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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 19.10.2023*
Pronounced on: 20.10.2023

+ **W.P.(CRL) 3035/2023 & CRL.M.A. 28269/2023**

SANJAY SINGH Petitioner

Through: Mr. Vikram Chaudhary, Sr. Advocate along with Mr. Rajat Bhardwaj, Mr. Vivek Jain, Mohd. Irshad, Ms. Ankita M. Bhardwaj, Mr. Kanishk Raj, Mr. Kaustabh Khanna, Mr. Rishi Sehgal, Mr. Arveen Sehnon and Ms. Nikita Gill, Advocates

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. S.V. Raju, ASG
Mr. Zoheb Hossain, Special Counsel for ED along with Mr. Vivek Gurnani and Mr. Kartik Sabharwal, Advocates

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

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SWARANA KANTA SHARMA, J.

1. The instant petition under Article 226/227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (*'Cr.P.C.'*) has been filed on behalf of petitioner seeking the following prayers:

“A. In consonance with the principles laid to rest by the Hon'ble Supreme Court, inter alia, in its latest *locus classicus* '*Pankaj Bansal Versus Union Of India And Others 2023 SCC Online SC 1244*', hold and declare the arrest of the petitioner at the hands of Respondent no. 2 to be wholly non-est, illegal, arbitrary and unconstitutional and consequently set aside and quash the entire proceedings relating thereto including arrest order dated 4.10.2023 (annexure P-21) as a gross and blatant abuse of the process of law as well as perversion of power and authority is writ large thereby, infringing the petitioner's fundamental rights as guaranteed under articles 14, 19, 21 and 22(1) & (2) of the Constitution of India;

B. Quash and set aside the orders dated 5.10.2023 & 10.10.2023 (annexures P-24, P-26) passed by the Special Judge (PMLA) whereby, the petitioner has been remanded to the custody of Respondent no. 2 in a patently routine and mechanical manner and, therefore, such untenable remand orders cannot cure the constitutional infirmities as guaranteed under Articles 21 and 22(1) & (2) of the Constitution of India; C. Direct the forthwith release of the petitioner from custody as his any further incarceration would be anathema to law and gravely detrimental to the cause of justice;

c. Direct the forthwith release of the petitioner from custody as his any further incarceration would be anathema to law and gravely detrimental to the cause of justice;

d. Issue any other writ(s), order(s) or direction(s), that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favor of the petitioner...”

FACTUAL BACKGROUND

2. In the year 2021, the Government of NCT of Delhi (*'GNCTD'*) had issued the New Excise Policy wherein bids were invited for grant



of 32 zonal retail licenses in the form of L7Z licenses to eligible business entities for the sale of Indian and foreign liquor in the city of Delhi.

3. However, on 17.08.2022, the Central Bureau of Investigation ('CBI') had registered an FIR i.e. RC0032022A0053 for offences punishable under Section 120B read with 447A of Indian Penal Code, 1860 and Section 7 of Prevention Of Corruption Act, 1988 on the basis of a complaint dated 20.07.2022 made by the Lieutenant Governor, GNCTD and the directions of competent authority conveyed by Director, Ministry of Home Affairs (MHA), Government of India, through letter dated 22.07.2022 and also based on some source information, in relation to the irregularities committed in framing and implementation of excise policy of GNCTD for the year 2021-2022.

4. Since the case registered by the CBI was in relation to offences which are scheduled offences under the Prevention of Money Laundering Act, 2002 ('PMLA'), the Directorate of Enforcement had registered a case i.e. ECIR/HIU-II/14/2022 on 22.08.2022 for the offence of money laundering under Section 3 and 4 of PMLA in the alleged '*Delhi Excise Policy Scam*'.

5. In the predicate offence, the CBI had filed chargesheet dated 25.11.2022, cognizance of which was taken by the learned Trial Court on 15.12.2022. Two supplementary chargesheets have also been filed on 25.04.2023 and 08.07.2023, against total 16 accused persons. A perusal of record reveals that the case of CBI is that while the excise policy of GNCTD was at the stage of formulation or



drafting, the accused persons had hatched a criminal conspiracy, in furtherance of which some loopholes had intentionally been left or created in the policy, which were meant to be utilized or exploited later on. Further, huge amount of money was paid as kickbacks in advance to the public servants involved in commission of alleged offences and in exchange of undue pecuniary benefits to the conspirators involved in liquor trade. As alleged, kickbacks of around Rs. 20-30 crores in advance were paid to accused Vijay Nair, Sh. Manish Sisodia and some other persons belonging to the ruling political party in Delhi, and the other public servants involved in conspiracy by some persons in liquor business from South India and these kickbacks were found to have been returned back to them subsequently out of the profit margins of wholesalers holding L-1 licenses and also through the credit notes issued by the L-1 licensees to the retail zone licensees (L-7Z) related to the South liquor lobby. It is further alleged that as a result of criminal conspiracy, a cartel was formed between three components of the said policy, i.e. liquor manufacturers, wholesalers and retailers, by violating provisions and the spirit of liquor policy, and all the conspirators had played an active role to achieve the illegal objectives of the said criminal conspiracy, result in huge losses to the Government exchequer and undue pecuniary benefits to the public servants and other accused involved in the said conspiracy.

6. In the present ECIR, the first prosecution complaint was filed on 26.11.2022 and the cognizance was taken by the learned Trial Court on 20.12.2022. Thereafter, four supplementary prosecution



complaints were filed on 06.01.2023, 06.04.2023, 27.04.2023 and 04.05.2023. The role of Directorate of Enforcement comes into picture since the allegations against the accused persons are of money laundering and concealment, possession, acquisition of the proceeds of crime. In a nutshell, the case of Directorate of Enforcement is that advance kickbacks of around Rs. 100 crores were paid to the public servants involved in this conspiracy and as a result of the nexus created because of this conspiracy between the political persons, Government officers/officials and the other accused persons involved in the liquor trade, a total loss of around Rs. 2873 crores has been caused to the Government exchequer.

THE GRIEVANCE OF PETITIONER

7. The petitioner's grievance, as disclosed from the contents of the present writ petition, is that he is a politician of repute as well as a social leader and member of Rajya Sabha from State of NCT of Delhi and is a senior member of Aam Aadmi Party, who has been widely regarded for his contribution in the field of strategic thinking apolitical campaigns and for his role towards nation building.

8. It is stated that though the CBI had registered the case for predicate offence on 17.08.2022, the petitioner is neither a suspect nor an accused in the said case and despite one main chargesheet and two supplementary chargesheets being filed in last one year, there has been no involvement of the petitioner.

9. As regards the present ECIR, the case of petitioner is that even though one prosecution complaint and four supplementary



complaints have been filed implicating as many as 29 accused and citing 254 witnesses by the Directorate of Enforcement, the petitioner has never been summoned under Section 50 of PMLA and was never arraigned as either suspect or accused. It is also his case that after the Directorate of Enforcement had registered the present ECIR, several raids and attachment proceedings had been conducted against several persons, but the petitioner was not involved in any manner whatsoever in reference to any of the alleged money transactions. It is also stated that after the investigation had started in the present case, the Directorate of Enforcement had recorded statements of several witnesses and co-accused persons, but the name of petitioner had not reflected anywhere.

10. However, the petitioner has been compelled to approach this Court pursuant to his arrest on 04.10.2023 in the present ECIR, which according to the petitioner, is illegal, arbitrary and a gross and blatant abuse of process of law.

SUBMISSIONS MADE ON BEHALF OF PETITIONER

11. Learned Senior Counsel for the petitioner argues that the present case is a classic example of abuse of power and malice against the petitioner herein. It is argued that the petitioner has been arrested without any ground in total violation of the law laid down by the Hon'ble Apex Court and in contravention of provisions of PMLA. Learned Senior Counsel also contends that the learned Sessions Court at the time of grant of remand of the petitioner has not



appreciated the ratio of judgment of *Pankaj Bansal v. Union of India* 2023 SCC OnLine SC 1244.

12. It is argued that as per Section 19 of PMLA, it is the mandate of law that there should be some tangible material in possession of Investigating Officer pointing out towards the guilt of the accused for his arrest. It is further contended that no summons were received by the present petitioner from August, 2022 till October, 2023 even once and without there being necessity of arrest or sufficient grounds of arrest, he was arrested which shows the malice on the part of investigating agency in this case.

13. Learned Senior Counsel further argues that no trail of money or money has been recovered or any indication regarding the money having been laundered and therefore, without any substance, the petitioner was arrested and is now languishing in judicial custody.

14. It is also argued that one Dinesh Arora has become approver in the case registered by CBI for the predicate offence as well as PMLA case and for getting pardon, he has become an approver and has given a false statement against the present petitioner under pressure.

15. Learned Senior Counsel for the petitioner also argues that petition has not become infructuous since his prayer is for being released from custody as his fundamental right has been violated and he is challenging the arrest as well as the remand and the consequent proceedings emanating therefrom. It is further argued that the present petitioner was not even named once in any of the statements or complaints, and rather an application had been moved for correction of the name in the statement of Dinesh Arora where it was mentioned



that the name of the present petitioner had been mistakenly mentioned and instead of Sanjay Singh, the name should have been Rahul Singh.

16. It is also stated that the petitioner had served a defamation notice to Director, Enforcement Directorate on 23.05.2023, which reads as under:

“....1. That my client is a very reputed and respected Indian Politician, Social Leader and a member of the Rajya Sabha from Delhi and also a member of the party's foremost decision-making body viz. the Political Affairs Committee (PAC), AAM AADMI PARTY.

2. That my client is widely regarded for his contribution in the field of strategic thinking, apolitical campaigns from the Right to Information and Indian Anti-corruption movement and widely known across the country as a leading thinker, contributing to the crucial dialogues related with nation building. Having a Twitter following of more than 2 million, and a cumulative social media following of more than 10 million across platforms, my client enjoys wide social reach, repute, and extraordinary credibility and standing in the civil society.

3. That you are a well-known, reputed, and prestigious agency of our country which enjoys a special status amongst others and is responsible for investigating offences related to money laundering, and investigating a complaint with regard to the Delhi Liquor Policy. In the above mentioned prosecution complaint knowingly and intentionally you have made certain untrue, defamatory, and incriminating statements against my client and further have circulated the same.

4. That being the National Spokesperson, AAM AADMI PARTY which is one of the leading Opposition party in India, you the addressee and your associates, colleagues, agents and employees have attempted to tarnish and mutilate my client's public image and you and your colleagues, agents and employees have attempted to otherwise popularise a perverse, false, motivated, wild, malicious and baseless campaign against my client's alleged involvement in Delhi Excise Policy.

5. That in conspiracy to defame and effect reputation of my client you have deliberately & maliciously defamed my client by imputing his involvement in some Liquor Policy on the basis of an alleged statement dated 01.10.2022 recorded under Section



50 of the Prevention of Money Laundering Act of Dinesh Arora, in following words which are reproduced from the Complaint:

" ... Am it asked him for help in shifting the shop from Pitampura to Okhla as the matter was pending with excise department. Accordingly, he raised that issue with Mr. Sisodia and the directions of Mr. Sanjay Singh, the matter got resolved by excise Department

6. That my client specifically denies this fact that he ever issued such directions as alleged above and further ex facie falsity of your assertion in the said complaint is evident from the fact that the alleged statement of Dinesh Arora does not attribute any wrongdoing to my client. The relevant portion of the statement dated 01.10.2022 does not name my client.

7. The above stated allegations in the complaint made by you are baseless, malicious, and utter falsehood. It was portrayed by you that my client is involved in the alleged matter, which is false and derogatory.

8. That the name of my client was mentioned by you out of nowhere and without any basis; by making false statements in Judicial proceedings where you are obligated to make only truthful assertions. The said false and derogatory statements have been made with the clear intention to defame my client and to adversely affect his reputation and subject him to ridicule and social hatred. The alleged statement of Sh. Dinesh Arora as recorded by you has been mischaracterized and misquoted by you in the complaint for ulterior purposes. You have intentionally added the name of client without any basis with the mala-fide intent to cause disrepute to my client. Towards this end, you and other officers of the Directorate have further circulated and cause to be published the complaint and specifically the portion pertaining to my client.

9. That you have made patently untrue incorrect statements that have defamed my client. The statements are per se defamatory, and my client is also receiving comments of the public which reflect that he is being subjected to social ridicule and hatred due to the belief that your complaint is factually correct. Therefore, through your acts of commission you have tarnished and blemished my client's goodwill and reputation, knowingly that by your said act my client image shall be affected amongst the masses.

10. Because of the baseless and unacceptable statements made in the prosecution complaint my client's political image and credential among the masses is severely tainted, which will hurt him in future by creating negative prejudice. Further these irresponsible and false statements made by you have been



reported in various platforms across print and electronic media in pursuance of which indelible marks have been cast on my client's public repute, which are solely attributable to your responsible and callous conduct.

11 As a law enforcement agency, you have responsibility to 'Speaking the truth, and 'keeping a dignified profile', and not to misrepresent or mislead anything, however, such wrong defamatory remarks, not only lowered the reputation of my client but has caused a permanent damage as you have linked my client in shifting of a liquor shop, to which my client has no relation whatsoever. This has been done by you to significantly damage my client's reputation amongst the masses who take my client as an upright and honest person. My client has extraordinary credibility and standing in the civil society.

12. Further, you have filed a complaint before the Ld. Special Court which is receivable as evidence, containing allegations which are false to your knowledge. You have corruptly filed this complaint declaring the same to be true while fully well knowing that the contents therein, in so far as they relate to my client, are false and contrary to the alleged statement of Mr. Dinesh Arora recorded by you. These actions are ex facie illegal and punishable under various provisions of the Indian Penal Code, 1860.

13. I, therefore, through this Notice call upon you to immediately issue an open and public apology within 48 hours of receipt of this Notice, for the mental agony and harassment faced by my client. Please note that you the addressee is severally liable for such misdeed done with malicious intent. If you fail to comply with the above within 48 hours of the date of receipt of this notice, I have instructions to initiate appropriate civil & criminal proceedings against you before the competent court, and in that event, you shall be fully responsible for the same and related cost and consequences.

14. This notice is without prejudice to any rights and contentions that may be raised by my client in future in the course of this or any other proceedings.

17. It is argued that the above cited legal notice sent by the petitioner is the trigger point, which led to his arrest.

18. It is contended by learned Senior Counsel that the remand order in the present case is a colourable exercise of power, as merely



giving the grounds of arrest is not enough, and the grounds of arrest should also have reasonable nexus to the arrest, and should not be mere chants.

19. Therefore, it is prayed that the present petition be allowed.

SUBMISSIONS MADE ON BEHALF OF DIRECTORATE OF ENFORCEMENT

20. Learned Additional Solicitor General, on the other hand, argues that the facts of the case of *Pankaj Bansal (supra)* are entirely different from the present case and the said decision will not apply to the case in hand since written grounds of arrest were provided to the petitioner. It is stated that the petitioner already knew in the month of April itself that there was evidence against him, but he was not arrested. It is stated that in case he was not aware about the evidence against him, how he would have sent notice of defamation to the officials of Directorate of Enforcement. It is, therefore, argued that it is factually incorrect to state that the name of the present petitioner was not mentioned anywhere earlier to his arrest.

21. This Court's attention was also drawn to Section 19 of PMLA and it was stated that there was no breach of any condition of Section 19 of PMLA. It was further argued that the remand order is not mechanical and is a well-reasoned order and it notes that there is compliance of Section 19 of PMLA. Learned ASG further argues that the present petition is actually a bail application in the guise of writ petition, which cannot be allowed, especially when no fundamental or legal right of the petitioner has been violated.



22. Learned ASG also states that it is not the case as has been claimed by the petitioner that any application was moved by Directorate of Enforcement for deleting the name of petitioner in its application for correction of name, but rather it was only at one or two places in the statement that there was a typographical error of name of the petitioner which was corrected at the first given instance. It is stated that in the statement of the approver and witnesses, the name and role of the present petitioner has been mentioned at several places. It is also argued that the search and seizure memo would reveal that a photograph of print out of statement of Dinesh Arora, which has allegedly been taken on a table of the office of Directorate of Enforcement, was found in possession of petitioner. Learned ASG argues that the contention that the statement recovered from the possession of the petitioner was already in public domain loses its significance since it was a photograph of the statement of Dinesh Arora which was found to be clicked on a table of the office of Directorate of Enforcement which reflects that he has access to the confidential documents, and the photograph may have been obtained even when the statement was not in public domain. It is also stated that the petitioner is an influential person and it shows that he can tamper with evidence as the confidential documents i.e. the photograph copy of statement of approver was found in his possession. It is also argued that Section 19 of PMLA does not mandate that satisfaction for necessity to arrest be mentioned in detail or in writing and it is the remand application which mentions the need for arrest and remand. It is also argued that as far as mala



fide and malice is concerned, the petitioner has to specifically name a person and make him a party while imputing malice. Lastly, it is stated that the order of remand is an interlocutory order and there is no error apparent on the face of record to interfere with it by this Court under writ jurisdiction. Therefore, it is prayed that the present petition be dismissed.

23. This Court has heard arguments addressed by learned Senior Counsel for the petitioner as well as learned Additional Solicitor General appearing on behalf of respondent, and has perused the material placed on record.

ISSUE BEFORE THIS COURT

24. The issue for consideration in the present petition is as under:

*Whether the arrest of petitioner is illegal and arbitrary and whether the arrest order dated 04.10.2023, and the consequent remand orders dated 05.10.2023 and 10.10.2023 passed by learned Sessions Court, are in violation of the decision of Hon'ble Apex Court in case of **Pankaj Bansal** (supra)?*

THE POWER TO ARREST UNDER PMLA

(i) Section 19 of PMLA

25. Since the present petition challenges the arrest of the petitioner by the Directorate of Enforcement, it shall be relevant to consider the



mandate of Section 19 of PMLA. The relevant portion of Section 19 reads as under:

“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....”

(ii) *Mandate of Section 19 of PMLA*

26. Following ingredients can be culled out from the reading of Section 19(1) of PMLA:

- i. The officer concerned must have some ‘*material in his possession*’
- ii. On the basis of such material, the officer should have a ‘*reason to believe*’ that any person has been ‘*guilty*’ of an offence punishable under PMLA
- iii. Such reasons should be recorded in ‘*writing*’ by the officer concerned
- iv. The person so arrested should be ‘*informed of the grounds of arrest*’

27. The compliance of these conditions is undoubtedly mandatory, which is also fortified by the explanation added to Section 45 of PMLA, which provides as under:

“45. Offences to be cognizable and non-bailable.



Explanation. — For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and **accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.**"

(Emphasis supplied)

(iii) Judicial Precedents Qua Power Under Section 19 of PMLA

28. The Hon'ble Apex Court, while dealing with constitutional validity of certain provisions of PMLA and the procedure followed by Directorate of Enforcement, in case of ***Vijay Madanlal Choudhary v. Union of India*** 2022 SCC OnLine SC 929, had made the following observations:

“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...”



29. Further, in case of *V. Senthil Balaji v. The State represented by Deputy Director 2023 SCC OnLine SC 934*, the Hon'ble Apex Court has explained the mandate of Section 19 of PMLA by way of following observations:

“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.”

30. In case of *Pankaj Bansal (supra)*, the Hon'ble Apex Court while reiterating the principles laid down in case of *Vijay Madanlal Choudhary (supra)* has made the following observations on the scope of Section 19 of PMLA:

“14. ...In *Vijay Madanlal Choudhary (supra)*,It was noted that Section 19 of the Act of 2002 prescribes the manner in which the arrest of a person involved in money laundering can be effected. It was observed that such power was vested in high-ranking officials and that apart, Section 19 of the Act of 2002 provided inbuilt safeguards to be adhered to by the authorized officers, such as, of recording reasons for the belief regarding involvement of the person in the offence of money laundering and, further, such reasons have to be recorded in writing and while effecting arrest, the grounds of arrest are to be informed to that person...”



CONCEPT OF NECESSITY OF ARREST UNDER PMLA

31. One of the arguments raised on behalf of petitioner was that to affect an arrest under Section 19 of PMLA, it must be proved that there was sufficient reason to arrest or in other words there was sufficient material shown for necessity to arrest the person allegedly involved in the offence of money laundering.

32. The Hon'ble Apex Court in case of *Vijay Madanlal Choudhary (supra)* while explaining the mandate of Section 19 of PMLA and the scope of powers of arrest, had expressed that the requirement on part of authorized officer to forward the copy of arrest order and material in his possession to the adjudicating authority was to ensure fairness and accountability of the officer in forming an opinion regarding the *necessity* of arrest. The relevant observations in this regard reads as under:

“322. ...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...”

33. The aforesaid observations of the Hon'ble Apex Court in case of *Vijay Madanlal Choudhary (supra)* were reiterated in case of *V. Senthil Balaji (supra)*, and *Pankaj Bansal (supra)* and it was observed that it is necessary for the officer concerned to record reasons for his belief that a person is guilty of an offence under PMLA and needs to be arrested.



REMAND OF AN ACCUSED

34. Since the present petition also seeks setting aside of remand orders dated 05.10.2023 and 10.10.2023 on the grounds that the same were passed by the learned Sessions Court in a patently mechanical and routine manner, it will also be relevant to take note of the legislative framework and judicial precedents on the issues as to what is remand of an accused, the power of Courts to remand an accused to the custody of police, and the essentials to be considered for grant of remand in cases under PMLA.

(i) ***Power of Remand under Section 167 of Cr.P.C.***

35. Relevant portion of Section 167 of Cr.P.C. reads as under:

“167. Procedure when investigation cannot be completed in twenty-four hours.—

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is wellfounded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—



(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be...”

36. Thus, Section 167(2) of Cr.P.C. authorizes the detention of an arrestee beyond 24 hours and empowers the Magistrate to remand an



accused to police custody, though not exceeding the period of 15 days.

37. The object and importance of Section 167(2) of Cr.P.C. was elucidated by the Hon'ble Apex Court in case of *Satender Kumar Antil v. CBI (2022) 10 SCC 51*, and relevant portion of the decision reads as under:

“39. Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and infeasible one, inuring to the benefit of suspect.”

38. In *Satyajit Ballubhai Desai v. State of Gujarat (2014) 14 SCC 434*, the Hon'ble Apex Court had explained the role of a Magistrate while passing an order under Section 167(2) of Cr.P.C. by way of following observations:

“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.”

39. In *V. Senthil Balaji* (*supra*), the Hon'ble Apex Court has emphasised that the power under Section 167(2) of Cr.P.C. is to be exercised after applying judicial mind and passing a reasoned order, and has expressed as under:

"53. ...While authorizing the detention of an accused, the Magistrate has got a very wide discretion. Such an act is a judicial function and, therefore, a reasoned order indicating application of mind is certainly warranted. He may or may not authorize the detention while exercising his judicial discretion. Investigation is a process which might require an accused's custody from time to time as authorised by the competent Court. Generally, no other Court is expected to act as a supervisory authority in that process. An act of authorisation pre-supposes the need for custody. Such a need for a police custody has to be by an order of a Magistrate rendering his authorisation.

54. The words “such custody as such Magistrate thinks fit” would reiterate the extent of discretion available to him. It is for the Magistrate concerned to decide the question of custody, either be it judicial or to an investigating agency or to any other entity in a given case.



(ii) ***Grant of Remand in cases under PMLA***

40. The Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary (supra)*** had observed that it is the obligation of the officer concerned to produce the arrestee before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within 24 hours and such production is to comply with the requirement of Section 167 of Cr.P.C. The relevant portion of the judgment is extracted as under:

"322. ...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.

41. Similarly, in ***V. Senthil Balaji (supra)***, the Hon'ble Apex Court analysed the nexus between Section 167 of Cr.P.C. and Section 19 of PMLA and it was held that the Magistrate or Court concerned is duty bound to apply its mind to ensure that provisions of Section 19 have been complied with by the prosecuting agency, and the crucial observations in this regard read as under:

“INTERPLAY BETWEEN SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE, 1973:

67. 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.

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

69. The interplay between Section 19(1) of the PMLA, 2002 and Section 167 of the CrPC, 1973, as discussed, would facilitate the application of the latter after the conclusion of the former. One cannot say that Section 167(2) of the CrPC, 1973 is applicable to an authority when it comes to arrest but not to custody.

70. An external aid would be required only when there is a lacuna, especially when the provisions are *pari materia*. We are conscious of the fact that in certain statutes like Foreign Exchange Regulation Act, 1973 and the Customs Act, 1962, etc. there is an express provision which confers the powers of police officers upon the authorised officers for the purpose of arrest and then custody to the police. That does not mean that there is no power under the PMLA, 2002 read with the CrPC, 1973 to the Authorised Officer to seek custody. There is a fallacy in the



said argument. One cannot apply Section 167(2) of the CrPC, 1973 in piecemeal. There cannot be an application of the provision only for an arrest but not for custody. Such an argument is also dangerous from the point of view of an arrestee as the benefit conferred under the proviso to Section 167(2) of the CrPC, 1973 will not be available. Vijay Madanlal Choudhary (*supra*):

“88. ...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. ...”

42. Further, in ***Pankaj Bansal*** (*supra*), the Hon'ble Apex Court after taking note of its earlier decisions in cases of ***Vijay Madanlal Choudhary*** (*supra*) and ***V. Senthil Balaji*** (*supra*), and while dealing with the issue as to whether the remand order passed by the Sessions Court therein was liable to be set aside, had observed as under:

“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* 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.”

ANALYSIS AND FINDINGS

(i) Material In Possession in the present case against the petitioner

43. From the perusal of records including the grounds of arrest and remand application filed before the learned Sessions Court, the material against the petitioner and his role can be summarised as under:

- a. The petitioner is directly linked to the receipt of illicit funds amounting to Rs. 2 crores concerning the Delhi Liquor Scam. This revelation surfaced during the ongoing investigation, indicating that this sum was delivered to the accused's close associate Sarvesh Mishra, in two separate installments by an employee of the co-accused Dinesh Arora, who has already turned an approver in this case.
- b. Allegedly, Rs. 1 crore of this sum constitutes a portion of the Rs. 3 crore bribe received by the approver Dinesh Arora from the co-accused Sameer Mahandru between August and October, 2021. This transaction was conducted at the direction of the co-accused Vijay Nair in relation to the Goa elections. The remaining Rs. 1 crore originated from the South liquor interest group and was designated for the AAP party fund.
- c. The co-accused Vijay Nair is suspected of having represented the Delhi Government and leaders of the AAP during



negotiations with the South liquor lobby and other individuals involved in the aforementioned criminal conspiracy.

- d. It is alleged that in addition to statements provided by individuals involved in the transportation of these sums and related transactions, there is supplementary evidence in the form of call detail records (CDRs) and the cell phone locations of the employee of the approver Dinesh Arora, as well as Sarvesh Mishra. Furthermore, according to statements made by witnesses during the investigation, the approver Dinesh Arora allegedly contacted the accused to verify the delivery of the aforementioned sums to the mentioned associate.
- e. The allegation suggests that the petitioner, right from the outset and even before the policy's formalization, was inclined to provide benefits to private individuals through policy development. During investigation, it was discovered that he had made commitments to the approver Dinesh Arora, who was acting on behalf of another co-accused Amit Arora, to implement specific modifications to the proposed excise policy. These modifications were aimed at raising the brand registration criteria for IMFL brands and were to be carried out through the co-accused Manish Sisodia.
- f. It is alleged that for Delhi Liquor Policy 2020-21, in exchange for the mentioned favours, an agreement was reached wherein an individual named Vivek Kumar Tyagi, who had close association with the present petitioner, would acquire a stake in a business entity owned by the co-accused Amit Arora, known



as M/s Aralias Hospitality Pvt. Ltd.. During the investigation, an unsigned Memorandum of Understanding (MoU) was discovered, purportedly executed between the co-accused Amit Arora, the witness Dinesh Arora, and Vivek Kumar Tyagi. This MoU was intended to ensure the payment of the quid pro quo amount through the mentioned entity. As alleged, the petitioner had played a key role in effecting the aforementioned changes by leveraging his influence and government connections, particularly in collaboration with the co-accused Manish Sisodia.

- g. Furthermore, it is contended that printouts of certain email exchanges between an individual named Mr. Ankit Gupta, who serves as the Chartered Accountant for the approver Dinesh Arora and had prepared the aforementioned MoU have been obtained and confiscated during the investigation. These email communications also substantiate the aforementioned allegations, as alleged.
- h. Additionally, in addition to the aforesaid evidence, it is asserted that several other documents have been seized during the investigation, which indicates the transfer of 20% shares each of M/s Aralias Hospitality, held by the co-accused Amit Arora, in favour of both Vivek Kumar Tyagi and the approver Dinesh Arora.
- i. Nevertheless, it has been acknowledged on behalf of the ED that for certain reasons, the policy change mentioned above



was never implemented, and consequently, the MoU in question could not be put into effect.

44. Thus, the role attributed to the petitioner by the ED is that during investigation it was discovered that the petitioner is a significant conspirator in the Delhi Liquor Scam, and is closely connected to several other individuals involved in this case, including Mr. Dinesh Arora and Mr. Amit Arora. It has also been alleged that the petitioner has profited from illicit funds or advanced kickbacks, which constitute Proceeds of Crime derived from the liquor policy scam for the year 2021-22, and such proceeds of crime were generated, transferred and concealed by the petitioner amounting to Rs. 2 crores. Further, he has played an active role in conspiracy related to the alleged Delhi Excise Policy Scam which is reflected from his specific role described in the statement of the approver and witnesses.

(ii) The Grounds of Arrest

45. This Court has also examined the contents of the grounds of arrest supplied to the petitioner herein at the time of his arrest which also contains the details of the investigation conducted as well as the role of the present petitioner, and has also gone through the contents of the remand application filed before learned Sessions Court. A perusal of the same reveals as under:

- a. The petitioner has conspired with other persons and by such acts, proceeds of crime to the tune of Rs. 2 Crore has been generated and has played role in the generation, Transfer,



concealment of proceeds of crime and has projected the same as untainted.

- b. The petitioner is actively involved in the process of money laundering and he is guilty of the offence of money laundering under Section 3 of PMLA.
- c. The petitioner has withheld information which is in his exclusive knowledge and extremely relevant to the investigation, and his custodial interrogation is required to investigate the money trail of kickback money that he had received from Dinesh Arora
- d. The petitioner needs to be confronted with the digital and physical records seized during 239 search operations including those recovered from his associates.
- e. The petitioner needs to be interrogated with respect to other associates/entities involved in the kickbacks received from south liquor lobby.
- f. The petitioner needs to be interrogated to identify the complete modus operandi of the offence and to unearth the complete proceeds of crime involved.

(iii) Whether the Arrest of Petitioner and the Impugned Remand Orders Violate the Mandate of Provisions of PMLA?

46. *Firstly*, as regards the exercise of power under Section 19 of PMLA by the officer concerned, this Court notes that the perusal of records reveal that all the essential ingredients of Section 19 have been complied with by the officer arresting the present petitioner.



The arrest order dated 04.10.2023, which is in the prescribed format as also directed to be followed by the Hon'ble Apex Court in case of **Pankaj Bansal** (*supra*), records that the authorized officer had reasons to believe that the petitioner was guilty of an offence under the provisions of PMLA.

47. *Secondly*, in the present case, the learned Sessions Court while granting remand of the petitioner *vide* order dated 05.10.2023 had specifically asked the investigating officer as well as the counsel for the petitioner as to whether the grounds of arrest of accused had been supplied to him or not, and it was stated before the learned Sessions Court that the same had already been supplied. The relevant portion of the order dated 05.10.2023 reads as under:

“12. At the beginning of hearing on this remand application, this court has asked from the IO if copy of grounds of arrest of the accused has been supplied to him or not and it has been stated by Ld. Senior Advocate that the same stands supplied, along with a copy of arrest memo of the accused. The case file produced by the IO has also been perused by the court to ensure that the reasons for belief leading to arrest of accused have also been recorded by the IO in writing, based on the material in his possession and as collected during investigation, to justify the arrest of accused and as showing his guilt in this case in relation to the alleged offence of money laundering of this case, as per provisions contained U/S 19(1) of the PMLA and as per the spirit of directions contained in the case of **Pankaj Bansal** (*Supra*). It is also found that the above reasons were even communicated by the IO through e-mail to his senior officer for approval, prior to effecting the said arrest. Hence, in *prima facie* view of this court, the facts stated and material placed before the court nowhere show or suggest that his arrest in the present case is unwarranted or unreasonable as allegations have been made against him of his being directly associated with activities related to the proceeds of crime of the present case.”



48. In the present case, the record reveals that grounds of arrest running into six pages in writing were provided to the petitioner as to why he was being arrested and what was the investigation conducted so far by the Directorate of Enforcement and as to how he was found *prima facie* guilty of offence under PMLA.

49. As regards the contention raised on behalf of the petitioner that fundamental right of the petitioner has been violated as he was not informed about the grounds of arrest, this Court notes that the grounds of arrest were provided to the petitioner in writing, which are part of the record, which were also placed before the learned Sessions Court for perusal and, therefore, it cannot be pleaded that the petitioner was not aware about the grounds of his arrest.

50. Therefore, the ratio of *Pankaj Bansal (supra)* to the extent that the grounds of arrest ought to be communicated to the person being so arrested under Section 19 PMLA in writing and the arrest shall be illegal if the same is not complied with, will not be applicable to the present case.

51. *Thirdly*, as far as the contention that there were no sufficient reasons to believe that the petitioner was guilty of offence under PMLA and that there was no necessity of his arrest is concerned, this Court is of the opinion that the learned Sessions Court has referred to the material on record against the present petitioner which had become basis of his arrest. The relevant portion of the remand order dated 05.10.2023 reads as under:

“...13. As stated above, investigation is alleged to have revealed that an amount of Rs. I crore each on two different occasions was got delivered by the approver Dinesh Arora at the residence



of this accused through his employee (whose name is not being disclosed here on request of the investigating agency as it will prejudice the ongoing investigation) and it was delivered to one Sh. Sarvesh Mishra, who is stated to have been a close associate of this accused and had also earlier worked as a personal secretary for him. The first delivery of Rs. 1 crore is stated to be part of the proceeds of crime of Rs. 3 crores paid by co-accused Sameer Mahandru during the period from August-October, 2021 for Goa Elections, at the instructions of co-accused Vijay Nair as he facilitated the grant of wholesale licence of M/s Pemod Ricard to the wholesale entity named MIS Indospirits of the co-accused Sameer Mahandru, and the second delivery of Rs. 1 crore is alleged to be a part of the proceeds of crime of Rs. 4 crores, which the approver Dinesh Arora took from the other co-accused Abhishek Boinpally during the period March-April, 2022 for party fund. This bribe or kickback amount of Rs. 2 crores received by the accused is alleged to have been as a part and in furtherance of criminal conspiracy of the scheduled offences case of CBI. It prima facie appears from the material placed before this court that this amount was delivered at the residence of this accused at North Avenue, New Delhi and CDRs and Cell Location Chart of the mobile phones of above employee of approver Dinesh Arora and of the above associate of accused are there to corroborate this claim of the investigating agency and it is further alleged to be corroborated from different statements made by the approver Dinesh Arora as well as the statements of his above employee etc. Though some of the statements of co-accused Amit Arora, approver Dinesh Arora and other witnesses being referred to by the ED may be of an earlier period, but the role of this accused is stated to have clearly been elaborated by the approver Dinesh Arora in his statement dated 19.07.2023 recorded U/S 164 Cr.P.C and also in his statement dated 14.08.2023 recorded U/S 50 of the PMLA in the present case. Besides the above, statements of employee of approver Dinesh Arora and one Sh. Harinder Singh Narula, whose services were utilized in collection of a part of the above bribe amount from the office of co-accused Abhishek Boinpally, were also made in August, 2023 only. Though the veracity of these statements will be tested during the course of trial only, but for the purposes of investigation such statements have to be believed and taken into consideration. There is also nothing on record to show at this stage that the above statements of approver Dinesh Arora are tainted statements.



14. Hence, though the allegations made against the accused pertaining to his attempt to receive the quid pro quo by making his close associate Sh. Vivek Kumar Tyagi a dummy partner in the above entity named MIS Aralias Hospitality for getting effected some changes in the above excise policy may be the subject matter of the scheduled offences case of CBI, but from the allegations being leveled against the accused and the material placed before this court his direct nexus with activities pertaining to proceeds of crime of the present case by way of receiving the above amount of Rs. 2 crores has been shown and his sustained and custodial interrogation appears to be necessary in relation to receipt of the above amount and the other activities related to the same and also to trace out the complete trail thereof. Further, it has also been submitted on behalf of the ED that they have already deciphered some records and data out of the seizures effected in the present case and they have also issued summons to some persons, including the above Sh. Vivek Kumar Tyagi and Sh. Sarvesh Mishra, and custodial interrogation of the accused may even be necessary for confronting him with the above said persons.

15. Therefore, in view of the above and the totality of facts & circumstances, the accused is being remanded to the custody of ED till 10.10.2023 for the purposes of his detailed and sustained interrogation and confrontations with the above oral and documentary evidence and he shall be produced before this court at 2pm on that day. However, it is directed that his interrogation shall be conducted at some place having CCTV coverage in accordance with the guidelines laid down by the Hon'ble Supreme Court and the said CCTV footage shall be preserved. It is also subject to the condition that he shall be medically examined once in every 48 hours.

16. Further, on a separate application made to this effect on behalf of the accused and in terms of provisions contained in Section 41D Cr.P.C., the accused shall also be permitted to meet his Advocates namely Dr. Farrukh Khan, Sh. Prakash Priyadarshi and Mohd. Irshad for half an hour daily between 6pm to 7pm during the above period of his ED custody in a manner that the ED officials are not able to hear their conversations. Besides this, the accused shall also be permitted to meet to his wife Mrs. Anita Singh and father Sh. D.K. Singh every day for a duration of half an hour during the above said hour.



17. Another application has also been filed on behalf of the accused for providing adequate medicines and other necessary medical equipments to him during his custody period. It is stated that the accused is having a history of fluctuation in his blood pressure and also having Type-2 Diabetes and the doctor has suggested regular monitoring of his blood pressure and glucose levels. Hence, it is also directed that blood pressure of accused shall be monitored twice a day and his sugar level shall be monitored once a day during his above ED custody period and for this purpose, he is being permitted to carry the requisite monitoring instruments with him. Further, he is also being permitted to be given medicines stated in para no. 4 of the above application, as per medical prescription/advice enclosed therewith. 18. Thus, the application moved by IO seeking ED custody of accused stands disposed off accordingly. An e-copy of this order be given dasti to Ld. SPPIO and Ld. Counsel for the accused through Whatsapp/e-mail.”

52. This Court has also perused the case record and is of the opinion that there are statements of witnesses, including the approver, on record which name the petitioner as one of the persons who was co-conspirator with the other co-accused and he had received an amount of Rs. 2 crores from Sameer Mahandru and Abhishek Boinpally through one Sarvesh Mishra, which are the proceeds of crime in the present case. This Court also notes that the remand order as well as remand application mentions specifically that above facts are corroborated by CDRs and Cell Location Chart of the mobile phones of employee of Dinesh Arora who had communicated with Sarvesh Mishra, associate of accused Sanjay Singh, on the same day when he had visited the house of present petitioner Sanjay Singh. This Court also notes that on the basis of the record, it is also apparent that there are allegations against the petitioner regarding receipt of money and as to how and why the same was received by



him. The material on record also records and reflects his meeting with various co-conspirators. Though the learned Senior Counsel for the petitioner pleads that it is a case of total absence of evidence or no material against the accused on record, this Court notes that the statement of the approver and other witnesses specifically point out the role played by the accused in receipt of money and the purpose of the same i.e. for funding the elections which were to be held in Goa and for the party funding of AAP.

53. This Court is not dwelling into elaborate details about the other material on record, being conscious that by doing so and any reference to the same may prejudice the petitioner at any other stage of investigation or trial. However, at the insistence of learned Senior Counsel for the petitioner and to deal with his arguments, this Court to adjudicate the present petition, has already taken note of the material collected by the Directorate of Enforcement and the role ascribed to the present petitioner in the Delhi Liquor Scam in the preceding paragraphs, which at the stage of remand and investigation can be considered adequate material against the accused in possession of concerned officer to conduct further investigation and arrest of the accused.

54. *Fourthly*, as far as the argument that proceeds of crime are not identified and the case of money laundering is not made out is concerned, this Court notes that the grounds of arrest and the remand application categorically mention that the petitioner had received Rs. 2 crore from the co-accused persons, in conspiracy with other persons, and had played an active role in generation, transfer,



concealment of the proceeds of crime. Be that as it may, it is only during further investigation that the trail of money, how it exchanged hands, for what purpose it was taken, and what assurances were given, will emerge when the chargesheet/prosecution complaint qua petitioner will be filed, and it will be subjected to scrutiny and appreciation by the learned Trial Court to determine whether there exists sufficient evidence to proceed with a trial against the present petitioner.

55. *Fifthly*, the argument of the learned Senior Counsel that the remand order has been passed in a mechanical manner and without appreciating the ratio laid down in case of ***Pankaj Bansal*** (*supra*) or even considering that the mandate of law by way of precedents and legal enactments has not been adhered to, is also without merit.

56. In ***Pankaj Bansal*** (*supra*), the Hon'ble Apex Court had observed that the remand orders impugned therein reflected total failure on part of the learned Sessions Judge in discharging his duty, since the remand order did not even record of finding that he had perused the grounds of arrest to ascertain as to whether the Directorate of Enforcement had recorded reasons to believe that the accused therein were guilty of an offence under PMLA and that there was proper compliance of Section 19 of PMLA Act. The learned Sessions Court therein had merely stated that the custodial interrogation of the accused was required in view of the seriousness of allegations and the stage of investigation.

57. However, a perusal of the remand orders in the present case revealed that they are well reasoned orders wherein the learned



Sessions Court has taken into account all the aspects and contentions as well as referred to the law on point including judicial precedents, and had applied its judicial mind and had recorded the satisfaction regarding the necessity of arrest and custody remand of the petitioner herein.

(iv) Power of this Court under Article 226 of Indian Constitution and Section 482 of Cr.P.C. for quashing of remand orders in light of material available on record against the accused

58. In the present case, Directorate of Enforcement and CBI while conducting investigation on the basis of statement of the witnesses and the approver came across evidence against the present petitioner.

59. An argument was also raised regarding the statement of the approver Dinesh Arora being false and motivated and obtained under pressure. This Court, however, cannot go into the test of veracity of statement of the approver. The proceedings under Article 226 of Constitution of India do not authorise this Court to conduct a mini trial at this stage when the accused has just been remanded to custody and the investigating agency is conducting further investigation.

60. It is not open for this Court to examine the genuineness of the allegations or the veracity of the statement of the witness or approver in the present proceedings. In the present proceedings, this Court has to appreciate as to whether the fundamental right of the accused has been violated and whether he is entitled to the termination or setting aside of the orders of his arrest and remand which would lead to proceedings being quashed, even before the investigation against the



petitioner is complete, in the light of guidelines laid down in various cases by the Hon'ble Apex Court.

61. There are allegations that the statement of the approver, i.e. a three-page document was found in the possession of the petitioner, which was photocopied from a photograph of the statement taken in the office of Directorate of Enforcement, which shows that the petitioner is an influential person and can tamper with the evidence. In this regard, this Court is of the opinion that it cannot go into the veracity of the same, and if it was a photograph taken in the office of Directorate of Enforcement, it may be proved through evidence before the Trial Court. However, this Court notes that the present petitioner is in-fact an influential public figure and can influence witnesses as well as evidence, part of which is yet to be collected, and investigation is to be carried out to know the truth for the benefit of the State and its citizens.

62. Another argument raised on behalf of the petitioner was that the Directorate of Enforcement could not explain that if they were in possession of evidence against the petitioner for last one year, why had they failed to arrest the accused.

63. In this regard, this Court observes that any investigating agency before arresting a person has to follow rules of criminal jurisprudence and convince itself about sufficiency of material, and in the present case of money laundering, they had to have sufficient material in their possession to arrest the present accused to produce him before the Sessions Court for seeking his custodial interrogation and for the purpose of conducting proper investigation. Therefore, the



same cannot be read against them but rather in their favour that they had waited to collect sufficient material against the petitioner before arresting him.

(v) Argument of Malice and Malicious Prosecution raised on behalf of Petitioner

64. The first instance of attributing Malice to the ED on the part of the petitioner can traced to the defamation notice which has been sent to Mr. Sanjay Kumar Mishra, Director, ED and Mr. Jogender, Assistant Director, ED that they have deliberately tried to bring down his reputation and spoil his future prospects in politics. In this regard, it is useful to take note of the contents of the notice sent on behalf of the petitioner for the purpose of dealing with the contention of learned counsel for the petitioner that this notice was the trigger point of arrest of the petitioner on false grounds. Every person in India has a right to legal access. The accused in the present case being an influential person as he himself in the first five paragraphs of the legal notice mentions his stature, was assisted by the best lawyers and he was able to send a legal notice that he is being framed in a case on the basis of false statement of a co-accused. However, this Court has to observe that the investigating agency had to do its work howsoever, uncomfortable and inconvenient it would be to any accused, as per law and only because they are investigating a case and are during investigation recording statements of co-accused(s) who name him, cannot make their actions tainted. The investigation has to take place as per law and one notes that it is a hard task for the



investigating agencies to investigate a case when they are also burdened with defamation notices just because they are investigating a case.

65. The petition filed on behalf of the petitioner also attributes malice on the part of the prosecuting agency, which in the present case is the Directorate of Enforcement. The relevant portion of the petition reads as under:

“U. FOR THAT, no jugglery of words and/or depth of expressive language can justify the wanton and arbitrary action of arrest of the petitioner and equally untenable remand orders passed by the Court. In the entire process, justice has been rendered a casualty and it is one of those classic cases where the ED has allowed its process to be used and misused by vested interests as an instrument of oppression to not only invade the liberty of the political opponents of such vested interest but also to tarnish their reputation and self-esteem. Such lawlessness cannot be allowed to be perpetrated under any circumstances whatsoever and this Hon'ble Court being *sentinel on the qui vive*, will not hesitate to exercise its powers either under writ jurisdiction or any other enabling provisions to set at naught blatantly illegal actions of the respondents.”

66. As far as the contention raised on behalf of petitioner that malice is reflected by the fact that though the present petitioner was never ever named in any of the statements of any witnesses or approver and the present petitioner was never summoned, issued notice or any enquiry was conducted before being abruptly arrested after raid at his home is concerned, this Court notes that the name of the present petitioner had emerged in the statements of witnesses namely Amit Arora, Ankit Gupta and Kanwar Bir Singh in March, 2023 as well as the statement of approver Dinesh Arora in July, 2023. The present petitioner himself, as is clear from the record, was aware



about a statement being made against him by the approver. A copy of the statement of the approver, in the form of a photograph clicked by the petitioner was also recovered from his residence. He was, therefore, himself aware about the evidence against him being in possession of the Directorate of Enforcement, therefore, it cannot be pleaded that there was no evidence against him till he was arrested abruptly.

67. Further, it will not be prudent to hold malice as ground for release of a person or quashing of proceedings at the early stages of investigation. Criminal prosecution typically commences based on complaints, confessions, disclosures, and other material that forms the foundation of inquiry and investigation process, which in the opinion of an accused may be malicious.

68. It is only during investigation that a suspicion, disclosure or confession of a witness, co-accused or an accused may lead to making out of an offence against a person. In case, the courts will start absolving a person of accusations or charges on the ground of malice on part of investigating agency when the investigation has just begun and there is material on record *prima facie* showing his role in an offence, no investigating agency will ever be able to carry out any investigation to its logical end.

69. No accused is expected to accept his guilt or involvement in a criminal case. It is only after investigation that the roles are defined, charge-sheets are filed, the material is perused by the Trial Court and on the basis of a strong suspicion, charges are framed, and further on proving case beyond reasonable doubt, a conviction is recorded.



70. Criminal prosecution is carried out within criminal law's framework in disciplined manner, in accordance with enacted criminal law, and not on whims and fancies of an investigating officer of investigating agency. An accused can hardly be expected to ever confess to his crime. This Court also notes that malice is to be proved against a person for the acts committed by him. In the present case, there are no specific allegations or as to why malice has been attributed to Directorate of Enforcement. To hold malice as a ground for releasing an accused of his alleged offences and at the stage when the investigation has just begun and there is *prima facie* material on record against him will be against criminal jurisprudence and its principles.

71. If an accused is permitted to allege malice on the part of the complainant who initiated the case against them, it could result in the complainant themselves becoming victims of facing charges of malicious prosecution. This could potentially divert the focus from addressing their grievances and from carrying out investigation against an accused. As the proper stage for addressing malicious prosecution claims is during the appropriate stage of the trial, this current stage, which concerns the remand order, does not warrant any intervention from this Court.

(vi) The Aspect of Approver's Statement Being Extracted Under Pressure and it Being Unworthy of Credence

72. The grave question raised in one of the arguments that the confession of the approver was obtained under pressure and is



patently false with a view to frame the present accused has been considered by this Court. This Court, at this stage, holds that the statement was recorded with due process and under provisions of the relevant law. The determination as to whether the same was extracted under pressure and was without procedural due process or abuse of power cannot be considered at this stage or gone into by this Court. There is nothing to suggest at this stage that the law enforcement agency by lawless means, to achieve their pre-decided end, had extracted a false statement from the approver. The statement of an approver at this stage even in a case of public figure has to stand on equal footing as in the case of any other accused in a criminal case. This Court holds that all citizens have to stand on principle of equality before the court of justice in every Indian Court. Needless to say, after investigation, if any lawless means and abuse of power is proved, our constitutional system and Courts which have always acted as refuge of those who suffer due to abuse of power will pass appropriate order and provide the constitutional shield of protection which is laid down for the benefit of every citizen of this country not only irrespective of its race or creed but also financial and public standing.

73. This Court also holds that as much as the interest of the accused and his liberty is compelling, so is the interest of the State. The prejudice that the petitioner alleges caused to him by tarnishing his image and political career by his arrest and filing the present criminal case is essentially confined to his personal hardship. Unless it is proved on record that the agency had pressurized the approver to



name him, it cannot be observed at this stage that the statement and evidence against him is motivated and extracted under pressure to form a ground to quash the proceedings at the very nacent stage of investigation.

74. The argument regarding quashing of the proceeding on the ground of willful and reckless disregard of fundamental rights of the accused or mandate of law under Section 19 of PMLA and the Cr.P.C. or evidence against the present petitioner being planted has to fail since neither it could be brought on record that there was breach of any mandate of law that could bring the remand or arrest in question in disrepute before this Court.

75. The Society-State interest have to outweigh the impact of accused protected rights in face of *prima facie* evidence against him. There is nothing at this stage brought to the notice of the Court that the arrest or remand were unconstitutionally obtained on the basis of no evidence.

CONCLUSION

(i) Right of the Accused of Personal Liberty vs. Right of State of Fair Opportunity to Investigate a Crime

76. The Courts hold the responsibility of upholding not only the rights of the accused but also the interests of the State. While investigating a case, the State acts as the guardian of its citizens, seeking to ensure their safety and well-being. When allegations of activities like money laundering, potentially linked with political



gains or party funding are alleged, it becomes an obligation of the State to ascertain the veracity of these claims. The citizens of the State have a legitimate right to know the truth in such matters. This truth, however, can only be unearthed through a thorough and unbiased investigative process.

77. The Courts are entrusted with a duty that is two fold: on one hand, it must safeguard the rights and liberty of the accused, ensuring that they are treated fairly and in accordance with the principles of justice. On the other hand, the court must recognize that an individual's liberty has to yield to the broader interests of the State, particularly when substantial evidence exists against the accused that necessitates constraints on his freedom. This delicate balance lies at the heart of the judicial process, where the scales must be adjusted with precision to safeguard both the principles of justice qua an accused and the welfare of the State and its citizens.

(ii) Reputational Concern of the Accused

78. This Court is not oblivious to critical question of ensuring dignity of an individual even if he is alleged to be an accused. However, the criminal due process lens has to be applied by Court and investigating agency on the same lines whether in the case of public figure or any other individual citizen. The liberty and dignity in such cases cannot succeed in outweighing competing state interest and right to investigate a crime.

79. This Court will also have no hesitation to hold that a person has a right to protect his individual public image and the reputational



aspect of human dignity. However, upholding that right cannot come in the way of curtailing the right of the State to investigate any crime against a person.

(iii) Abuse of Power in the Present Case and Allegations of Political Vendetta

80. As far as contention regarding abuse of power by the ED is concerned, this Court notes that the doctrine of abuse of process has its origin in the discretion that lies with the Court to stay and quash proceedings where compelling reasons are available on record pointing out violation of fundamental principles of justice or use of power by investigating agency through oppressive or vexatious means. In the present case, it was repeatedly argued that in the present case the abuse of power has been apparent throughout. It has been argued that the present petition is one of those classic cases where the ED has allowed its process to be used and misused by vested interests as an instrument of oppression to not only invade the liberty of the political opponents of such vested interests but also to tarnish their reputation and self esteem.

81. This Court in this regard is constrained to observe, while dealing with the contention of learned counsel for the petitioner that there is no money trail or recovery of money in this case, that while dealing with an offence where advance kickbacks have been alleged to be paid in cash, it can hardly be expected that the accused persons whether one who gives the money and one who receives it, in this advanced age of technology will leave any apparent trail which can



be found in the first blush with the crime. The allegations in the statement of the approver and the witnesses are that the kick backs were paid in cash. This Court takes note of the fact that the statements reflect as to how the money travelled from one point and person to another and that the currency notes GC numbers were conveyed to the receiver etc. The statements reveal that the conversations and conveying of such GC numbers was through WhatsApp calls and Face Time calls. It is for the investigating agency to investigate and find out the truth or evidence regarding the same for which they are entitled to and they have to be given fair and adequate opportunity of investigation. Even if the investigating agency/ED is premier investigating agency, they cannot be expected to work as magicians and even if with the aid of technology and best investigative skills at their best are to be applied, it will still take time to investigate the case and try to reach the truth.

82. The argument of the learned counsel that the cheese and chalk must be separated by this court is a powerful argument. In this regard, this court holds that the cheese and the chalk can be separated by the court once the entire material i.e. the cheese and the chalk mixed together will be brought before the Court which the investigative agency is trying to collect.

83. This Court, however, has absolute clarity about the fact that as a Court of law, this Court is sitting as a Judge with eyes that only look at parties with equality. For a Court, a criminal case, and trial has to be judged as per criminal jurisprudence and there are no political or apolitical cases or persons. This Court examines the cases



before it from the prism of enactments of law and judicial precedents and does not get swayed by a political affiliation nor reads the law coloured with the lens of political biases. This Court without there being any evidence on record would desist from imputing political affiliations or objectives to a premier investigating agency as the reputation of the premier investigating agency of a country has direct relation to the reputation of a country being fair entity itself.

84. The argument regarding the case being politically motivated essentially involves the question of deciding and holding that the investigating agency is under control of a particular political party. This Court cannot and will not be a part of either the said discussion or adjudication unless the matter in issue alongwith the material is placed before it for adjudication. The Courts of the country have been best left untouched by such influences and being bound to the oath of being fair and equal without any bias to any person before it, this Court is duty bound to adjudicate the present petition as a Court of law solely on the basis of the law on point and the judicial precedents as any Court should do in any other case of any other citizens, since equality before law is the most cherished goal of the Constitution and the Courts themselves for which they strive hard and put the spirit of the Constitution in the judgments itself through their writings.

85. This Court will not insinuate or impute any political motives to the investigating agency in absence of any material on record and does not consider it a *prima facie* case of no evidence at all.



(iv) The Decision

86. In view of the above discussion, this Court upholds the orders impugned before it having found no infrimtiy or illegality in the same on any ground raised before this Court

87. Accordingly, the present petition stands dismissed alongwith pending applications

88. It is however clarified that any observation made by this Court in this judgment shall not be construed as an opinion of this Court on merits of the case.

89. Copy of this judgment be given free of cost to the accused as the accused is in judicial custody

90. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

OCTOBER 20, 2023/ns