of Enforcement of Government of India"***, reported as ***2022 (ILR) Chhattisgarh 2202***, more so paras No.10 to 15 of the same. It is argued that the petitioners have a strong objection to the averments made in the last para (at page 19 of the additional reply dated 29.01.2024) and have submitted that the same are contrary to the documents and the earlier reply filed and has been filed only to overcome the submissions made on behalf of the petitioners on the first date of hearing. It is argued that it is the case of the petitioners right from the beginning that they had been illegally detained and the same was contrary to their will and thus, a bald assertion made in the last part of the additional reply, being contrary and an after thought, deserves to be rejected.

22. Learned senior counsel for the petitioners has submitted that a reading of Section 19(1) of the 2002 Act would clearly show that before arresting a person, it is necessary for the officer concerned to have reason to believe, which is required to be recorded in writing that the person sought to be arrested is guilty of the offence punishable under the Act and the said reason to believe has to be on the basis of material in his possession. It is argued that the above-said provision necessarily envisages that the material which the officer has collected and on the basis of which he has formed the said reason to believe has to be with the officer on the date of making the arrest and as soon as may be, he is required to inform the accused about the grounds of such arrest. It is further argued that under sub-section (2) of the 2002 Act, the said officer is duty bound to send the said material which is already collected to the Adjudicating Authority in a sealed envelope so that

the said material cannot be tampered with and the officer in case is called upon to demonstrate that on the date when the arrest was made he had the material for his reason to believe that the person arrested was guilty and if there is any delay in sending the said material the same could result in such a situation where the material which is subsequent to arrest could also be sought to be forwarded so as to justify the arrest which had taken place prior. It is stated that it is for the said reason that the expression "immediately after arrest", which signifies a higher decree of urgency, rather than, the expression "as soon as may be" has been used in sub-section (2) of the 2002 Act. It is argued that as per the latest judgment of the Hon'ble Supreme Court in "***Ram Kishor Arora Vs. Directorate of Enforcement***", reported as ***2023 (SCC Online) SCC 1682***, the Hon'ble Supreme Court has come to the conclusion that the expression "as soon as may be" would mean within 24 hours of the arrest of the accused, within which he had to be informed in writing about the grounds of arrest. It is further stated that the said time of 24 hours has been given in view of the expression used in Section 19(1) of the 2002 Act and also in view of the fact that on the basis of the material already in possession, the grounds of arrest had to be drafted by the officer concerned. It is stated that on the other hand, under sub-section (2) the expression used is "immediately" and the same necessarily means that much prior to elapsing of 24 hours from the time of arrest the material is to be sent to the Adjudicating Authority as the said material is already in possession of the authority before arresting the person concerned. It is further stated that sending of the said material within the period of 24 hours and prior to the person being produced before the magistrate for the purpose of remand

would be necessary so as to demonstrate to the magistrate that there is complete compliance of Sections 19(1) and 19(2) of the 2002 Act and it is only in case the material has been sent and the said fact has specifically been mentioned in the application for remand that the Special Court would be able to appreciate the said fact and record so in his order as per the mandate of law. It is stated that in the present case, since it is the admitted case of the respondents authority that they had not sent the material which they had collected on the date when the remand was granted i.e. 09.01.2024 on the first occasion, clearly shows that there is clear violation of the provision of Section 19(2) of the 2002 Act, which has further been compounded by there being no observation in the impugned order with respect to the compliance of the said provision of Section 19(2) of the 2002 Act.

23. Learned senior counsel for the petitioners has vehemently submitted that a perusal of para 3 of the additional reply dated 29.01.2024 would clearly show that there is complete non-compliance of Section 19(1) of the 2002 Act as well as 19(2) of the 2002 Act. It is further submitted that the entire sequence of events, as per the stand of the respondents, has been stated in para Nos.3(a) to 3(e) and the said sequence of events shows that certain cash, documents and vehicles were seized, regarding which preliminary scrutiny was required to be done as per the stand of the respondents and it has further been stated that the final search was conducted till 03:00 PM, which was after the arrest of the petitioners as the petitioners were arrested at 12:15 PM and 2:20 PM on 08.01.2024. It is argued that it is no where stated that before the arrest, the material had already been scrutinized by them and on the basis of the material, the arresting officer had

formed the reason to believe and no where stated that the said reason to believe was recorded in writing, thus, violating Section 19(1) of the 2002 Act also. It is argued that even as per the averments in sub-clause (c), the only issue, as per the case of the respondents which the Special Court was considering was the point of jurisdiction and no averment has been made that the compliance of Sections 19(1) and 19(2) of the 2002 Act, was also being considered or was actually considered. It is submitted that sub-clause (d) would clearly show that even as per the stand of the respondents, the preliminary scrutiny of documents was done on 10.01.2024 i.e. after two days of the arrest of the petitioners and after the remand had already been sought and it is thus apparent that the arrest was made without even scrutinizing the material and thus, the question of the arresting officer having the reason to believe on the basis of the said record that the petitioners were guilty of the offence, does not arise. It is stated that although it had been stated that there were 110 officers who were involved in the said process in addition to 100 CRPF persons, yet, the simple act of forwarding the material already in possession of the officers concerned was not done by respondent No.2 and thus, the reasons for non-forwarding the material under Section 19(2) of the 2002 Act given in the additional reply dated 29.01.2024 are completely unjustifiable and thus, there is non-compliance of the conditions of Section 19(2) of the 2002 Act also, in the present case.

24. Learned Senior Counsel for the petitioners has further referred to paragraphs 29(h) and (i) (Internal page 18) of the first reply dated 22.01.2024 filed on behalf of the authorities and has submitted that even in

the said paragraph it has not been averred by the respondent authorities that on the basis of the material in their possession they had reason to believe that the petitioners were guilty of an offence punishable under the Act, rather it has only been stated that the arrest was made upon finding a "prima facie case of commission of money laundering against the petitioner" and on the observation that the petitioner was involved in the commission of offence and the said reason could not be a sufficient reason for arresting the petitioners. It is further submitted that both the petitioners are not accused in any of the FIRs, reference of which has been made in the grounds of arrest and a perusal of the grounds of arrest does not show that the proceeds of crime which are stated to be allegedly in possession of the petitioner or allegedly recovered from the petitioners are relatable or having any link with the scheduled offences given in the eight FIRs as mentioned in the grounds of arrest.

25. Learned Senior Counsel for the petitioners has further submitted that a perusal of para 311 of the judgment passed in ***Vijay Madanlal Choudhary's*** case (supra) clearly states that reasons to believe are required to be recorded in writing and "contemporaneously" forwarded to the Adjudicating Authority along with material in his possession in a sealed envelope to be preserved by the Adjudicating Authority. Reference has been made to the New International Webster's Comprehensive Dictionary of the English Language to highlight that the word "contemporaneous" means "at the same time". It is submitted that thus, the intent of the legislature was that the material should be sent contemporaneously/immediately to the Adjudicating Authority so as to avoid any manipulation or subsequent

addition of documents to justify prior arrest. It is further submitted that in the said judgment of ***Vijay Madanlal Choudhary's*** case (supra) in paragraph 322, it has been observed that the safeguards which have been provided are to ensure fairness, objectivity and accountability of the authorised officer and the said term objectivity has also been used in the subsequent judgment in ***Pankaj Bansal's*** case (supra) in Paragraph 5.

26. Learned senior counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court of India in case titled as ***"State of Punjab vs. Davinder Pal Singh Bhullar and others"*** reported as ***(2011) 14 Supreme Court Cases 770*** to contend that it is a settled proposition of law that in case initial action/order is found to be illegal, then all subsequent and consequential proceedings would fall automatically and the said principle is applicable to judicial, quasi judicial and administrative proceedings equally and that in case an order at the initial stage is bad in law, then all further proceedings, consequent thereto, would be non-est and have to be necessarily set aside. It is argued that in the said judgment, it was observed by the Hon'ble Supreme Court that once the impugned order has been found to be illegal, then the consequential subsequent proceedings, orders, FIR, investigation stand vitiated and are liable to be declared non-est and set aside.

27. Learned Senior Counsel for the petitioners has further relied upon a judgment of the Hon'ble Supreme Court in ***Pebam Ningol Mikoi Devi Vs. State of Manipur and others***, reported as ***2010(9) SCC 618*** to contend that even under the Acts which require subjective satisfaction, as contrary to the objective satisfaction required under the 2002 Act, Hon'ble

the Supreme Court had gone into the question as to whether the material to form the said subjective satisfaction justifying the detention was there in existence or not. It is submitted that the Hon'ble Supreme Court had relied upon an earlier judgment passed in ***State of Rajasthan Vs. Daud Khan*** reported as ***(2016) 2 SCC 607***, to state that the material which forms subjective satisfaction is also required to be communicated to the detenue. It is submitted that in the said case, the detention was held to be bad and was set aside. It is further submitted that the custody of the Enforcement Directorate is now over and the petitioners have been sent to judicial custody and thus, even on the said aspect, no useful purpose would be served by keeping the petitioners in further incarceration. It is further submitted that reading of Section 19(3) of the 2002 Act would clearly show that the word "jurisdiction" is referable to Special Courts, Judicial Magistrates and also the Metropolitan Magistrates as the case may be and not just Judicial Magistrates and Metropolitan Magistrates. It is further submitted that the expression "jurisdiction" has been used in the said provision and not territorial jurisdiction.

28. Learned Senior Counsel for the petitioners has referred to Section 4(4) of Code of Criminal Procedure to contend that with respect to offences under the Acts other than IPC, the investigation, inquiry and trial is to be conducted subject to the enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences and thus it is the provisions of PMLA which would prevail in the instant case.

29. Learned Senior Counsel for the petitioners has submitted that

panchnama dated 05.01.2024 (Annexure R-2) and the alleged recovery of Rs.7.50 lacs from Faridabad has no connection with the petitioners as the said premises is neither owned nor possessed by either of the two petitioners and even as per the case of the respondent authorities, the same is owned and possessed by one Raman Ojha with which the petitioners have no connection. It is argued that the alleged recovery from the residence of the third person cannot be stated to be the recovery from the present petitioners so as to confer the jurisdiction on the Court at Gurugram, more so on 09.01.2024 when the petitioners were produced before the said Court. It is reiterated that the petitioners are residents of Yamuna Nagar and the search was also carried out in their premises at Yamuna Nagar and there is nothing stated in the application for remand of both the petitioners to even remotely show any recovery or part of the cause of action which might have arisen within the jurisdiction of the Special Court at Gurugram.

FINDINGS OF THIS COURT

30. This Court has heard the arguments raised on behalf of the petitioners as well as the respondents and has perused the paper books and is of the opinion that both the petitions deserve to be allowed for the reasons enumerated hereinbelow.

(I) NON-APPLICATION OF MIND AND NON-RECORDING OF COMPLIANCE OF THE CONDITIONS/STIPULATIONS CONTAINED IN SECTION 19 BY THE SPECIAL COURT WHILE PASSING THE IMPUGNED REMAND ORDERS

31. At the outset, it would be trite to note the relevant provisions of law as well as the relevant judgments on the said issue. Section 19 of the

2002 Act which deals with the power to arrest and is relevant for the purpose of adjudicating the present issue is reproduced hereinbelow:-

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

A perusal of the above Section would show that the same contains three Sub-Sections. Under Sub-Section 1, the concerned officer who could be the Director, Deputy Director, Assistant Director or any other officer authorized in this behalf by the Central Government, may arrest a

person after, on the basis of the material in his possession, he has reason to believe, which belief has to be recorded in writing, that any person is guilty of an offence punishable under the Act. Sub-Section 1 further provides that after the arrest, the person so arrested, is required to be informed about the grounds of such arrest "as soon as may be". Sub-Section 2 of Section 19 provides that the officer, who has arrested the person concerned, is "immediately" required to forward a copy of the order along with the material in his possession, on the basis of which he had reason to believe that the said person was guilty of the offence punishable under the Act, to the Adjudicating Authority in a sealed envelope in the manner as may be prescribed. Sub-Section 3 further provides that the person arrested shall within 24 hours be taken to the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be having jurisdiction.

32. The Hon'ble Supreme Court in the case of ***V.Senthil Balaji*** (supra) had observed that the provisions of Section 19 are mandatory and the compliance of the said provisions is a solemn function of the arresting authority which brooks no exception and that the officer concerned is to strictly comply with the mandate of Section 19 in its letter and spirit, failing which he would be visited with the consequences as have been mentioned under the 2002 Act. It was further observed that the Court/Magistrate before whom the person arrested is produced within the period of 24 hours, as prescribed under Section 19(3), has a distinct role to play and it is his bounden duty to see to it that Section 19 of the 2002 Act has been duly complied with and any failure would entitle the person arrested to be released. It was observed that the said Court/Magistrate shall peruse the

order passed by the authority under Section 19(1) of the 2002 Act and would satisfy itself about the compliance of the safeguards as mandated under Section 19 of the 2002 Act and after being so satisfied, the competent Court/Magistrate could consider the request for custody in favour of the respondent authority. In para 95, the Hon'ble Supreme Court had concluded that any non-compliance of the mandate of Section 19 of the 2002 Act would enure to the benefit of the person arrested. Paras 39, 42, 73, 74 and 95(ii) of the said judgment are reproduced hereinbelow:-

> *"**39. To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.***
>
> *42. This provision is a reiteration of the mandatory compliance of Section 19 of the PMLA, 2002. It is in the nature of a warning to an officer concerned to strictly comply with the mandate of Section 19 of the PMLA, 2002 in letter and spirit failing which he would be visited with the consequences.* ***It is***

his bounden duty to record the reasons for his belief in coming to conclusion that a person has been guilty and therefore, to be arrested. Such a safeguard is meant to facilitate an element of fairness and accountability.

73. We have already touched upon the mandatory function that a Magistrate is to undertake while dealing with a case of remand. *He is expected to do a balancing act. As a matter of rule, the investigation is to be completed within 24 hours and therefore it is for the investigating agency concerned to satisfy the Magistrate with adequate material on the need for its custody, be it police or otherwise.* ***This important factor is to be kept in mind by him while passing the judicial order.*** *We reiterate that Section 19 of the PMLA, 2002, supplemented by Section 167 of the CrPC, 1973 does provide adequate safeguards to an arrested person. If Section 167 of the CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise.*

74. Such a Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the PMLA, 2002. It is his bounden duty to see to it that Section 19 of the PMLA, 2002 is duly complied with and any failure would entitle the arrestee to get released. <u>The Magistrate shall also peruse the order passed by the authority under Section 19(1) of the PMLA, 2002</u>. Section 167 of the CrPC, 1973 is also meant to give effect to Section 19 of the PMLA, 2002 and therefore it is for the Magistrate to satisfy himself of its due compliance. Upon such satisfaction, he can consider the request for custody in favour of an authority, as Section 62 of the PMLA, 2002, does not speak about the authority which is to take action for non-compliance of the mandate of Section 19 of the PMLA, 2002. *A remand being made by the Magistrate upon a person being produced before him, being an Independent entity, it is well open to him to*

invoke the said provision in a given case. ***To put it otherwise, the Magistrate concerned is the appropriate authority who has to be satisfied about the compliance of safeguards as mandated under Section 19 of the PMLA, 2002****. On the role required to be played by the Magistrate, qua a remand, we do not wish to go any further as it has been dealt with by this Court in Satyajit Ballubhai Desai v. State of Gujarat, (2014) 14 SCC 434:*

> *"9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law.* ***The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers which at times may be at the Instance of an interested party also. But it is also equally true that the police custody although is not the be-all and end-all of the whole investigation, yet it is***

> ***one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and has therefore, permitted limited police custody"***
>
> *95. SUMMATION OF LAW:*
>
> *xxx xxx*
>
> ***ii. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002."***

33. The Hon'ble Supreme Court in ***Pankaj Bansal's case*** (supra), had further reiterated the fact that the Court which is seized of the exercise under Section 167 Cr.P.C. of remanding the person arrested has a duty to verify and ensure that the conditions in Section 19 of the 2002 Act are duly satisfied and in the event, the Court fails to discharge its duty in right earnest and in proper perspective, the order of remand would have to fail on the said ground alone. In the said case, the Hon'ble Supreme Court had observed that the concerned Judge had not even recorded a finding that he had perused the grounds of arrest to ascertain whether the officer concerned had recorded the reasons to believe that the appellants therein were guilty of the offence under the 2002 Act and that there was proper compliance of the mandate of Section 19 of the 2002 Act and after considering the said aspects and other relevant aspects, had allowed the appeal and set aside the order passed by the Division Bench of the High Court as well as the impugned arrest orders and the arrest memo along with the orders of remand and all other consequential orders and had released the appellant therein. Paras 16 to 19 of

the said judgment are reproduced hereinbelow:-

> *"16. This Court had occasion to again consider the provisions of the Act of 2002 in V. Senthil Balaji vs. The State represented by Deputy Director and others , and more particularly, Section 19 thereof. It was noted that the authorized officer is at liberty to arrest the person concerned once he finds a reason to believe that he is guilty of an offence punishable under the Act of 2002, but he must also perform the mandatory duty of recording reasons. It was pointed out that this exercise has to be followed by the information of the grounds of his arrest being served on the arrestee.* ***It was affirmed that it is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested and it was observed that this safeguard is meant to facilitate an element of fairness and accountability****. Dealing with the interplay between Section 19 of the Act of 2002 and Section 167 Cr.P.C, this Court observed that the Magistrate is expected to do a balancing act as the investigation is to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that Section 19 of the Act of 2002, supplemented by Section 167 Cr.P.C., provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the Act of 2002.* ***It was held that the Magistrate is under a bounden duty to see to it that Section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released.*** *It was pointed out that Section 167 Cr.P.C is meant to give effect to Section 19 of the Act of 2002 and,*

therefore, ***it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002****. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this, the grounds of arrest were furnished in writing to the arrested person by the authorized officer.*

17. In terms of Section 19(3) of the Act of 2002 and the law laid down in the above decisions, Section 167 Cr.P.C. would necessarily have to be complied with once an arrest is made under Section 19 of the Act of 2002. ***The Court seized of the exercise under Section 167 Cr.P.C. of remanding the person arrested by the ED under Section 19(1) of the Act of 2002 has a duty to verify and ensure that the conditions in Section 19 are duly satisfied and that the arrest is valid and lawful. In the event the Court fails to discharge this duty in right earnest and with the proper perspective, as pointed out hereinbefore, the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination, validate an unlawful arrest made under Section 19 of the Act of 2002.***

18. In the matter of Madhu Limaye and others was a 3-Judge Bench decision of this Court wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest

suffered on the ground of violation of Article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.

19. Viewed in this context, the remand order dated 15.06.2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, reflects total failure on his part in discharging his duty as per the expected standard. ***The learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reasons to believe that the appellants were guilty of an offence under the Act of 2002 and that there was proper compliance with the mandate of Section 19 of the Act of 2002. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of the ED! The sentence – 'It is further (sic) that all the necessary mandates of law have been complied with' follows – 'It is the case of the prosecution….' and appears to be a continuation thereof, as indicated by the word 'further', and is not a recording by the learned Judge of his own satisfaction to that effect."***

34. It would be relevant to note that the Hon'ble Supreme Court in the case of ***Ram Kishor Arora*** (supra) had observed that since, in the judgment of ***Pankaj Bansal*** (supra), it had directed to furnish the grounds of arrest in writing as a matter of course, "henceforth" thus, it was observed that the said requirement of furnishing the grounds of arrest in writing to the arrested person would be mandatory/obligatory after the date of the said judgment and that non-furnishing of the grounds of arrest in writing till the date of pronouncement of the judgment in the case of ***Pankaj Bansal***

(supra) could not be faulted upon. It would be relevant to note that the judgment in the case of ***Pankaj Bansal*** (supra) was pronounced on 03.10.2023 whereas both the petitioners, in the present case, have been arrested as per the case of the prosecution on 08.01.2024 and as per the case of the petitioners on 04.01.2024, which is after the date of pronouncement of the said judgment. In the case of ***Ram Kishor Arora*** (supra), the Hon'ble Supreme Court had further observed that the term "as soon as may be" appearing in Section 19(1) would mean reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of arrest, which would be within 24 hours of his arrest. In the said case, the sole ground of challenge as noticed in para 3 and para 24 of the judgment was that the appellant therein had not been furnished the copy of the grounds of arrest at the time of his arrest and since in that case the arrest of the said person was on 27.06.2023 which was prior to the date of pronouncement of the judgment in the case of ***Pankaj Bansal*** i.e. 03.10.2023, no relief was granted to the appellant therein. In the judgment of ***Ram Kishor Arora*** (supra), it was observed that after 03.10.2023, in case a person is arrested and is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished written communication about the grounds of arrest within a period of 24 hours of his arrest, then that would be sufficient, instead of his having to be given written grounds of arrest immediately at the time of arrest. Further, in the abovesaid case of ***Ram Kishor Arora*** (supra), the judgment of the Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary*** (supra) was reiterated. In the said judgment of ***Vijay Madanlal Choudhary*** (supra), the Hon'ble Supreme Court while upholding the

constitutional validity of certain provisions of the 2002 Act had observed that Section 19 provides for inbuilt safeguards to be adhered to by the authorized officers which included recording reasons for the belief that the person to be arrested is guilty of an offence punishable under the Act and the same had to be recorded in writing and the grounds of such arrest are to be informed to the accused person and the officer concerned who has arrested the person has to forward the copy of the order along with the material in his possession in a sealed cover to the Adjudicating Authority. Relevant portion of para 322 of the said judgment is reproduced hereinbelow:-

> *"**ARREST***
>
> *322. Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money-laundering can be effected. Subsection (1) of Section 19 envisages that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to believe that any person has been guilty of an offence punishable under the 2002 Act, he may arrest such person. Besides the power being invested in high-ranking officials,* ***Section 19 provides for inbuilt safeguards to be adhered to by the authorised officers, such as of recording reasons for the belief regarding the involvement of person in the offence of money-laundering. That has to be recorded in writing and while effecting arrest of the person, the grounds for such arrest are informed to that person. Further, the authorised officer has to forward a copy of the order, along with the material in his possession, in a sealed cover to the Adjudicating Authority, who in turn is obliged to preserve the same for the prescribed period as per the Rules. This safeguard is to ensure fairness, objectivity and accountability of the authorised officer in forming opinion as recorded in writing***

> ***regarding the necessity to arrest the person being involved in offence of money-laundering.*** *Not only that, it is also the obligation of the authorised officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within twenty-four hours. This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section 19(3), it has to be complied by the authorised officer."*

35. In para 325, further reference was made to the fact that the Central Government by virtue of Section 73 of the 2002 Act had framed the 2005 Rules(I) which deal with the forms and manner of forwarding the copy of order of arrest of a person along with the material to the Adjudicating Authority.

36. The law laid down in the abovesaid judgments clearly shows that it is incumbent upon the Special Court/concerned Court at the time of remanding the accused to the custody of ED, to peruse the order of arrest and to see due compliance of provisions of Section 19 of the 2002 Act and also reflect the same in the order of remand by making a specific observation regarding the same.

37. This Court would now consider as to whether the Special Court, in the present case, has passed the order of remand in accordance with law and in accordance with the provisions of Section 19 and law laid down in the abovesaid judgments.

38. Relevant portion of order dated 09.01.2024 passed in the case of

the petitioner-Dilbag Singh @ Dilbag Sandhu is reproduced hereinbelow:-

> *"18. I have given my due consideration to the facts & circumstances of the case and the above mentioned arguments. The remand papers and other relevant documents have also been perused carefully.*
>
> *19. A perusal of record shows that in the present case there is no denial of the fact that for the commission of scheduled offence, nine FIRs have been lodged in two Police Stations of* ***District Yamuna Nagar****, i.e. Two FIRs in Police Station Bilaspur and seven FIRs in Police Station Pratap Nagar. It has been* ***alleged*** *by the applicant-Directorate of Enforcement that during the course of investigation of the above mentioned FIRs, it was found that ultimate beneficiary of cheating/fraud was the accused who had dealt with proceeds of crime.* ***In such circumstances, in my considered opinion, at this prima facie stage when investigation is still at infant stage this arguments of learned counsel for the accused is not tenable that a false story has been cooked-up by the Directorate of Enforcement with regard to commission of offence under the Prevention of Money Laundering Act, 2002, and the accused has no nexus whatsoever with the same.Such a conclusion can be drawn at the time of conclusion of trial only.***
>
> *20. It has been* ***alleged*** *by the Directorate of Enforcement that during search of the premises of the accused various E-Rawana bills and cheque books of many firms, which were part of syndicate were traced and that the above mentioned recoveries further augment the claim of the applicant/Directorate of Enforcement with regard to involvement of accused in the commission of offence.*
>
> *21. Here this fact cannot be ignored that there are very specific and categorical* ***allegation*** *of the applicant-Directorate of Enforcement that during the course of investigation when the*

statement of the accused was recorded, his attitude ***was non-cooperative****, and that for majority of questions he has given either misleading replies or his replies were evasive.*

22. Since the ***allegations*** *against the accused are* ***very serious*** *and the Directorate of Enforcement is seeking to decode the money trail, role of the accused, viz-a-viz his persons/aids, who facilitated the offence of money laundering, so as to get to know as to how the accused persons were successful in generating proceeds of crime,* ***in my opinion, a valid ground exists for the applicant/Directorate of Enforcement for custodial interrogation of the accused****. In my considered opinion, once ECIR has been registered and during investigation,* ***a prima facie case for the commission of offence*** *under the Prevention of Money Laundering Act, 2002 has been found, the applicant/Directorate of Enforcement is duty bound to trace the money, reveal the modus oprendi adopted by the accused for generating proceeds of crime and its circulation from one source to another. In my considered opinion the above mentioned goal can be achieved only when the opportunity is given to the applicant-Directorate of Enforcement to interrogate the accused in custody.*

23. As a sequel to above mentioned discussion, in my considered opinion the applicant-Directorate of Enforcement has a good and sufficient reason to claim the custody of accused person for his interrogation. However, in my opinion in view of facts and circumstances of the instant case and other mitigating circumstances, it shall be just & proper that the accused is remanded into custody of Directorate of Enforcement for a period of 07 (seven) days.

24. In view of above mentioned observations, the application in hand is hereby partly accepted and the accused is remanded into ED custody for a period of 07 days. The accused be produced in the court on 16.1.2024. It is further directed that

the Investigating Officer of the case shall get the accused examined medically before proceeding for custodial interrogation and his custody shall not be transferred to any other agency without prior order of the competent authority.

25. At this stage, an application has been moved by the learned counsel for the accused seeking for permission to interact with the accused during the remand period. In addition to above the learned counsel for the accused has also requested to provide facility of medicines and other facilities as advised by the Medical Officer.

22. In view of above mentioned application, it is hereby ordered that the Investigating Officer shall allow the accused to meet his counsel on each and every date, during custody period, for one hour daily, i.e. from 09:00 a.m. to 10:00 a.m. It is further directed that all the facilities as prescribed/advised by the Medical Officer, including medicines & equipments shall be provided by the Directorate of Enforcement.

23. The papers be put up on 16.1.2024."

To the similar effect is the order dated 09.01.2024 passed in the case of petitioner-Kulwinder Singh. A perusal of the above and the whole order would show that not even a passing reference much less finding has been made on the aspect that the Court had satisfied itself that the officer concerned immediately after the arrest of the accused persons had forwarded the copy of the order along with the material in his possession to the Adjudicating Authority in a sealed envelope in the manner as has been prescribed. Thus, compliance of Section 19(2) has not been noticed and it has not even been remotely observed that the said mandatory provision has been complied with by the concerned officer of the Enforcement Directorate. It would be relevant to note that as per the additional reply dated 29.01.2024

filed on behalf of respondent No.2 {para (E)(3)(d)} in the case of petitioner-Dilbag Singh @ Dilbag Sandhu, it is the admitted case of the respondent authorities that on the date of passing of the order dated 09.01.2024, the compliance of the provision of Section 19(2) had not been fulfilled by the respondent authorities. The detailed discussion regarding the same would be done in the subsequent paragraphs while dealing with the other issues in the present case. Similarly, even with respect to the provisions of Section 19(3), the fact that the petitioner had been produced before the Court having jurisdiction and that the Court concerned was having jurisdiction in the matter has not been recorded. It would be relevant to note that in the impugned order, it has been recorded that the person arrested is a resident of Yamuna Nagar and the eight FIRs which are stated to be with respect to the scheduled offences were registered in District Yamuna Nagar. No reference with respect to any averments in the application or any material so as to show that the offence of money laundering had been committed within the jurisdiction of the Court at Gurugram, has even been remotely made in the order. In Section 19(3), the word “having jurisdiction” has been used in contradistinction to Section 167(2) of Cr.P.C. where it has been stated that the Magistrate to whom the accused person is to be forwarded may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused. This Court is aware of the fact that the final question as to whether the Court at Gurugram would have the jurisdiction to try the case or not would be dependent upon the entire material which would be produced by the Enforcement Directorate and even if a part of the proceeds of crime is recovered from the place within the jurisdiction of the

Court at Gurugram, then the plea of the prosecution to the effect that the Court at Gurugram would have the jurisdiction would in all likelihood be accepted. The issue which the Court is considering presently is not as to whether the Court at Gurugram would have the jurisdiction to try the offence but is as to the aspect of the application of mind of the Special Court with respect to compliance of provisions of Section 19 including that of Section 19(3). Since, the petitioners were produced before the Special Court at Gurugram on 09.01.2024 thus, it was incumbent upon the said Court to consider the material to see as to whether as on 09.01.2024, any cause had arisen so as to produce the petitioners before the said Court and in case any such cause had arisen then to specifically state so in the order of remand. In the instant case, the same has not been done by the Court concerned.

39. Importantly, the Special Court has also not made any observations with respect to the due compliance by the authority of Section 19(1). There is no reference in the order of remand to state that the Court had perused the order, if any, recording the reason to believe that the petitioners are guilty of the offence punishable under the 2002 Act or the grounds of arrest in writing and had satisfied itself that the arresting officer, on the basis of material in his possession, had reason to believe that the petitioners were guilty of the offence punishable under the Act. No such fact has been recorded in the impugned order. On the said aspect, it has only been observed in the impugned order that once ECIR has been registered and during investigation, a prima facie case for the commission of the offence under the 2002 Act has been found, then the Directorate of Enforcement is bound to trace the money for which it required to interrogate

the petitioners in custody. The said order is thus, illegal and deserves to be set aside on the said ground alone.

40. Even in the subsequent order of remand dated 16.01.2024, which was a common order passed in the case of both the petitioners, no reference has been made with respect to the compliance of provisions of Section 19(1) and 19(2). With respect to compliance of Section 19(3), the following findings have been given:-

> *"13. Since investigation in the instant case is at infant stage and facts are yet to crystallize, in my opinion, at this stage it cannot be ascertained as to whether any part of offence has been committed by the accused within the territorial jurisdiction of this Special Court or not. In my opinion such question can be determined only at the time of taking of cognizance on the complaint, if filed by the Directorate of Enforcement."*

A perusal of the above would show that it has been observed that it cannot be ascertained as to whether any part of the offence has been committed by the accused within the territorial jurisdiction of the said Court or not. Even the order dated 23.01.2024 annexed as Annexure R-11 along with the reply filed in the case of petitioner-Kulwinder Singh, vide which, both the petitioners have been remanded to judicial custody till 06.02.2024 would also show that the Additional Sessions Judge, Gurugram has not made even a remote reference with respect to the compliance of the provisions of Sections 19(1), 19(2) or 19(3). It is thus, apparent that the Court while passing the remand orders has neither applied its mind to the compliance of the provisions of Section 19, nor recorded the same in the

remand orders.

41. The argument on behalf of counsel for the respondents to the effect that the order passed is speaking and has been passed after taking into consideration the entire material which included the remand papers and other relevant documents which had been produced, is liable to be rejected. From a perusal of the provisions of law and the judgments referred to in the preceding paragraphs, it is clear that it was the requirement of the Court to have specifically recorded in the order the fact that the provisions of Sections 19(1), 19(2) and 19(3) have been duly complied with and that the Court had perused the written reasons to believe, as mandated under Section 19(1) of the 2002 Act and was satisfied that it had been so recorded therein that the petitioners were guilty of the offence punishable under the Act and that the said order along with the material had been forwarded to the Adjudicating Authority and also that a part of the cause of action had arisen within the territorial jurisdiction of the Special Court at Gurugram and the same having not been done in the present case calls for setting aside the impugned orders/action of the respondent authorities on the said ground alone.

(II) ILLEGAL DETENTION/WRONGFUL RESTRAINT OF THE PETITIONERS FROM 04.01.2024 TO 08.01.2024 AMOUNTING TO ARREST ON 04.01.2024 ITSELF AND CONSEQUENTIAL VIOLATIONS OF SECTION 19 OF PMLA READ WITH SECTION 167 CR.P.C. ON ACCOUNT OF NON-PRODUCTION OF PETITIONERS WITHIN 24 HOURS

42. It is the case of both the petitioners that the petitioners along

with their family members were illegally detained by the respondents on 04.01.2024 itself at the time when search and seizure of the houses had started and were illegally detained from 04.01.2024 to 08.01.2024 and were illegally shown to have been arrested only on 08.01.2024. Reference has been made to the panchnama in the case of both the petitioners. Relevant portion of the panchnama of petitioner-Kulwinder Singh is reproduced hereinbelow:-

> *"Everyone present at the premises was allowed proper rest, food breaks and washroom breaks."*

A perusal of the above statement in the panchnama supports the case of the petitioners that they were not permitted to leave the house during the time of their search and were detained and their movement was controlled by the authorities and it was the authorities who had allowed them to take rest, food breaks and washroom breaks. Even in the panchnama of petitioner-Dilbag Singh @ Dilbag Sandhu, it has been mentioned that the petitioner, Rajinder Singh and their family members were given proper rest and food during the course of search. A reply dated 22.01.2024 on behalf of respondent No.2 was filed in the case of petitioner-Dilbag Singh @ Dilbag Sandhu. Paragraphs 29(h) and 35 of the said reply is reproduced hereinbelow:-

> *"29(h) The Petitioner was not detained from 04.01.2024 and* ***he was free in his residence*** *until his arrest on 08.01.2024 upon "prima facie" case of commission of money laundering against him. Even the Panchnama endorses this fact that:*
>
> *Dilbag Singh, Rajinder Singh and their family members* ***had proper rest and food during the course of search***

proceedings.

35. The content of ***Ground C*** *is expressly denied as being wrong, and vexatious in nature. In response, it is submitted that no restrictions were imposed upon the Petitioner until his arrest on 08.01.2024.* ***The Petitioner and other persons were free and at their own sweet will to loiter with their own premises during the duration of the search*** *as general practice and this cannot be termed as detention. In fact Section 17 PMLA which deals with search and seizure mandates certain requirements which were all duly complied with.* ***In order to ensure the sanctity of the search and seizure and to ensure the safeguards, in exercise of powers under Section 73 PMLA****, the central government has framed* ***"The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention Rules 2005"****, which were also followed scrupulously by the Respondent No.2."*

To the similar effect is the reply filed in the case of petitioner-Kulwinder Singh. Para 36 of the reply filed in the case of petitioner-Kulwinder Singh is reproduced hereinbelow:-

"36. The content of ***Ground C*** *is expressly denied as being wrong, and vexatious in nature. In response, it is submitted that no restrictions were imposed upon the Petitioner until his arrest on 08.01.2024.* ***The Petitioner and other persons were free and at their own sweet will to loiter within their own premises during the duration of the search as general practice*** *and this cannot be termed as detention. In fact, Section 17 PMLA which deals with search and seizure mandates certain requirements which were all duly complied with. In order to ensure the sanctity of the search and seizure and to ensure the safeguards,*

*in exercise of powers under Section 73 PMLA, the central government has framed "**The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and the Period of Retention Rules 2005**", which were also followed scrupulously by the Respondent No.2.*

*Further, the Petitioner and other persons present at the premises were in possession/control of the locker, safe, almirah, documents etc. and **hence it was important to secure their presence within the premises in order to have access to** inspect/examine the content and to avoid any sort of tampering with the potential proceeds of crime"*

A perusal of the said reply would show that it is the stand of the respondents that the petitioners were free to move in their residence and could loiter within (wrongly mentioned as with and specific query was put to the respondent's counsel and it has been fairly stated that the word "with" is to be read as within and the said fact is also apparent from the reply filed in the case of petitioner-Kulwinder Singh where word "within" has been mentioned) their own premises. Further it has been averred that sanctity of the search was to be maintained and reference in this regard was made to the 2005 Rules (II). Even a perusal of the above reply lends credence to the plea raised on behalf of the petitioners to the effect that they were not permitted to go out of their house and were illegally detained in the house for the period of the search from 04.01.2024 to 08.01.2024. An additional reply dated 29.01.2024 was filed on behalf of respondent No.2 in the case of petitioner-Dilbag Singh @ Dilbag Sandhu. Relevant portion of para F of the said reply is reproduced hereinbelow:-

> *"**F. <u>Procedure relating to Search</u>:***
>
> *No person, including the Petitioner, were detained during the search proceedings and **they had proper rest and food during the course of proceedings.** Further by virtue of Rule 3(7) and (8) of The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding The Reasons and Material To The Adjudicating Authority, impounding and custody of records and the Period of Retention) Rules, 2005, the Petitioner and other persons present at the premises were in possession/control of the locker, safe, almirah, documents etc. and **hence it was important to secure their presence within the premises in order to have access to inspect/examine the content and to avoid any sort of tampering with the potential proceeds of crime. Also, they were allowed to follow their daily routine**. In no circumstances they were detained or asked compulsorily be in the premises."*

43. From the above averments, the arguments raised on behalf of the petitioners to the effect that the petitioners were detained in the premises in question against their consent stands fully fortified as it has been stated in the abovesaid reply that the same was done to secure the presence of the petitioners within the premises in order to have access to locker, safe, almirah, documents etc.. Strong reliance has been placed upon by the counsel for respondent No.2, even during the course of arguments, on the provisions of Rule 3 Sub-Rules 7 and 8 of the 2005 Rules (II) to contend that the presence of the petitioners and the other family members was required within the premises so as to enable them to make effective search as several things including locker, safe, almirah had to be opened. Sub-Rules 7 and 8 of Rule 3 are reproduced hereinbelow:-

> *"**3. Procedure relating to search.—***
>
> *(7) The authority **may** require any person who, is the owner, or has the immediate possession, or control, of any box, locker, safe, almirah or any other receptacle situated in such building, place, vessel, vehicle or aircraft, to open the same and allow access to inspect or examine its contents, **and, where the keys thereof are not available or where such person fails to comply with any such requirement, may break open the lock of such box, locker, safe, almirah or other receptacle which the authority may deem necessary for carrying out all or any of the purposes specified by the Director in this behalf.***
>
> ***(8) The occupant of the building, place, vessel, vehicle or aircraft searched, including the person in charge of such vessel, vehicle or aircraft, or some person on his behalf, shall be permitted to attend during the search.**"*

44. The issue as to whether the detention of the petitioners for the purpose of the said search as per the case of respondent No.2 was valid or not and as to whether the petitioners could have been restrained for more than four days i.e. from 04.01.2024 to 08.01.2024 from moving out of the house in order to enable the authorities to have access to the lockers, safe, almirahs would be considered after considering the true import of Sub-Rules 7 and 8 and the law on the said aspect.

45. A perusal of Sub-Rule 8 would show that the occupant of the building or some person on his behalf has a right to attend the search. A reading of the said provision would show that attending of the search is an enabling right of a person who is an occupant of the building etc. and once the said occupant i.e. in the present case the petitioners, requested the authorities that they be permitted to attend the search, then the authorities are

duty bound to permit them to attend the search. Reading of the said provision would show that the occupant of the building cannot be forced to attend the search much less to stay confined in the premises for days altogether till the time the search is concluded. In case the argument raised on behalf of respondent No.2 to the effect that the petitioners would have to be present in the premises all the time when the search is going on is accepted, then the question of giving any right to the occupant or some person on his behalf to attend the search would not arise as it would then be necessary for him to be available in the premises throughout the search. Even Sub-Rule 7 would not further the case of respondent No.2 inasmuch as the said Sub-Rule, provides that in case the keys are not available or the person to whom the direction or request has been made to open the locker/box fails to comply with the same, then the authority has the power to break open the lock of the said locker, safe, almirah and thus, even in case of non-compliance of the direction of the authorities, no hindrance is caused in the search. Joint reading of the above provisions would clearly show that there is nothing which stops the persons whose premises are being searched from carrying out their daily routine including going to their offices/place of work and the authorities have a right to require the said persons to open any lock, safe, almirah and in case of non-compliance, the authorities have further power to break open the same and thus, it cannot be said that the authorities have a right to restrain the movements of the said persons i.e. the petitioners in the present case within the premises.

46. Importantly, a perusal of the panchnama in the case of both the petitioners would show that it is on 04.01.2024 alone that the search was

made of the cupboard, almirah, drawer etc. and no such search had been carried out on 05.01.2024, 06.01.2024, 07.01.2024 and 08.01.2024 and thus, even in case the argument of respondent No.2 is accepted then also it cannot be said that the petitioners were legally detained for all the days from 04.01.2024 to 08.01.2024. In the panchnama (Annexure P-1) of petitioner-Dilbag Singh @ Dilbag Sandhu, it has been mentioned that search had started at 8:25 hours on 04.01.2024 and it continued uptill 13 hours (1 pm) on 08.01.2024 and the actual search started at 8.40 hours on 04.01.2024 on which day, the documents in the cupboard, almirah, drawers, bed boxes and other part of the house were searched and the vehicle parked inside the house was also searched. A further perusal of the panchnama would show that there is no reference made with respect to any search made of any box, locker, safe, almirah etc. as mentioned in Sub-Rule 7 from 05.01.2024 to 08.01.2024. Similarly, as per the panchnama, in the case of petitioner-Kulwinder Singh, the said Kulwinder Singh was called in the premises at 11:50 am on 04.01.2024 and on the said date, since, key of one room was not available and it couldn't be found, a Locksmith was called to break open the lock and the said lock was opened at 12.30 pm on 04.01.2024 and another lock of Godrej safe was also broken at 04.20 pm by calling a Locksmith. Other than this, there is no mention of any further search of any almirah, safe, locker, locks etc. which was required by the authorities to be done from 05.01.2024 to 08.01.2024.

47. It would be relevant to note that even as per the provisions of Section 18 of the 2002 Act, in case where the respondent authorities have reason to believe which is to be recorded in writing that any person has

secreted about his person or in anything under his possession, ownership or control, any record or proceeds of crime which could be useful or relevant for the purpose of proceedings under the Act, then the said person can be searched and the said property/record can be seized. Even in such a situation, the person so searched, if he so requires, is required to be taken within 24 hours to the nearest Gazetted Officer, superior in rank to the officer searching or to a Magistrate and as per Sub-Section 4, the authority cannot detain the said person for more than 24 hours prior to taking him before the Gazetted Officer or to the Magistrate concerned and as per Sub-Section 5, the Gazetted Officer or the Magistrate before whom any such person is brought, if sees no reasonable ground for search, shall forthwith discharge such person. Thus, even in case personal search is to be carried out, specific time has been given within which the person is to be taken to the Gazetted Officer/Magistrate and the period for which the person can be detained by the authority can not exceed 24 hours. In the present case, it is the admitted case of the respondents in the reply that they have not invoked the provisions of Section 18 of the 2002 Act and thus, to detain/restrain the petitioners for a period of more than four days within the premises would amount to illegal detention/unlawful restraint and the petitioners would be deemed to have been arrested on 04.01.2024.

48. Before referring to the law on the said point, it would also be relevant to note that a plea has been raised in the additional reply dated 29.01.2024 to the effect that the petitioners were in the premises out of their own will, which is contradictory to the pleas taken in the earlier reply dated 22.01.2024 in which it was averred that the petitioner and the other persons

were free at their own sweet will to loiter **within their own premises** during the duration of the search as general practice (the word "with" has been wrongly written and learned counsel appearing for the respondents has fairly submitted that the word "with" be read as "within"). Learned Senior Counsel for the petitioners had raised a strong objection to the taking of the said plea in the additional reply dated 29.01.2024 as neither any such plea was raised in the written statement dated 22.01.2024 nor any amendment of the earlier written statement was sought and it was argued that the said plea has been raised in the additional reply dated 29.01.2024 after the petitioners had opened their arguments. It is further submitted that the said plea is even contrary to the averments in the panchnama as well as to the other pleas averred by the respondents which have been reproduced hereinabove. This Court is of the view that the said argument raised on behalf of the petitioners carries weight and deserves to be accepted. Even during the course of arguments on behalf of respondent No.2, contradictory stands have been sought to be taken as on the one hand, it has been argued that the presence of the petitioners was required in the premises where the search was conducted for the purpose of search, for which the presence of the petitioners was secured, within the premises, whereas on the other hand, it was sought to be argued on behalf of respondent No.2 that the authorities did not restrain the petitioners from going out of the premises. Moreover, the plea raised in the additional reply dated 29.01.2024 to the effect that the petitioners stayed within the premises on their own will, without further mentioning that the petitioner and the other persons were free to loiter **within their own premises during the duration of the search,** as had been stated in the first reply dated 22.01.2024 would show that the

respondents as an afterthought have tried to improve on their case and thus, the said plea is liable to be rejected.

49. The Division Bench of this Court in the case of ***Pranav Gupta*** (supra), while considering the issue as to whether restraint put on the petitioners therein tantamounted to there being actual arrest on 27.10.2023 i.e. the date prior to the date of actual arrest shown i.e. 28.10.2023, observed that the arrest would be reckonable from the date of unlawful restraint and not from the date of formal and actual arrest and the argument on behalf of the respondents to the effect that the accused therein was only taken in the vehicle in pursuance of the summons having been issued to him was rejected as it was found that the accused therein was taken in the seized car/car belonging to the ED which could not be stated to be voluntary. In the said judgment, on the abovesaid account, arrest of the petitioners was declared to be non-est and void. Relevant portion of the said judgment is reproduced hereinbelow:-

> *"9. On a studied analysis being made of the said arguments, it appears, that the learned ASG concerned, has visibly over focused upon drawing a semantic distinction inter-se arrest and custody, thus through his making reliance upon the judgments (supra).*
>
> ***10. Moreover, he has also emphasized, that the above manner of accompanyings of the accused in the respective vehicles, which were respectively seized, and/or, belonged to the E.D. officials concerned, were only in pursuance to the summons, as became issued upon them. In addition, though he has attempted to thereby make a submission, that the said purported restraint, was not arrest, rather the date of drawing of the formal arrest memo, is the reckonable date rather for all the relevant purpose(s).***

12. The reason for making the above conclusion, spurs from the judgment (supra), as cited before this Court by the learned Senior counsels wherein, ***it has been most candidly expressed, that the date of causing unlawful restraint, upon the petitioners, is the reckonable date, than the date of makings of the formal actual arrest of the accused, thus through the drawings of arrest memo(s).***

14. The argument, if any, as addressed before this Court by the learned ASG concerned, that the said accompanying of the accused in the vehicles (supra), was only in pursuance to summons, becoming issued upon them, for ensuring that thereby, they are interrogated at the E.D. headquarters located at Delhi, is but also liable to be rejected.

15. The reasons for rejecting the above argument, but is again planked, upon the trite evident fact, that unless the accused had willingly accompanied the E.D. officials concerned, thus in their private vehicles or in the vehicle of their relatives, thereupon theirs in the above mode of theirs accompanying the E.D. officials to the E.D. headquarters, located at Delhi, ***would be construed to be theirs thereby then, thus becoming unlawfully restrained. However, when the material in the above regard is grossly amiss, rather material emerges, that the accused had accompanied, the E.D. officials, on 27.10.2023, thus in the respectively seized vehicle or in the vehicles belonging to the E.D. officials. Therefore, the said mode of the accused accompanying the E.D. officials, thus cannot be construed to be theirs either voluntarily or willingly accompanying them, to the E.D. headquarters, nor thereby the said manner of accompanyings of the accused with the E.D. officials, can be termed to be in pursuance to theirs becoming summoned, thus for their interrogation being made, at the E.D. headquarters located at Delhi. It appears that in the garb of the summons of 27.10.2023, the E.D. officials has***

> ***attempted to give the otherwise unlawful restraint, thus the untenable colour of the accused voluntarily accompanying, the E.D. officials to the E.D. headquarters, located at Delhi***.
>
> *17. Though, learned ASG concerned, has emphasized upon the factum, that since the learned Magistrate concerned, has made orders of remand vis-a-vis the accused, therefore the said orders of remand are construable to be condoning the above lapses.*
>
> *18. However, the above argument, cannot become accepted by this Court, in view of the mandate recorded by the Hon'ble Apex Court in case titled as "V. Senthil Balaji V. State Represented by Deputy Director and Others" reported in 2023 SCC Online SC 934, wherein, it has been expostulated, that when material, does emerge rather suggestive that the parameters laid thereins, relating to application of judicial mind by the learned trial Judge concerned, to the makings of the relevant statutory breaches but become infringed, thus in his making the impugned order of remand, as such, upon, the vice of non-application of mind rather emerging, thus planked, upon breach being caused to the mandate of Section 19 of the Act of 2002, thereby the orders of remand are illegal."*

50. In the case of ***Ashak Hussain Allah Detha @ Siddiqui*** (supra), it was observed that in substance, arrest was restraint on a man's personal liberty by the power or colour of lawful authority and it also amounts to restraint on or deprivation of one's personal liberty and in case the authority clothed with the power to arrest, actually imposes the restraint by physical act or words, then the same would amount to arrest and the question as to whether the person is arrested would depend on the fact as to whether he has been deprived of his personal liberty to go where he pleases irrespective of the label which the Investigating Officer may affix on the act of restraint and

even the actual date of arrest would not be an index to see as to what is the actual date of arrest and the arrest would commence when restraint has been placed on the liberty of the accused and not the time of arrest recorded by the arresting officer. Relevant portion of paras 9, 10, 12, 13 of the said judgment are reproduced hereinbelow:-

> *"9. xxx xxx. The Prosecution urges that after the "arrest" they were not detained beyond 24 hours. This submission is a distortion of the true meaning of the constitutional guarantee against detention without the sanction of judicial Tribunal. The word "arrest" has not been defined in the Code of Criminal Procedure or in any other law. The true meaning needs to be understood. The word "arrest" is a term of art.* ***It starts with the arrester taking a person into his custody by action on or words restraining him from moving anywhere beyond the arrester's control, and it continues until the person so restrained is either released from custody or, having been brought before a Magistrate, is remanded in custody by the Magistrate's judicial act Christie v. Leachinsky****, (1947) 1 All ER 567; Holgate Mohammed v. Duke, (1984) 1 All ER 1054. Both quoted in WORDS AND PHRASES LEGALLY DEFINED Vol. 1, Third Edition*
>
> *page 113.).* ***In substance, "arrest" is the restraint on a man's personal liberty by the power or colour of lawful authority. In its natural sense also "arrest" means the restraint on or deprivation of one's personal liberty.***
>
> ***10. It is thus clear that arrest being a restraint on the personal liberty, it is complete when such restraint by an authority, commences. Whether a person is arrested or not does not depend on the legality of the Act. It is enough if an authority clothed with the power to arrest, actually imposes the restraint by physical act or words. Whether a person is***

arrested depends on whether he has been deprived of his personal liberty to go where he pleases. It stands to reason, therefore, that what label the investigating officer affixes to his act of restraint is irrelevant. For the same reason, the record of the time of arrest is not an index to the actual time of arrest. The arrest commences with the restraint placed on the liberty of the accused and not with the time of "arrest" recorded by the Arresting Officers.

12. xxx xxx. There is no authority in the Investigating Officers to detain a person for the purpose of interrogation or helping them in the enquiry.

13. On this principle it follows that the detention of the Applicants on the mid-night of 19th July, 1989 was illegal if it was not for having committed an offence under the N.D.P.S. Act. If it was for having committed an offence, the detention was "arrest" and it commenced at the mid-night of 19th July, 1989."

51. In the case of ***Mrs. Iqbal Kaur Kwatra*** (supra), the Division Bench of the Andhra Pradesh High Court at Hyderabad has held as under:-

*"**19. It is well settled that "police custody" does not necessarily mean custody after formal arrest. It also includes "some form of police surveillance and restriction on the movements of the person concerned by the police**". The word "custody" does not necessarily mean detention or confinement. A person is in custody as soon as he comes into the hands of a police officer.*

23. Thus it is seen that a police officer cannot detain any person in custody without arresting him and any such detention will amount to a wrongful confinement within the meaning of Section 340 of the Indian Penal Code. Actual arrest and detention do not appear to be necessary. A person in custody cannot be detained without producing him before a

> ***Magistrate under the colourable pretention that no actual arrest is made and the burden of proving the reasonable ground is on the arrester that the time occupied in the journey*** *was reasonable with reference to the distance traversed as also other circumstances and in case of continuation of detention for twenty-four hours, particularly, when the police officer has reason to believe that the investigation cannot be completed within twenty-four hours, he must produce the accused forthwith before the Magistrate and cannot wait for twenty-four hours."*

52. From the abovesaid facts and circumstances and also the law laid down in the abovesaid judgments, it is apparent that respondent authorities had illegally confined/unlawfully restrained the petitioners in the premises in question from 04.01.2024 to 08.01.2024 and thus, in effect had arrested the petitioners on 04.01.2024 itself but had not produced the petitioners before the concerned Court within 24 hours from the date of their actual arrest i.e. 04.01.2024 nor had complied with the other conditions mentioned in Section 19(1), 19(2), 19(3) and thus, arrest and all subsequent orders including remand orders are illegal and against law and deserve to be set aside. Before concluding the discussion on the present point, it would be relevant to consider the judgments referred to by the counsel for respondent No.2 on the point in issue. The judgment of the Single Bench of the Delhi High Court in case of ***Gautam Thapar*** (supra) relied upon by the counsel for the respondents would not further the case of the respondents. The facts in the said case were completely different from the facts in the present case inasmuch as the said case was not a case where there was unlawful restraint/illegal detention for a period of more than four days nor there was

any averment of the respondent authorities in the said case in the reply as is there in the present case which clearly shows that the petitioners, in the present case, were confined to the four walls of the premises in question from 04.01.2024 to 08.01.2024. The judgments relied upon on behalf of the petitioners, relevant portion of which is reproduced hereinabove, are on the other hand fully applicable to the facts of the present case.

53. Similarly, the facts in the case of ***Sundeep Kumar Bafna*** (supra) are completely different from the facts of the present case. Paragraph 9 of the said judgment gives the meaning of custody as has been stated in various dictionaries. Para 9 and relevant portion of para 10 of the said judgment are reproduced herein as under:-

> *"9. Unfortunately, the terms "custody", "detention" or "arrest" have not been defined in the CrPC, and we must resort to few dictionaries to appreciate their contours in ordinary and legal parlance.*
>
> ***9.1 The Oxford Dictionary (online) defines custody as imprisonment, detention, confinement, incarceration, internment, captivity; remand, duress, and durance.***
>
> *9.2 The Cambridge Dictionary (online) explains custody as the state of being kept in prison, especially while waiting to go to court for trial.*
>
> *9.3 Longman Dictionary (online) defines custody as when someone is kept in prison until they go to court, because the police think they have committed a crime.*
>
> *9.4 Chambers Dictionary (online) clarifies that custody is "the condition of being held by the police; arrest or imprisonment; to take someone into custody to arrest them."*
>
> ***9.5 Chambers Thesaurus supplies several synonyms, such as detention, confinement, imprisonment, captivity, arrest,***

formal incarceration.

9.6 The Collins Cobuild English Dictionary for Advance Learners states in terms of that someone who is in custody or has been taken into custody or has been arrested and is being kept in prison until they get tried in a court or if someone is being held in a particular type of custody, they are being kept in a place that is similar to a prison.

9.7 The Shorter Oxford English Dictionary postulates the presence of confinement, imprisonment, durance and this feature is totally absent in the factual matrix before us.

9.8 The Corpus Juris Secundum under the topic of Escape & Related Offenses; Rescue adumbrates that

> ***"Custody, within the meaning of statutes defining the crime, consists of the detention or restraint of a person against his or her will, or of the exercise of control over another to confine the other person within certain physical limits or a restriction of ability or freedom of movement."***

9.9 This is how Custody is dealt with in Blacks Law Dictionary, *(5th Edn. 2009):-*

> *Custody- The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a mans person by virtue of lawful process or authority.*
>
> *The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Term custody within statute requiring that petitioner be in custody to be entitled to federal habeas corpus relief does*

> *not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty. U. S. ex rel. Wirtz v. Sheehan. Accordingly, persons on probation or released on own recognizance have been held to be in custody for purposes of habeas corpus proceedings.*
>
> ***10. A perusal of the dictionaries thus discloses that the concept that is created is the controlling of a persons liberty in the course of a criminal investigation, or curtailing in a substantial or significant manner a persons freedom of action." xxx xxx***

54. Moreover, the said case does not in any way further the case of the respondent authorities. Thus, the order of arrest and the impugned orders of remand and all the subsequent proceedings arising thereto deserve to be set aside on this ground also.

(III) VIOLATION OF THE PROVISIONS OF SECTION 19(2) OF THE 2002 ACT

55. A perusal of Section 19(1), 19(2) and 19(3) of the 2002 Act, which have been reproduced hereinabove, would show that there are mandatory conditions which are required to be fulfilled, both before and immediately after effecting the arrest which are enumerated hereunder:-

i) The Director / Competent officer may arrest a person only after, on the basis of material in his possession, he has reason to believe, which reasons have to be recorded in writing, that the person sought to be arrested is guilty of the offence punishable under the Act.

ii) After the person has been arrested, he is required to be informed of the grounds of arrest "as soon as may be". The said

grounds of arrest have to be in writing as per the law laid down in the case of ***Pankaj Bansal*** (supra). The expression "as soon as may be" has been interpreted in the case of ***Ram Kishor Arora*** (supra) to mean upto 24 hours from the time of arrest.

iii) Sub section 2 of Section 19 further provides that immediately after arresting the person under sub section (1), the copy of the order along with material in the possession of the officer concerned, as has been referred to in sub section (1) has to be forwarded to the Adjudicating Authority in a sealed envelope in the manner prescribed.

iv) Under sub-Section (3), the person so arrested is mandatorily required to be taken to the Special Court or Judicial Magistrate or Metropolitan Magistrate as the case may be, having jurisdiction, within 24 hours. The relevant portion of the judgment of the Hon'ble Supreme Court in ***V. Senthil Balaji*** (supra) which has been reproduced in the earlier part of this judgment specifically holds that the compliance of sub section (2) is a solemn function of the arresting authority and the same brooks no exception. In paragraph 74 of the said judgment, it has further been specifically stated that the Magistrate has to satisfy himself of the compliance of the **safeguards** as mandated under Section 19 of the 2002 Act. Similarly, in the case of ***Pankaj Bansal*** (supra), the relevant portion of which has been reproduced in the earlier part of this judgment, it has been observed that the concerned Court while remanding the

accused person has to "ensure that the conditions in Section 19 are duly satisfied" and that there is proper compliance of the mandate of Section 19 the 2002 Act. Even explanation to Section 45 of the 2002 Act states that the officers authorised under the Act are empowered to arrest the accused without warrant subject to fulfilment of the **conditions** under Section 19 in addition to the conditions enshrined under Section 45. Paragraph 322 of ***Vijay Madanlal Chaudhary*** (supra) which has also been reproduced in the earlier part of this judgment also furthers the proposition that the conditions and the procedure as mentioned in Section 19 are mandatory and any violation of the same would make the arrest and subsequent proceedings illegal. It is the admitted stand of respondent no.2 that upto 09.01.2024, when both the petitioners were produced before the Special Court and their remand was sought and granted by the Court, there was no compliance of Section 19(2) and the same was done subsequently only. The question which would arise in the present case, with respect to the present issue, would be the construction to be placed on the word "immediately" used in Section 19(2) and as to whether the same would show a higher degree of urgency than the term "as soon as may be". The Hon'ble Supreme Court in the case of ***Ram Kishor Arora*** while interpreting the expression "as soon as may be" contained in Section 19(1) observed that the said period would be 24 hours from the time of arrest and while observing

so it was noticed that by way of safeguard, a duty is cast upon the concerned officer to forward the copy of the order along with the material in his possession to the Adjudicating Authority immediately after the arrest of the person. Paragraph 21 of the judgment in the case of ***Ram Kishor Arora*** is reproduced hereinbelow:-

"21. In view of the above, the expression "as soon as may be" contained in Section 19 of PMLA is required to be construed as- "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time. ***Since by way of safeguard a duty is cast upon the concerned officer to forward a copy of the order along with the material in his possession to the Adjudicating Authority immediately after the arrest of the person, and to take the person arrested to the concerned court within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest."***

56. In paragraph 311 of ***Vijay Madanlal Chaudhary*** (supra) while considering the provisions of Section 5 (2) and 17(2) of the 2002 Act, which also require the competent officer to immediately after attachment under Section 5(1) and after search and seizure under Section 17(1), to forward a copy of the order along with material in his possession to the Adjudicating Authority, the Hon'ble Supreme Court of India was pleased to use the term "contemporaneously" and had observed that the reasons to believe were required to be recorded in writing and contemporaneously forwarded to the Adjudicating Authority along with the material in possession in the sealed

envelope. The relevant portion of paragraph 311 of the said judgment is reproduced hereinbelow:-

> *"311. Undoubtedly, the 2002 Act is a special self-contained law; and Section 17 is a provision, specifically dealing with the matters concerning searches and seizures in connection with the offence of money-laundering to be inquired into and the proceeds of crime dealt with under the 2002 Act. We have already noted in the earlier part of this judgment that before resorting to action of provisional attachment, registration of scheduled offence or complaint filed in that regard, is not a precondition.* ***The authorised officer can still invoke power of issuing order of provisional attachment and contemporaneously send information to the jurisdictional police about the commission*** *of scheduled offence and generation of property as a result of criminal activity relating to a scheduled offence, which is being made subject matter of provisional attachment. Even in the matter of searches and seizures under the 2002 Act, that power can be exercised only by the Director or any other officer not below the rank of Deputy Director authorised by him. They are not only high-ranking officials, but have to be fully satisfied that there is reason to believe on the basis of information in their possession about commission of offence of moneylaundering or possession of proceeds of crime involved in moneylaundering.* ***Such reason(s) to believe is required to be recorded in writing and contemporaneously forwarded to the Adjudicating Authority along with the material in his possession in a sealed envelope to be preserved by the Adjudicating Authority*** *for period as is prescribed under the Rules framed in that regard. Such are the inbuilt safeguards provided in the 2002 Act."*

57. The word "contemporaneous" has been defined in the New

International Webster's Comprehensive Dictionary of the English language Deluxe Encyclopedic Edition in the following manner:-

"Living or occurring at the same time"

58. From the perusal of provisions of Section 19 and the law laid down in the above said judgments, it is apparent that the legislature has purposely chosen to use the expression "immediately" in Section 19(2) and expression "as soon as may be" in Section 19(1) as the order along with the material which is required to be forwarded to the Adjudicating Authority would already be in the possession of the competent officer carrying out the arrest, as before arresting on the basis of the said material in his possession, he has formulated reason to believe to be recorded in writing that the said person was guilty and thus, the act of sending the said material should be done immediately and the same would be required to be done prior to when the person so arrested is produced before the Special Court or Judicial Magistrate or Metropolitan Magistrate, as the case may be having jurisdiction, as it has been repeatedly held by the Hon'ble Supreme Court that it is incumbent upon the Court concerned to satisfy itself of the compliance of the conditions contained in Section 19 which would also include the compliance of Section 19(2), before passing the order of remand. In case the material on the basis of which the officer arresting the person, had reason to believe that the accused persons were guilty of the offence under the Act, is not forwarded before the accused is presented before the Court concerned, then it would not be possible for the Court concerned to carry out its duty to see the compliance of Section 19 moreso Section 19(2). Moreover, in case respondent no.2 is permitted to render compliance of the

said provision of Section 19(2) after some delay i.e., beyond the period when the accused are to be presented before the concerned Court, then in such a situation it would not be possible to affirmatively come to a conclusion that the reasons to believe that the person is guilty before arresting were actually recorded in writing or not and were based upon the material already in possession of the competent officer prior to arresting the accused. In case there is non-compliance of the provisions of Section 19(2) prior to the date when the accused persons are presented before the concerned Court for the first time, then the next opportunity for the Court concerned to verify compliance of the same would only arise when the accused is presented on the next occasion before the Special Court which could be 7 days as in the present case. The argument made on behalf of respondent no.2 that the provisions of Section 19(2) are not mandatory and delay, if any, in sending the same would not call for setting aside the order of remand or holding the arrest to be illegal is misconceived and is, thus, rejected. A reading of the law laid down in the judgment of ***Vijay Madanlal Chaudhary's*** (supra), ***V. Senthil Balaji's*** (supra) and ***Pankaj Bansal's*** (supra), and also the other judgments which have been referred to hereinabove, would show that compliance of Section 19 including Section 19(2) is mandatory and for the non-compliance of the same, arrest and the order of remand would be required to be set aside.

59. In the present case, admittedly, the compliance of Section 19(2) was not done till 09.01.2024, and the orders of remand dated 09.01.2024 of both the petitioners do not even remotely show that the Special Court had observed anything regarding its compliance. Even the order dated

16.01.2024 passed by the Special Court extending the remand of both the petitioners does not even remotely mention that there was any compliance of Section 19(2). The same is the position with respect to the order dated 23.01.2024 annexed as Annexure R-11 along with the reply filed by respondent no.2 in CRM-M-3385-2024 vide which the petitioners have been remanded to the judicial custody till 06.02.2024. Respondent no.2 has in their additional reply dated 29.01.2024 in the case of Dilbag Singh given the series of events which as per their case had taken place from the time of search till the time of scrutiny of documents. Paragraphs E[(3)(a) to (3)(d)] of the same are reproduced hereinbelow:-

> *"3. That in light of the above well settled legal principles, it is submitted that the following* ***series of events*** *explaining the timeline of the present case with respect to the arrest and compliance of Section 19(2), shows beyond any pale of doubt that the respondent Directorate has acted without any undue delay in compliance with Section 19 of the PMLA.*
>
> *a) It is submitted that this Directorate initiated search operation at 23 different locations in the districts of Yamuna Nagar, Karnal, Mohali, Sonepat and Faridabad with* ***manpower of around 110 Enforcement Directorate officers/ officials along with approximately 100 CRPF personnel on 04.01.2024.*** *To conduct the search, 110 officers of Enforcement Directorate were mobilized from various office of ED such as Gurugram, Srinagar, Jammu, Jalandhar, Chandigarh, Delhi, Dehradun etc. To conduct the search of this level, is humongous task as it requires co-ordination with multiple teams situated at multiple locations. There was seizure of cash (5.29 Cr), gold bullion (Valued at 1.89 CR), vehicle (2), various electronic devices & documents from multiple search premises*

which needed to be collected at one place ***and preliminary scrutiny was required. The final search operation was concluded at around 03:00 pm on 08.01.2024 (after) the arrest of the petitioner and another co-accused Kulwinder Singh.***

b) During the whole proceedings, Investigating officer was continuously on the move and coordinating with multiple teams and also performing his own duties. ***The petitioner was arrested on 08.01.2024 at 12:15 pm and the other co-accused was arrested on the same day at 02:20 pm****. They both were brought to this Gurugram Zonal office situated at #22, The Green, Rajokri, New Delhi at around 09:00 pm and were taken for medical examination in Civil Hospital, sector 10, Gurugram as per prescribed norms. Their medical was completed at around 11:45 PM on 08.01.2024.*

c) After that both the accused were brought to the office. Further, the remand application was prepared late night and the ***next day on 09.01.2024*** *at 10:00 am both the accused were produced before the Special Court (PMLA), Gurugram seeking for their remand on 09.01.2024. Matter was taken up around 10:30 AM and thereafter, the Ld. Special Court (PMLA) Gurugram after hearing the arguments from both the sides adjourned the matter to 2:00 PM in order to peruse the relevant material available with* ***Directorate to satisfy itself with respect to point of jurisdiction****. At 2.00 PM, the Directorate produced the case file along with Reason to Believe (RTB) of the arrestees before the Ld. Judge and the Ld. Judge again deferred the matter for 4.00 PM thereby giving reasonable opportunity to the other side to present its arguments. During arguments, the Directorate, also requested the Hon'ble Judge for transit remand with respect to the remand applications. Later, after perusal of the case file, remand application and hearing arguments of both the sides, the Ld. Special Judge had*

pronounced the order in the evening at around 5:30 PM, copy of which was received around 7:30 PM on 09.01.2024

d) ***Thereafter, on 10.01.2024,*** *without any delay,* ***the officials of the Directorate preliminary scrutinized all the seized material*** *which was collected from 23 different teams.* ***After summarizing the seizure, officer prepared the application & other material as prescribed which was to be sent to adjudicating authority.*** *Later on, both letters intimating about the search and arrest, along with requisite documents as prescribed were dispatched to the Ld. Adjudicating Authority* ***on 10.01.2024. However, by the time officer reached the office around 5:30 PM of the Ld. Adjudicating Authority situated in New Delhi, dispatcher had left the office hence, this office could get the receiving only on 11.01.2024*** *(Annexure-R7).”*

A perusal of the above reply would show that it has been admitted by respondent no.2 that till 09.01.2024 no compliance of Section 19(2) was made. It is the own case of respondent no.2 that 110 officers of the Directorate of Enforcement along with 100 CRPF personnel were involved in the search operation and yet respondent no.2 was not able to forward the material which they had already collected as per their case, to the Adjudicating Authority. In case the plea sought to be raised in the additional reply is accepted, then the same reason could be given by respondent no.2 for non-supply of the grounds of arrest within 24 hours and also for non-production of the petitioners within the said period of 24 hours. Preparation of the grounds of arrest involves application of mind and even in the said situation, the Hon’ble Supreme Court of India in ***Ram Kishor Arora’s*** (supra) had observed that 24 hours should be granted for the same whereas forwarding the material already seized is more of a ministerial act

and thus, should be sent immediately and in any case within 24 hours. A perusal of the above paragraph would also show that it was stated in sub clause (d) that the preliminary scrutiny of the seized material was done after 09.01.2024 on 10.01.2024 i.e., after the date of the arrest and after the date of remand. Moreover, as per the stand of respondent no.2 in para 3(a) and (c) the search operation continued even after the petitioners had been arrested and that the Special Court on 09.01.2024 had considered the material only with respect to the point of jurisdiction, whereas no observation regarding the said point of jurisdiction has been made in the order dated 09.01.2024. Reliance placed upon the judgment of the Single Bench of the Delhi High Court in the case of ***Neeraj Singal*** (supra) moreso, paragraph 60 of the said judgment by the learned counsel for the respondent does not further the case of the respondent. A perusal of paragraph 60 of the said judgment would show that in the said case, the petitioner therein was arrested on 19.06.2023 at 10:25 PM which happened to be a Friday night and thereafter on Saturday i.e., 10.06.2023 and Sunday i.e., 11.06.2023, the office of Adjudicating Authority was closed and immediately thereafter, the copy of the arrest order along with the relevant material was forwarded on 12.06.2023 and the Delhi High Court after taking into consideration the provisions of Section 10 of the General Clauses Act 1897 which provided that where a period prescribed for the purpose of an act in a Court or office expired on a holiday, then the said Act should be considered to have been done within that period, if it is done on the next date on which the Court / Office opens and on the basis of the said peculiar facts of that case it was observed that there was no delay in forwarding the copy of the arrest order along with the material to the

Adjudicating Authority. In the above said case, it was impossible for the authorities to have complied with the provision of Section 19(2) within 24 hours as on Saturday and Sunday, the office of the Adjudicating Authority was closed and it was observed that in view of the provisions of Section of 10 of the General Clauses Act, the act done on the following day was taken to be done within the period required. In the case at hand, it is not the case of respondent no.2 that either on 08.01.2024 or on 09.01.2024 there was a holiday in the office of the Adjudicating Authority.

60. Further reliance sought to be placed upon the judgment of the Hon'ble Supreme Court of India in ***Sheo. Shankar Singh*** (supra) as well as ***State of Rajasthan Vs***. ***Daud Khan*** (supra), by the learned counsel for the respondent would also not further the case of respondent no.2. In the said cases, the Hon'ble Supreme Court was considering the provisions of Section 157 of Cr.P.C., with respect to cases where the FIR had been registered under the provisions of IPC and not under the provisions of a special Act like the 2002 Act. In the case of ***Sheo. Shankar Singh*** (supra), the appellant therein had been convicted and it was argued on their behalf that the absence of any proof of forwarding the FIR copy to the Magistrate concerned was violative of Section 157 Cr.P.C. and thus the very registration of the FIR had become doubtful and while rejecting the said argument, the Hon'ble Supreme Court had observed that the FIR was recorded on 13.06.1979 and was forwarded on 14.06.1979 and moreover, a perusal of the judgments of the High Court as well as trial Court disclosed that no case of any prejudice was shown nor even raised on behalf of the appellants based on alleged violation of Section 157 Cr.P.C. It would be relevant to note that Section

157 Cr.P.C. does not come into play necessarily after the arrest of accused person whereas the provision of Section 19 (2) of the 2002 Act would come into play only after a person has been arrested and thus, the compliance of the provisions of Section 19 are mandatory, as has been repeatedly held by the Hon'ble Supreme Court. Moreover, the 2002 Act is a special Act and the provision for bail as contained in Section 45 is different from the provision for bail for the offences under the IPC and much stringent conditions have been provided in Section 45 of the 2002 Act and thus, the compliance of the provisions of Section 19 of the 2002 Act which enables the competent officer to arrest a person has to be of a much higher degree. It would also be relevant to note that the Hon'ble Supreme Court in the case of ***Youth Bar Association vs. Union of India*** reported as ***2016(9) SCC 473*** has directed that the copy of the FIR unless the offence is sensitive in nature is required to be uploaded on the website within 24 hours of the registration of the FIR. At any rate, in view of the observations made by the Hon'ble Supreme Court in the case of ***Vijay Madanlal Chaudhary's*** (supra), ***V. Senthil Balaji's*** (supra) and ***Pankaj Bansal's*** (supra), the relevant portion of which has been reproduced hereinabove, it is apparent that compliance of Section 19 including Section 19(2) is mandatory and brooks no exception. Accordingly, in view of the above facts and circumstances, it is held that there is violation of the provisions of Section 19(2) of the 2002 Act on account of which also the impugned action is bad in law and is liable to be set aside.

(IV) NON-COMPLIANCE OF SECTION 19(1) OF THE 2002 ACT

61. Section 19(1) which has been reproduced in the earlier part of the judgment states that the competent officer may arrest a person after he

has reason to believe (on the basis of material in his possession, to be recorded in writing) that any person is guilty of an offence punishable under the Act and as soon as may be inform him of the grounds of such arrest. In pursuance of the law laid down by the Hon'ble Supreme Court in ***Pankaj Bansal*** (supra), the said grounds of arrest are to be supplied in writing and the expression "as soon as may be" has been held to mean "within 24 hours" in the case of ***Ram Kishor Arora*** (supra). The Hon'ble Supreme Court in the case of ***Pankaj Bansal*** (supra) had observed that failure of a person to respond to the questions put to them by the E.D. would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19 as the said provision specifically requires that the Investigating Officer is to be of the opinion that there is reason to believe that the person concerned was guilty of the offence under the Act and that, mere non-cooperation of the said person in response to the summons issued under Section 50 of the 2002 Act would not be **enough** to render him/her liable to be arrested under Section 19. It was further observed that it was not for the Enforcement Directorate to seek an admission of guilt from the person summoned for interrogation as the same would be violative of his fundamental right against self incrimination as provided for in Article 20 clause (3) of the Constitution. It was also held that the arrested person was required to be made aware of the grounds of arrest by the authorised officer containing the basis for the officer's "reason to believe" that he/she was guilty of the offence punishable under the 2002 Act and it is only thereafter that the arrested person could make out a case that he / she is not guilty of such offence. Paragraphs 27, 28, 32 and 33 of the above said judgment are

reproduced hereinabelow:-

> *"27. Further, when the second ECIR was recorded on 13.06.2023 'after preliminary investigations', as stated in the ED's replies,* ***it is not clear as to 22 when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours. This is a sine qua non in terms of Section 19(1) of the Act of 2002. Needless to state, authorities must act within the four corners of the statute, as pointed out by this Court in Devinder Singh v. State of Punjab , and a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof.***
>
> ***28. We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as 'evasive' and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'. In Santosh S/o Dwarkadas Fafat vs. State of Maharashtra, this Court noted that custodial interrogation is not for the purpose of***

'confession' as the right against self-incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. *Similarly, the absence of either or both of the appellants during the search operations, when their presence was not insisted upon, cannot be held against them.*

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32. In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. ***To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence,***

so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

33. We may also note that the language of Section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. *Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person."*

62. The Hon'ble Supreme Court of India in ***Pebam Ningol Mikoi Devi*** (supra) while examining the provisions of the National Security Act 1980 and Article 22 of the Constitution of India observed that even when the detention of a person is based on subjective satisfaction of the authority concerned, then also in support of the said subjective satisfaction, reference should be made to some pertinent material. In the said judgment, reliance

was placed upon the judgment of the Hon'ble Supreme Court in ***"State of Rajasthan vs. Talib Khan"*** reported as ***(1996) 11 SCC 393*** which required the communication of the grounds of detention to the detenue together with documents in support of the subjective satisfaction reached at by the detaining authority. It was further observed that individual liberty is a cherished right and is one of the most valuable fundamental rights guaranteed by the Constitution to the citizens of this country. Paragraphs 3, 16, 22, 23, 24 and 25 of the said judgment are reproduced hereinbelow:-

> *"3.* ***Individual liberty is a cherished right, one of the most valuable Fundamental Rights guaranteed by the Constitution to the citizens of this Country.*** *On "liberty", William Shakespeare, the great play writer, has observed that "a man is master of his liberty". Benjamin Franklin goes even further and says that "any society that would give up a little liberty to gain a little security will deserve neither and lose both". The importance of protecting liberty and freedom is explained by the famous lawyer Clarence Darrow as "you can protect your liberties in this world only by protecting the other man's freedom; you can be free only if I am free." In India, the utmost importance is given to life and personal liberty of an individual, since we believe personal liberty is the paramount essential to human dignity and human happiness.*
>
> *xxx xxx xxx*
>
> *16. The High Court has responded to each of these, by holding that the allegations projected in the grounds of detention have been corroborated in material particulars. Further, the allegations were not vague or ambiguous, and the material was sufficient for the detaining Authority to arrive at the subjective satisfaction that the detenu was acting in a manner prejudicial to the maintenance of the public order. The*

High Court has also pointed out that the statement incriminating himself under Section 161 was prepared by a public servant, and there is a presumption of regularity, which the appellant has a burden to disprove in order to prove them false and fabricated, which was not done in this case. It highlighted that the exercise of discretionary power involved objective and subjective elements, and the subjective elements if derived from objective elements cannot be questioned on grounds of adequacy of subjective satisfaction by a judicial review.

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22. Some of the decisions of this Court may be of relevance in determining in what manner such subjective satisfaction of the Authority must be arrived at, in particular on Section 3(2) of the National Security Act. In Fazal Ghosi v. State of Uttar Pradesh, this Court observed that: (SCC p.505, para 3)

> *"3....The District Magistrate, it is true, has stated that the detention of the detenus was effected because he was satisfied that it was necessary to prevent them from acting prejudicially to the maintenance of public order, but there is no reference to any material in support of that satisfaction. We are aware that the satisfaction of the District Magistrate is subjective in nature, but even subjective satisfaction must be based upon some pertinent material. We are concerned here not with the sufficiency of that material but with the existence of any relevant material at all."*
>
> *(emphasis supplied)*

23. In Shafiq Ahmed v. District Magistrate, Meerut, this Court opined :-

> *"Preventive detention is a serious inroad into the freedom of individuals. Reasons, purposes and the manner of such detention must, therefore, be subject to closest scrutiny*

and examination by the courts."

(emphasis supplied)

This Court further added: (Shafiq Ahmad case, SCC p.561, para 5)

"5. ...there must be conduct relevant to the formation of the satisfaction having reasonable nexus with the action of the petitioner which are prejudicial to the maintenance of public order. Existence of materials relevant to the formation of the satisfaction and having rational nexus to the formation of the satisfaction that because of certain conduct "it is necessary" to make an order "detaining" such person, are subject to judicial review."

(emphasis supplied)

24. In State of Punjab v. Sukhpal Singh, this Court held: (SCC p.43, para 9)

"9. ...the grounds supplied operate as an objective test for determining the question whether a nexus reasonably exists between grounds of detention and the detention order or whether some infirmities had crept in."

(emphasis supplied)

25. In State of Rajasthan v. Talib Khan, this Court observed that: (SCC p.398 para 8)

"8. ...what is material and mandatory is the communication of the grounds of detention to the detenu together with documents in support of subjective satisfaction reached by the detaining authority."

(emphasis supplied)"

63. In the present case it is the admitted case of the parties that both the petitioners are not accused till date in the 8 FIRs which have been reproduced in the grounds of arrest of both the petitioners. It is further the admitted case of the parties that no notice under Section 50 which empowers

the competent authority to summon any person and also to produce the documents as required, has been issued to either of the two petitioners. From the discussion made hereinabove, it is also clear that the petitioners were in the premises where the search was being conducted from 04.01.2024 to 08.01.2024. A perusal of the grounds of arrest of both the petitioners would show that although it has been stated by the competent officer that the petitioners have adopted an attitude of non-cooperation by evading the queries and by giving misleading answers but no specific instance regarding the same has been mentioned. General observations have been made on the said aspect. Paragraph E[(3)(a) to (3)(d)] of the additional reply dated 29.01.2024 filed in the case of Dilbag Singh has been reproduced in the earlier part of the judgment and a perusal of the same would show that in paragraph 3(a), it had been stated that the preliminary scrutiny of documents was required to be done and it had further been stated that search operation had continued till 03:20 PM on 08.01.2024 and both the petitioners were arrested prior in time to the conclusion of search inasmuch as the petitioner Dilbag Singh was arrested at 12:15 PM and Kulwinder Singh was arrested at 02:15 PM on 08.01.2024. Importantly in clause (d) it was stated that it is on 10.01.2024, that the preliminary scrutiny of all the seized material was done. By filing the said additional reply dated 29.01.2024, respondent no.2 has tried to show the sequence of events in order to explain the delay in compliance of Section 19(2) but a closer perusal of the said paragraph would show that in case the preliminary scrutiny of documents had been done on 10.01.2024, subsequent to 08.01.2024 when the petitioners were arrested, then the question of the arresting officer having formed the reason to believe

in writing that the petitioners were guilty of an offence under the 2002 Act on the basis of the material in his possession, becomes highly doubtful. Moreover, no reference has been made in the sequence of events as to when the reasons to believe as required under Section 19(1) of the 2002 Act were reduced into writing.

64. It would be further relevant to note that even a perusal of the remand application dated 09.01.2024 in the case of Dilbag Singh as well as in the case of Kulwinder Singh does not even remotely record the fact that the arresting officer had recorded the reasons of his belief in writing. In paragraph 18 of the application for remand in the case of Dilbag Singh, it has been observed that the petitioner was "prima facie guilty for commission of the offence of money laundering on the basis of investigation carried out" and there was no recording of the fact in the said application that the arresting officer had reason to believe in writing that the petitioner Dilbag Singh was guilty of an offence punishable under the Act and thus, even in case the averments in the grounds of arrest are taken on their face value, then also the mandatory conditions under Section 19(1) are not fulfilled. Paragraphs 15, 16 and 18 of the application for remand filed in the case of Dilbag Singh are reproduced hereinbelow:-

> *"15. In view of above, since the accused Dilbag Singh willfully adopted an attitude of non-cooperation either by evading the query or by giving misleading, part and evasive replies. By such action of willful noncooperation, the accused made a deliberate effort to hamper the investigation by not disclosing the facts and information which is in his exclusive knowledge pertaining to proceeds of crime received and generated from illegal mining activities,* ***thereby, leaving no other option but to invoke the***

> ***provision of Section 19 of PMLA, 2002 for taking investigation to a logical conclusion and to unearth proceeds of crime.***
>
> *16. Accordingly, accused Dilbag Singh was arrested on 08.01.2024 at 12.15pm from his residence House No. 410, Friends Colony, Yamuna Nagar, Haryana 135001 in accordance with the procedure established under section 19 PMLA.*
>
> *xxx xxx xxx*
>
> *18. That, this Directorate requires custodial interrogation of accused Dilbag Singh in order to discover and identify further proceeds of crime and to enquire upon certain crucial aspects of the investigation related to illegal mining and transfer of funds as he was* ***found to be "prima facie" guilty for commission of offence of money-laundering****, on the basis of investigation carried out and evidences collected so far as well as material in possession of this Directorate."*

65. To the similar effect are the averments made in the application for remand dated 09.01.2024 in the case of Kulwinder Singh and in paragraph 14 of the said application, it has been observed that the petitioner Kulwinder Singh was found to be prima facie guilty for commission of the offence of money laundering on the basis of the investigation carried out. Moreover, it is the case of respondent no.2 that search was continuing even after arresting the petitioners and thus, the question of assimilation of material and formulation of reasons to believe as required under Section 19(1) prior to arresting the petitioners moreso after application of mind becomes highly doubtful. A further perusal of paragraph 39 of the reply dated 22.01.2024 filed in the case of Dilbag Singh would show that it had been observed that the arrest was made after having reason to believe that

the prima-facie offence of money laundering is made out against the petitioners. Relevant part of paragraph 39 is reproduced hereinbelow:-

> *"The arrest was made after having reasons to believe that a* ***"prima facie" case of offence*** *of money laundering is made out against the petitioner person."*

66. To the similar effect is the averment made in paragraph 29 of the said reply which has already been reproduced in the earlier part of the judgment. Thus, even as per the stand of respondent no.2, the arrest was made after finding a prima-facie case against the petitioners and not after there was reason to believe on the basis of material in their possession that the petitioners were guilty of the offence punishable under the Act. In the grounds of arrest, reference has been made to one Om Guru Unit regarding which the petitioners are not stated to be either owners or in possession thereof. Further reference has been made to the orders passed by the NGT and the order dated 18.11.2022 has been annexed as Annexure R-4 along with the additional reply dated 29.01.2024 filed in the case of Dilbag Singh and a perusal of the same would show that M/s Development Strategies India Private Limited of which the petitioner Dilbag Singh is stated to be an authorised signatory had a mining lease whereas in the grounds of arrest the fact that the said company had a mining lease has not been mentioned and in the same, it is not coming out clearly as to what is the starting point showing the involvement of the petitioners with respect to the alleged proceeds of crime relatable to the 8 FIRs. The subsequent paragraphs i.e. paragraphs 6 to 14 in the grounds of arrest are all vague and general and no reference to any concrete material has been mentioned in the same. The plea of respondent

no.2 that the petitioners were non-cooperative is also vague. The argument raised on behalf of the petitioners to the effect that such vague grounds of arrest violate the fundamental right of the petitioners as it is very difficult for the petitioners to prepare their defence in view of the provisions of Section 45 of the 2002 Act is also weighty. In the said circumstances, it cannot be said that respondent no.2 has rendered full compliance of the mandatory provisions of Section 19(1) of the Act.

ADDITIONAL ISSUES

67. Section 19 sub-section (3) of the 2002 Act provides that every person arrested under sub-section (1) of the said provision shall within 24 hours of the said arrest be produced before the Special Court, Judicial Magistrate or the Metropolitan Magistrate as the case may be, having jurisdiction. On the basis of the arguments raised on behalf of the petitioners and the respondents, there are two aspects which this Court was called upon to consider. The first aspect was the non-application of mind by the Special Court, while passing the orders of remand, regarding satisfying itself with respect to the compliance of the conditions contained in Section 19 including Section 19(3) of the 2002 Act. The said aspect has been discussed in detail under ground No.1 and has been held in favour of the petitioners. The second aspect is as to whether prior to 09.01.2024 when the petitioners were produced before the Special Court at Gurugram, there was some recovery/part of cause of action within the jurisdiction of the Gurugram Court so as to meet the compliance of Section 19(3) of the 2002 Act. Although in the application for remand filed on 09.01.2024, no such recovery has been referred to but in the additional reply dated 29.01.2024

filed on behalf of respondent No.2 in the case of petitioner Dilbag Singh @ Dilbag Sandhu, it has been stated that an amount of Rs.7.50 lakhs was seized from the residence of one Raman Ojha, who is stated to be a 50% partner in Delhi Royalty Company which was a partnership firm and thus, the said Court at Gurugram had the jurisdiction at the time of passing of the order of remand dated 09.01.2024. In this regard, reference has been made to the panchnama dated 05.01.2024 (Annexure R-2) by the learned counsel for respondent No.2. A perusal of the said panchnama shows that House No.816, Sector 15-A, Faridabad, belonging to Raman Ojha was searched on 04.01.2024 and from the same an amount of Rs.7.50 lakhs was seized. It is the case of the petitioners that the said recovery has no connection with the petitioners and the said panchnama does not relate to any recovery having been made from any of the premises owned or possessed by either of the two petitioners. It is further the case of the petitioners that the said alleged recovery from the residence belonging to a third person cannot be stated to be a recovery from the present petitioners so as to confer jurisdiction on the Court at Gurugram on 09.01.2024 when the petitioners were produced before the said Court. It is further the case of both the petitioners that they are residents of Yamuna Nagar and their premises which were searched are situated at Yamuna Nagar and the Special Court at Gurugram had no jurisdiction with respect to offences having been committed at Yamuna Nagar and as per the notification dated 19.01.2021 (Annexure P-8), for offences which have been committed in the revenue district of Yamuna Nagar, the competent Court of jurisdiction is the Court of Sessions Judge, Ambala.

68. Several arguments on the aspect as to whether the Court at Gurugram would have jurisdiction or not to finally try the case have been raised from both sides. The Hon'ble Supreme Court in ***Rana Ayyub's case*** (supra) had observed that the question of territorial jurisdiction requires an enquiry into a question of fact as to the place where the alleged proceeds of crime were concealed, possessed, acquired or used and the same would depend upon the evidence that unfolds before the Trial Court. Thus, the said question cannot be decided finally in the present petitions especially when serious factual disputes have been raised by both the sides. Moreover, in the present case, the complaint is yet to be filed by the respondents and it is only at that stage after considering the entire material that the said issue could be finally considered. However, as has been stated herein above, the above said observations would not in any way take away the findings which have been recorded in the earlier part of the present order under ground No.1, as in the said ground the issue for consideration was the application of mind with respect to the compliance of the provisions of Section 19 including Section 19(3) of the 2002 Act by the Special Court on the date the petitioners were remanded and the ED was given their custody.

69. At this stage, it would be relevant to deal with the objection raised on behalf of respondent No.2 with respect to the specific non-challenge by the petitioner Dilbag Singh @ Dilbag Sandhu to the second order dated 16.01.2024 granting extension of ED custody of both the petitioners to respondent No.2. In this regard, it would be relevant to note that the first petition bearing CRM-M-2191-2024 titled as Dilbag Singh @ Dilbag Sandhu was drafted on 11.01.2024 and the said case had come up for

hearing before this Court on 15.01.2024. On 15.01.2024, this Court had passed a detailed order directing the Registry to clarify as to whether the present matter is to be heard by the Division Bench of this Court or is to be listed before a Single Bench. The relevant part of the said order is reproduced herein below: -

> *"Learned Senior Counsel for the petitioner has pointed out that the petitioner, in view of the abovesaid judgments, had filed writ petition under Article 226 of the Constitution of India but since an objection was raised regarding the maintainability of the same thus, the instant petition under Section 482 of Cr.P.C. has been filed.*
>
> *Registry is thus, directed to clarify the following:-*
>
> *1) Whether in view of the abovesaid cases which have been filed under Article 226 of the Constitution of India and have been entertained by the Hon'ble Division Bench, the present petition is to be listed before the Hon'ble Division Bench or Single Bench?*
>
> *2) Whether in case the matter is to be listed before the Single Bench then as to whether the same is to be listed before the learned Single Judge hearing all matters under the Prevention of Money Laundering Act or before this Court which has been assigned roster dealing with all the criminal matters (SB) by or against sitting/former MP/MLA's?*
>
> *Adjourned to 18.01.2024.*
>
> *To be listed before appropriate Bench after considering the abovesaid aspects.*
>
> ***(VIKAS BAHL)***
> ***15.01.2024 JUDGE"***

70. Thereafter, the Registry after obtaining orders from Hon'ble the Acting Chief Justice, had put up the matter before this Court. It would be

relevant to note that with respect to maintainability of the present petitions under Section 482 CrPC, no objection has been raised by respondent No.2 during the course of arguments.

71. From the above, it is apparent that the first petition was filed and taken up by this Court prior to 16.01.2023 and thus, the petitioner Dilbag Singh @ Dilbag Sandhu could not challenge the said order in the said petition. In the prayer clause, apart from there being specific challenge to the arrest order, arrest memo, remand order dated 09.01.2024, a further prayer was made that this Court may pass any other order or direction which it may deem fit and appropriate in the facts and circumstances of the present case. It would be relevant to note that the order dated 16.01.2024 has been placed on record by respondent No.2 in their reply dated 22.01.2024 (Annexure R-8) and that in the second petition i.e. CRM-M-3385-2024, filed by petitioner Kulwinder Singh which came up for hearing before this Court for the first time on 23.01.2024, on which date notice of motion was issued and the matter was ordered to be heard alongwith CRM-M-2191-2024, the order dated 16.01.2024 has been specifically challenged. The order dated 16.01.2024 is a common order passed in the case of both the petitioners extending the period of remand of both the petitioners. Arguments have been addressed on behalf of the petitioners challenging the said orders and also by the respondents in defending both the orders and after considering the said arguments, this Court has held that both the said orders deserve to be set aside for the reasons which have been given herein above.

72. The Hon'ble Supreme Court in the case of ***Davinder Pal Singh case*** (supra) had observed that it is a settled proposition of law that in case

initial action/order is found to be illegal, then all subsequent and consequential proceedings would fall automatically and the said principle is applicable to judicial, quasi judicial and administrative proceedings equally and after considering various judgments, it was further observed that once an order at the initial stage is bad in law, then all further proceedings, consequent thereto, would be non-est and have to be necessarily set aside and on the basis of the said proposition of law, the Hon'ble Supreme Court held that since the impugned order in the said case could not be sustained, then as a consequence of the same, the subsequent proceedings, orders, FIR, investigation would stand automatically vitiated and would be liable to be set aside. Paragraphs No.107 to 111 of the said judgment are reproduced herein below: -

> *"xxx xxx xxx*
>
> *107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.*
>
> *108. In **Badrinath v. State of Tamil Nadu & Ors**, **AIR 2000 SC 3243**; and **State of Kerala v. Puthenkavu N.S.S. Karayogam & Anr., (2001) 10 SCC 191**, this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.*

*109. Similarly in **Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. & Ors.**, **(2005) 3 SCC 422**, this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.*

*110. In **C. Albert Morris v. K. Chandrasekaran & Ors., (2006) 1 SCC 228**, this Court held that a right in law exists only and only when it has a lawful origin.*

111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/orders/FIR/ investigation stand automatically vitiated and are liable to be declared non est.

xxx xxx xxx

116. In view of the above, the appeals succeed and are accordingly allowed. The impugned orders challenged herein are declared to be nullity and as a consequence, the FIR registered by the CBI is also quashed."

73. To the similar effect is the law laid down by the Hon'ble Supreme Court in the case titled as "***Ritesh Tewari and another Vs. State of U.P. and others"***, reported as ***(2010) 10 SCC 677***. Paras No.32 to 35 of the said judgment are as under: -

"32. It is settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironical to permit a person to rely upon a law, in violation of which he has

obtained the benefits.

33. In C. Albert Morris v. K. Chandrasekaran this Court held that a right in law exists only and only when it has a lawful origin.

34. In Mangal Prasad Tamoli v. Narvadeshwar Mishra this Court held that if an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non-est and have to be necessarily set aside.

35. In the instant case, as we have observed that the alleged sale deed dated 20-4-1992 in favour of Mayur Sahkari Avas Samiti has been avoid transaction, all subsequent transactions have merely to be ignored."

74. Since in the present case, the order of arrest, arrest memo and the remand order dated 09.01.2024 are held to be illegal and against law for the detailed reasons given herein above, thus, the subsequent order of remand and other consequential orders are also liable to be set aside. Moreover, this Court is of the view that even the order dated 16.01.2024 is illegal and thus, deserves to be set aside.

75. The facts of the judgments relied upon by counsel for respondent No.2 i.e. ***Mumbai International Private Limited case*** (supra) and ***Gurdev Singh's case*** (supra)***,*** are distinguishable from the facts of the present case and do not further the case of respondent No.2 and thus, the objection raised on behalf of respondent No.2 is liable to be rejected and is accordingly rejected.

CONCLUSION/RELIEF

76. As per the discussion herein above, both the petitions deserve to be allowed and the impugned orders deserve to be set aside on the following

grounds: -

"a) Non-application of mind and non-recording of compliance of the conditions/stipulations contained in Section 19 by the Special Court while passing the impugned orders.

b) Illegal detention/wrongful restraint of the petitioners from 04.01.2024 to 08.01.2024 amounting to arrest on 04.01.2024 itself and consequential violations of Section 19 of PMLA read with Section 167 CrPC on account of non-production of petitioners within 24 hours.

c) Violation of provisions of Section 19(2) of the 2002 Act.

d) Non-compliance of Section 19(1) of the 2002 Act."

77. The custody of the Enforcement Directorate is over and presently the petitioners are in judicial custody.

78. Keeping in view the above-said facts and circumstances, both the petitions are allowed and the impugned arrest orders, arrest memos along with the orders of remand passed by the Special Judge, Gurugram and the Additional Sessions Judge, Gurugram and all orders consequential thereto in both the cases are set aside and both the petitioners are ordered to be released forthwith, unless their incarceration is required in connection with any other case.

79. All the pending miscellaneous application(s), if any, shall stand disposed of, in view of the abovesaid judgment.

February 08, 2024 **(VIKAS BAHL)**
naresh.k/pawan/davinder **JUDGE**

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