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

RESERVED ON – 19.09.2023.

% ***DATE OF DECISION ON – 22.09.2023***

\+ W.P.(CRL) 2408/2023 & Crl. M.A. No.22680/2023 (for interim relief).

RAM KISHOR ARORA ..... Petitioner

Through: Mr.Abhishek Manu Singhvi, Sr.Adv. with Mr.R.K.Handoo, Mr.Yoginder Handoo, Mr.Siddharth Bhatti, Mr.Aditya Chaudhary, Mr.Ashwin Kataria, Mr.Garvit Solank, Mr.Bhupendra Premi and Mr.Yatin Dev, Advts.

versus

DIRECTOR, DIRECTORATE OF ENFORCEMENT & ANR. ..... Respondents

Through: Mr.Zoheb Hossain, Spl.counsel for ED with Mr.Vivek Gurnani, Mr.Baibhav, Advts. and Mr.Mohit Godara, AD for ED

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

1. The present petition has been filed under article 226/227 of the Constitution of India r/w section 482 Cr.P.C. for an appropriate writ, order or direction declaring the arrest of the petitioner as illegal and violative of his fundamental rights guaranteed to him under art. 14, 20 and21 of the constitution of India and consequently forthwith directing release of the petitioner.
2. In the writ petition it has been submitted that the Petitioner was arbitrarily and illegally arrested on 27.06.2023 by Respondent No.2 and was not informed/served the grounds of his arrest. On 28.06.2023 when the petitioner was produced before the learned Special Judge an application was moved seeking copy of ground of arrest which was opposed by the ED and the learned Special Judge directed the ED to file the reply in this regard that the ground of arrest had not been supplied/served upon the petitioner.
3. On 10.07.2023, reply to the application seeking grounds of arrest was filed by the Enforcement Directorate wherein it was claimed that the grounds of arrest were informed to the Petitioner and he was made to read and sign the same. However, the ED refused to supply/serve copy of the same to the Petitioner. The petitioner has stated that a bail application was moved on 13.07.2023 which was rejected on 22.07.2023 by the learned Special Judge and the petitioner was remanded to judicial custody thereafter.
4. The petitioner has also submitted that the ld. NCLAT, New Delhi in Company Appeal (AT) (INS) 406/2022 has passed an order fixing 31.08.2023 as the deadline for completing all process of due diligence and submission of the term sheet of interim finance within two weeks

thereafter before the tribunal after completing all the formalities. In the present petition the petitioner has raised following question of law:

a) Whether grounds of arrest need to be orally informed or given in writing?

b) Whether the petitioner's fundamental rights have been violated as he has not been informed/served the grounds of his arrest (that are in writing) and thereby also denying him the right to consult and be defended by his legal practitioner?

c) Whether the fundamental right of the petitioner guaranteed to him under Art. 21 of the Constitution of India has been violated by depriving him of his life and personal liberty – subjecting him to an illegal arrest by setting the criminal law in motion contrary to the procedure established by law?

d) Whether the Petitioner's arrest is contrary to s. 19 of the Prevention of Money Laundering Act, 2002 – thereby violating the Petitioner's fundamental right under Art. 21 read with Art. 14 of the Constitution of India?

5. That the petitioner has submitted in his petition that ED has violated the fundamental right of the Petitioner under Article 22(1) of the Constitution of India, as the Petitioner has been arrested without being informed/communicated/served the grounds of arrest and by denying him right to consult and be defended by a legal practitioner of his choice.

6. The petitioner submitted that the petitioner had filed the writ petition on 02.08.2023 before the Hon'ble Supreme Court of India, as there were conflicting views on this issue. In a judgment dated 13.11.2017,

titled *"Moin Akhtar Qureshi vs. UOI"* in W.P (Crl.) No.2465/17, the Division Bench of this Hon'ble Court held that the competent authority is not obliged to inform/serve the order of arrest or grounds of such arrest to arrestee simultaneously with his arrest, while this view has been doubted in the case of *Rajbhushan Omprakash Dixit vs. UOI* in W.P. (Crl.) 363/2018 dated 19.02.2018 which was referred to a larger bench. However, it has been submitted that the law on the same has now been settled by the Hon'ble Supreme Court of India in the case of *V. Senthil Bala ji v. State represented by Deputy Director & Ors*. 2023 SCC Online SC 934 whereby it has been submitted that the concerned officer is at liberty to arrest while performing his mandatory duty of recording the reasons and the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. The petitioner stated that it was inter alia held that any noncompliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. The petitioner stated that in the present case this direction has been completely violated. The petitioner has also taken a plea that the arrest of the petitioner on 27.06.2023 by Enforcement Directorate has jeopardised the interests of almost 17000 (approx.) homebuyers, as well as the Settlement-cum-Resolution Plan that had been approved by Hon'ble NCLAT by order dated 10.06.2022, which was also approved by the Hon'ble Supreme Court by order dated 11.05.2023.

7. The petitioner has submitted that Section 19 of the PMLA has not been followed in the present case. It has been further submitted that the

procedure followed in arresting the petitioner is illegal and contrary to the well settled principles of law.

8. The petitioner has relied upon *State of Punjab Vs, Ajaib Singh*, AIR 1953 SC 10, wherein it was inter alia held that a person to be arrested is to be informed of the grounds for his arrest before he is actually arrested.

9. The petitioner has also relied upon *Madhu Limaye and Ors*., 1969(1) SCC 292. The petitioner has submitted that the grounds of arrest that admittedly are in writing and ran into several pages have to be informed to the petitioner in writing and non-furnishing of the same violates the fundamental rights of the petitioner under Art. 20(1) of the Constitution of India.

10. The petitioner has submitted that his fundamental right under Article 21 has also been violated by subjecting him to an illegal arrest by setting the criminal law in motion contrary to the procedure established by law.

11. The petitioner has also challenged the provisional attachment of the properties by the ED.

12. After hearing the parties, thus court was of the view that there are important questions of law which require consideration and thus, notice was issued.

13. In response to this, ED has filed the counter affidavit and submitted that there has been a sufficient compliance with Section 19 of the PMLA and Article 22(1) of Constitution of India. It has been submitted that there were sufficient reasons to believe that the Petitioner, Ram Kishor Arora, was involved in the commission of offence of money-

laundering as specified under Section 3 of PMLA 2002 and that there are sufficient evidences on record, which clearly bring out that the above specified offence is being perpetually committed with full disregard to the statutory provision with an intention to launder money and therefore petitioner was arrested on 27.06.2023.

14. ED has submitted that the arrest was affected in full compliance of Section 19 of PMLA and that after going through the grounds of arrest, the arrestee on last page in his own handwriting wrote that-"*I have been informed and have also read the above mention grounds of arrest*".

15. It has also been submitted that the Information/ details regarding arrest of the Petitioner were duly communicated to his son Mr. Mohit Arora. ED has submitted that the petitioner was duly produced before the learned Special Judge and on due consideration, the petitioner was remanded firstly to ED custody and then to the judicial custody.

16. In the counter affidavit it has been submitted that the legality of arrest cannot be questioned after a competent court has passed an order on remand which is a judicial function. In this regard reliance has been placed on *Serious Fraud Investigation Office vs. Rahul Modi* (2019) 5 SCC 266 and *Kanu Sanyal v. Distt. Magistrate, Darjeeling*, (1974) 4 SCC 141.

17. ED submitted that a writ petition challenging the legality of arrest would not stand if a person is in custody in pursuance of a judicial order. Reliance has been placed State of *Maharashtra v. Tasneem Rizwan Siddiquee,* (2018) 9 SCC 745.

18. In the counter affidavit, it has been submitted that since the accused has been validly remanded to custody, the present petition is not maintainable.

19. Reliance has been placed upon *Basanta Chandra Ghose v. King Emperor*, 1945 SCC OnLine FC 3, *Naranjan Singh Nathawan v. State of Punjab*, (1952) 1 SCC 118 : 1952 SCC OnLine SC 4, *Talib Hussain v. State of J&K*, (1971) 3 SCC 118, *Col. B. Ramachandra Rao (Dr) V. State of Orissa*, (1972) 3 SCC 256, *Sanjay Dutt v. State through CBI, Bombay* (II), (1994) 5 SCC 410, *Bhagwan Singh V. State of Rajasthan*, 2005 SCC OnLine Raj 861 : (2006) 1 RLW 790, *Saurabh Kumar v. Jailor, Koneila Jail*, (2014) 13 SCC 436, *State of Maharashtra v. Tasneem Rizwan Siddiquee*, (2018) 9 SCC 745 : (2019) 1 SCC (Cri) 386 : 2018 SCC OnLine SC, *Serious Fraud Investigation Office v. Rahul Modi*, (2019) 5 SCC 266, *State v. H. Nilofer Nisha*, (2020) 14 SCC 161.

20. It is submitted that informing grounds of arrest is sufficient compliance with section 19 of the PMLA and there is no legal requirement of supplying a copy of grounds of arrest. It was submitted that in the remand order dated 28.06.2023 which was passed by learned Special Judge specifically noted that there was nothing to suggest from the case file produced by IO that the arrest of the accused has been effected in violation of provision of Section 19 of the PMLA or that the same was otherwise illegal. Learned Special Judge has specifically mentioned that IO has not only recorded the reasons for his belief about accused's being guilty of the offence of money laundering under Section 3 of the PMLA, but the said grounds are also found to have been informed to

the accused. The ED has placed reliance upon *Moin Akhtar Qureshi vs. UOI* 2017 SCC OnLine Del 12108 and *Chhagan Chandrakant Bhujbal vs. Union of India* 2016 SCC OnLine Bom 9938.

21. It has further been submitted that it is an admitted position that within 24 hours of the arrest, the arrestee was supplied with the remand application which virtually contained all the grounds of arrest and therefore the legal requirement of informing the grounds of arrested "as soon as may be" stood fulfilled both as per the statutory requirement under S. 19(1) of the PMLA as well as the constitutional mandate under Article 22 (1) of the Constitution of India. It has been submitted that the expression "as soon as may be" in the context of Article 22(5) has been interpreted by the Hon'ble Supreme Court in *K.M. Abdulla Kunhi v. Union of India* , (1991) 1 SCC 476 wherein it was held that there can be no hard and fast rule and there is no period prescribed either underthe Constitution or under the law so long as the legal requirement of informing is not dealt with supine indifference, slackness or callous attitude in respect of the same. Reliance is placed on *Rajbhushan Omprakash Dixit vs. Union of India (supra*) in which was submitted that it was a well settled preposition that interim order do not have any precedential value. Reliance has been placed upon *Sundeep Kumar Bafna vs. State of Maharashtra (2014) 16 SCC 623.*

22. ED further submitted that the Hon'ble Supreme Court by way of its order dated 15.03.2018, passed in SLP (Crl) diary no. 9360/2018, was pleased to transfer to itself, the abovementioned case of *Rajbhushan Omprakash Dixit vs. Union of India (supra*) and the same was registered as Transferred Case (Crl.) No. 3 of 2018 and was tagged

with SLP (Crl) 4364/2014 i.e., *Vijay Madanlal*Batch of matters and the said issue has been decided by the Hon'ble Supreme Court in *Vijay Madanlal (supra) at Para 458 and 459*and is no longer res integra.

23. ED further submitted that after the decision the Hon'ble Supreme Court has transferred back the said case i.e., *Rajbhushan Omprakash Dixit (supra)*to this Court. It was pointed out that the Hon'ble Supreme Court at *Para 469 of Vijay Madanlal* specifically inter alia directed that:

"*In these transferred cases, the parties are relegated before the High Court by restoring the concerned writ petition(s) to the file of the concerned High Court to its original number limited to consider relief of discharge/bail/quashing, as the case may be, on its own merits and in accordance with law. It would be open to the parties to pursue all (other) contentions in those proceedings, except the question of validity and interpretation of the concerned provision(s) already dealt with in this judgment. The transferred cases are disposed of accordingly."*

24. ED has also relied upon the debates of Constituent Assembly wherein the suggestions to quantify the time-period to inform the grounds of arrest was found to be unnecessary and it was observed by Dr. B.R. Ambedkar that in any case informing such grounds of arrest cannot be later than 24 hours when the grounds for arrest and further custody are required to be informed to the Magistrate itself in the presence of the accused. It is submitted that it is well settled that Constituent Assembly Debates are the best aid for interpreting the provisions of the Constitution a reference has been made to *S.R. Chaudhari v. State of Punjab & On. (2001) 7 SCC 126 (para 33) Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter)* (2002) 8 SCC 237.

25. ED has further submitted that that even Article 22(1) provides 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".* It is submitted that the petitioner was communicated and made aware of the grounds of his arrest by the ED and the ground being raised before this Court is merely that a physical copy of the same was not provided to him. It is submitted that this is not a case where petitioner is unaware of the prosecution case and the reason for his arrest.

26. In the case of *Madhu Limaye, (1969) 1 SCC 292***,** this Court referred to and reiterated the observations of *Viscount Simon in Christie* v. *Leachinsky,* (1947) 1 All ERwhere it was inter-alia held that:

> "*The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained***.** *Lord Simonds gave an illustration of the circumstances where the accused must know why he is being arrested: There is no need to explain the reasons of arrest if the arrested man is caught red-handed and the crime is patent to high Heaven."*

27. Learned special counsel for ED submitted that in PMLA a person is arrested only under Section 3 of PMLA unlike IPC where a person can be arrested for various offnences.

28. Reliance has also been placed upon *State of Punjab* v. *Baldev Singh,(1999) 6 SCC 172***,** wherein it was inter alia held that, it is, however, not necessary to give the information to the person who is searched about his right in writing. It was inter alia held that it is sufficient if such information is communicated to the person concerned

orally and as far as possible in the presence of some independent and respectable persons witnessing the arrest and search.

29. Reliance has also been placed upon *Soni Natverlal Prabhudas and Ors.* vs. *State of Gujarat and Ors., Vijaysingh Chandubha Jadeja vs. State of Gujarat* , (2011) 1 SCC 609.

30. ED submitted that the reliance placed on *V. Senthil Balaji* v. *State, 2023 SCC OnLine SC 934* by the petitioner is absolutely misplaced as the same procedure was followed in the case *of V. Senthil Balaji*, at the time of arrest and the Apex Court did not find any fault with it. Additionally, that the judgment of the Hon'ble Supreme Court in the said case only requires the information to be served, which can even be done orally. It has been submitted that in this case the information of grounds of arrest was given in writing. It is submitted that it is undisputed that the petitioner had read and acknowledged the written grounds of arrest and also signed the same in his own handwriting.

31. Reliance has been placed upon ***Khimji Raja Harijan* v. *District Magistrate, 1987 SCC OnLine Guj 98,***wherein it was held that *oral intimation to the members of the household of the order of detention and the place of detention would substantially comply with the directions by the Supreme Court and would not vitiate the order of continued detention***.** ED has also placed reliance upon *Pranab Chatterjee v. State of Bihar, (1970*) 3 SCC 926.

32. Moreover, the ED submits that there will be no presumption that the particulars of the offence of the grounds for which the applicant was arrested were not conveyed to him by the person who arrested him, or by police and this fact is to be proved positively by the person who

alleges non-compliance with these provisions. Reliance has been placed upon *Vimal Kumar Sharma vs. State of U.P. and Ors. MANU/UP/0602/1995, Sher Bahadur Singh and Ors. vs. State of U.P. and Ors. (25.05.1992 - ALLHC) : MANU/UP/0263/1992.*

33. It has been submitted by the ED that the only manner in law by which the accused can seek release under PMLA is upon fulfilment of the twin conditions prescribed under section 45 of the PMLA, 2002. It has been submitted that the bail application of the petitioner has already been dismissed and that order has not been challenged. In the counter affidavit the facts have also been made which are not being detailed herein.

34. Dr. Abhishek Manu Singhvi, learned senior counsel for the petitioner along with Sh. R.K. Handoo submitted that even as per written submissions and counter affidavit of the ED grounds of arrest have not been served to the petitioner as yet.

35. Dr. Abhishek Manu Singhvi further submitted that from 17.11.2021 to 23.03.2023 petitioner had appeared before ED on 12 occasions and has submitted about 15,000 pages of documents. It was further pointed out that in the 26 FIRs filed against petitioner, the petitioner was neither arrested nor any charge-sheet has been filed.

36. Dr.Singhvi, learned senior counsel for the petitioner, further submitted that the petitioner was illegally arrested on 27.06.2023 and admittedly ground of arrest were not served or furnished.

37. Learned senior counsel submitted that the argument of ED that the remand application constitutes grounds of arrest is pernicious. It has been submitted that the grounds of arrest can never be equated with a

judicial remand application. It was submitted that it is not only a statutory procedural safeguard but also a constitutional obligation on the respondent to supply the grounds of arrest.

38. Dr. Singhvi further submitted that this court is bound to rely on *V. Senthil Balaji*. He submitted that the Hon'ble Supreme Court speaking through V. Senthil Balaji(Supra) has made it crystal clear that grounds of arrest have to be served upon the arrestee and non-supply of it would vitiate the entire proceeding. Dr. Abhishek Manu Singhvi submitted that in no manner the Vijay Madanlal Choudhary(Supra) and V. Senthil Balaji (Supra) are irreconcilable. Dr. Abhishek Manu Singhvi also submitted that V. Senthil Balaji cannot be termed as an *incuriam* judgment.

39. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that rather the ED should not be insisting that the court follow the judgment of *Vijay Madanlal Choudhary*and ignore the judgment of *V. Senthil Balaji*.Learned senior counsel submitted that *Vijay Madanlal Choudhary* judgment is oriented towards elaborating/ examining validity of law as it was a batch of matters challenging validity of law, whereas *V. Senthil Balaji* is fact-based matter where an individual was concerned and there is no irreconcilable conflict between the two.

40. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that *V. Senthil Balaji* has in fact aided in the advancement of law taking the law further from *Vijay Madanlal Choudhary*. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that *Vijay Madanlal Choudhary* also does not state that grounds of arrests need not be supplied, neither does it say that they be furnished well after arrest.

Learned senior counsel submitted that the judgment in *Vijay Madanlal Choudhary* arose out of batch of matters examining constitutional validity of law and was aimed at clarifying the law, whereas *V. Senthil Balaji* is more an individual based matter where the law laid down in *Vijay Madanlal Choudhary* were considered in the particular facts and circumstances of the case.

41. Dr. Abhishek Manu Singhvi, learned senior counsel relied on *Vijay Madanlal Choudhary* to underline the importance of procedural safeguards and its necessity to ensure fairness, objectivity and accountability.

42. Dr. Singhvi, learned senior counsel referred to Para-322 of *Vijay Madanlal Choudhary(Supra)* wherein it was inter alia held as under:

> *"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."

43. Learned senior counsel further submitted that in *Vijay Madanlal Choudhary* reliance was placed on *Premium Granite vs. State of Tamil Nadu 1994 2 SCC 691* to indicate that reasons are required to be noted while exercising discretionary power to check arbitrariness and referred to Para 325 wherein it was held as under:

"The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further

conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in Premium Granites, wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of arbitrariness. Further, in Sukhwinder Pal Bipan Kumar, the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in Ahmed Noormohmed Bhatti, this Court opined that theprovision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority."

44. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that even in the counter affidavit of ED, there is no submission of conflict between *Vijay Madanlal Choudhary(Supra)* and *V. Senthil Balaji(Supra).* Learned senior counsel submitted that there was nothing in the *Vijay Madanlal Choudhary* which has been negated *by V. Senthil Balaji(Supra).* Learned senior counsel submitted that the reliance placed by respondent/ED on Para459on Vijay Madanlal Choudhary is misplaced as it deals with ECIR and not grounds of arrest. Learned senior counsel submitted that ED may be justified by certain judgments in not providing ECIR. However, ED is not at all at liberty to not

provide grounds of arrest as judgments after judgments have stated that grounds should be communicated as soon as may be and cannot be interpreted to take liberty of not submitting yet till this stage.

45. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that petitioner has not come under Habeas Corpus petition but challenging the very basis of arrest due to non-providing of grounds of arrest whereas the purpose of Habeas Corpus is served the moment person is brought before court. It has been submitted that in the present petition the scope of the court to consider the legality of the arrest is very wide.

46. Learned senior counsel has placed reliance upon *V. Senthil Balaji* and submitted that the facts were different and the grounds of arrest were provided but were denied by accused. Hence, they were served to the family of the accused. Learned senior counsel has placed reliance upon V. Senthil Balaji to bolster the submission that officer should supply / serve reasons and non-compliance would vitiate the arrest.

47. Dr. Abhishek Manu Singhvi, learned senior counsel submitted that V. Senthil Balaji is completely in sync with Vijay Madanlal Choudhary and the law laid down has merely been followed and advanced. Learned senior counsel has invited the attention of the court to the rules and has placed reliance upon the Prevention of Money Laundering (the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the adjudicating authority. Hence its period of retention) Rules 2005. Learned senior counsel submitted that Rule 2(g) provides which is as under:

> *g) "material" means any information or material in the possession of the Director or Deputy Director or Assistant*

Director or any authorised officer, as the case may be, on the basis of which he has recorded reasons under sub-section (1) of section 19 of the Act;

48. It has further been submitted that Rule 2(h) provides the definition of order which is as under:

h) "order" means the order of arrest of a person and includes the grounds for such arrest under sub-section (1) of section 19 of the Act;

49. Reference has also been made to Rule 3 which deals with the manner of forwarding a copy of the order of arrest and the material to the adjudicating authority as well Rule 6 which deals with the forms of the record.

50. Learned senior counsel has also invited the attention to Form-3, "Arrest order". Learned senior counsel submitted that the rules provided are elaborate enough and aimed at creating procedural safeguards in case of arrest.

51. Dr. Abhishek Manu Singhvi, learned senior counsel has invited the attention to Para-12 of the reply of the ED where it is submitted that informing the grounds of arrest to a person is a sufficient compliance. However, learned senior counsel submitted grounds need to be served/furnished/given in writing to enable a person to take recourse as permissible by law. Learned senior counsel submitted that remand application does not get equated to supplying and grounds of arrest. Learned senior counsel, in the alternative and without prejudice to the submissions, submitted that the petitioner is also before NCLAT in some matter. The NCLAT had given 2 weeks' time to explore options

to resolve the agony of 17,000 home buyers and that is likely to be extended soon.

52. Learned senior counsel submitted that that petitioner is required for conduct of 25 ongoing projects which caters the needs of 17,000 customers. Learned senior counsel submitted that the petitioner has sufficient roots in the society and has an annual turnover of 2700 cr. Learned senior counsel submits that an alternative the petitioner may be released on interim bail to protect the interest of 17,000 home buyers.

53. In the rejoinder, Dr. Abhishek Manu Singhvi, learned senior counsel and Mr. R.K. Handoo have further reiterated that *Vijay Madanlal Choudhary* has not been violated at all by *V. Senthil Balaji*. Dr. Abhishek Manu Singhvi, learned senior counsel submits that ED is misusing its power to the hilt and therefore counter balancing against ED is necessary. Learned senior counsel also submitted that the matter involving personal liberty requires a different perspective by the court. Learned senior counsel has submitted that if a liberal approach is not taken all safeguards will be negated. Learned senior counsel has submitted it cannot be comprehended why ED is shying away from giving the grounds of arrest to the petitioner.

54. Zoheb Hossain, learned special counsel for the ED submits that there has been sufficient compliance with Section 19 of the PMLA and Article 22(1) of the Indian Constitution. He submits that it was based on 26 FIRs, the Enforcement Directorate initiated an investigation against the Petitioner and M/s Supertech Limited, recording ECIR No. ECIR/ 21/STF/2021 on September 9, 2021. He further submits that

throughout the investigation, the ED issued 12 summons under Section 50 PMLA to the Petitioner, spanning from November 17, 2021, to March 29, 2023. The learned Counsel submits that there is substantial evidence on record indicating that the was involved in the offense of money laundering as defined in Section 3 of the PMLA 2002 and that he knowingly participated in activities connected to the proceeds of crime, projecting it as clean property.

55. Mr. Zoheb Hossain has submitted that subsequently, on June 27, 2023, the Petitioner was arrested in accordance with Section 19 of PMLA. The grounds of arrest were provided in writing to the arrestee, Ram Kishor Arora, who, after reading them, affixed his signature on each page. Additionally, in his own handwriting on the last page, Ram Kishor Arora stated, "I have been informed and have also read the above mentioned grounds of arrest." Furthermore, information about the arrest of Petitioner was communicated to his son, Mr. Mohit Arora. This fact is affirmed by Ram Kishor Arora himself in the Arrest Memo dated June 27, 2023, where he wrote that he had informed his son Mohit about his arrest.

56. Learned Special counsel the Ed submits that on June 28, 2023, the Petitioner was presented before Ld. ASJ-05, Patiala House Courts, New Delhi wherein, after examining the Grounds of Arrest and the case file, the Ld. ASJ concluded that there was no indication that the arrest was conducted in violation of Section 19 of the PMLA. The Investigating Officer had duly recorded the reasons for their belief, and these grounds were also conveyed to the Accused/Petitioner Ram Kishor Arora. Consequently, the Ld. ASJ, after due consideration of

the remand application dated June 28, 2023, remanded the accused to ED custody until July 10, 2023. The counsel submits that therefore, in view of these facts, it is misguided to assert that there was insufficient material for the investigating officer to effect the arrest under Section 19. The alleged grounds and legal questions raised have no relevance in the broader context of the case, where there was abundant material and meticulous compliance. He further submits that upon an application by the ED seeking judicial custody of the petitioner, he was remanded to judicial custody vide order dated 10.07.2023 and hence the legality of the initial arrest and remand cannot be sought to be challenged at this stage. Reliance in this regard is placed on the findings of the Hon'ble Supreme Court on this issue in the case of *Serious Fraud Investigation Office vs. Rahul Modi (2019) 5 SCC 266:*

> *"It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on / 4- 12 - 2018. Additionally , there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpuspetition, the High Court was not justified in entertaining the petition and passing the order."*

57. That reliance in this regard is also placed on the decision of the Hon'ble Supreme Court in the case of *Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141 (Para 4), State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745 (Para 10), Basanta Chandra Ghose v. King Emperor, 1945 SCC OnLine FC*

3, Naranjan Singh Nathawan v. State of Punjab, (1952) 1 SCC 118 : 1952 SCC OnLine SC 4 (Para 10), Talib Hussain v. State of J&K, (1971) 3 SCC 118 at page 121, Col. B. Ramachandra Rao (Dr) v. State of Orissa, (1972) 3 SCC 256, Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410, Bhagwan Singh v. State of Rajasthan, 2005 SCC OnLine Raj 861 : (2006) 1 RLW 790, Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436, State v. H. Nilofer Nisha, (2020) 14 SCC 161

58. It is submitted that the legislative scheme under the PMLA does not provide for *'supplying a copy'* of the grounds of arrest to the arrestee at the time of arrest and that informing the arrestee of the grounds of arrest as required in Section 19 of the PMLA is sufficient compliance of the requirements of Article 22 of the Constitution of India. That in the present case, the remand order dated 28.06.2023, records as under: \

> *"I have examined the grounds of arrest. There is nothing to suggest from the case file produced by IO that arrest of the accused has been effected in violation of provision of Section 19 of the PMLA or that the same was otherwise illegal as the IO is found to have not only recorded the reasons for his belief about accused's being guilty of the offence of money laundering under Section 3 of the PMLA, but the said grounds are also found to have been informed to the accused. The investigating agency has complied with the provisions of law while arresting the applicant/accused."*

59. To buttress this, the court's attention is invited to the decision of the Division Bench of this Hon'ble Court in the case of *Moin Akhtar Qureshi vs. UOI 2017 SCC OnLine Del 12108* (Para 65-74), which held that there is no legal requirement to communicate grounds of

arrest in writing. Reliance has also been placed on *Chhagan Chandrakant Bhujbal vs. Union of India 2016 SCC OnLine Bom 9938.*

60. The learned special counsel submits that it is an admitted position that within 24 hours of the arrest, the arrestee was supplied with the remand application which virtually contains all the grounds of arrest and therefore the legal requirement of informing the grounds of arrested "as soon as may be" stood fulfilled. The expression "as soon as may be" in the context of Article 22(5) has been interpreted by the Hon'ble Supreme Court in *K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 at Para 12 t*o mean that there can be no hard and fast rule and there is no period prescribed either under the Constitution or under the law so long as the legal requirement of informing is not dealt with with supine indifference, slackness or callous attitude. Reliance has been placed on *Moin Akhtar Qureshi vs. UOI 2017 SCC OnLine Del 12108, Chhagan Chandrakant Bhujbal vs. Union of India 2016 SCC OnLine Bom 9938*.

61. It is further submitted that the reliance placed by petitioner on the order of this Hon'ble Court in *Rajbhushan Omprakash Dixit vs. Union of India* is misplaced as the same is merely an interim order; which do not have precedental value. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Sundeep Kumar Bafna vs. State of Maharashtra (2014) 16 SCC 62. Additionally, it is submitted that the Apex court in Vijay Madanlal decided the issue by stating *"So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution."* Reliance in the regard to show that quantifying the time-

period to inform the grounds of arrest was found to be unnecessary is also placed on the *Constituent Assembly Debates and S.R. Chaudhari v. State of Punjab & Ors. (2001) 7 SCC 126 (para 33) Special Reference No. 1 of 2002, In re (Gujarat Assembly Election matter), (2002) 8 SCC 237 (para 15 , 16 ,18), Madhu Limaye, (1969) 1 SCC 292, Viscount Simon in Christie v. Leachinsky, (1947) 1 All ER 567. (Para 11, at p.1144 of Cri LJ), State of Punjab v. Baldev Singh, (1999) 6 SCC 172.*

62. The learned special counsel for the ED further submitted that the reliance placed on *V. Senthil Balaji v. State, 2023 SCC OnLine SC 934* by the petitioner is absolutely misplaced as the same procedure was followed in the case of *V. Senthil Balaji*, at the time of arrest, which the Hon'ble Supreme Court did not find any fault. Reliance in this regard is placed on *Khimji Raja Harijan v. District Magistrate, 1987 SCC OnLine Guj 9*8, Pranab Chatterjee v. State of Bihar, (1970) 3 SCC 926. Moreover, it is also submitted it cannot be presumed that the arrestee was not informed go his grounds of arrest. To buttress this contention, the court's attentions brought to *Vimal Kumar Sharma vs. State of U.P. and Ors. MANU/ UP/0602/1995, her Bahadur Singh and Ors. vs. State of U.P. and Ors. (25.05.1992 - ALLHC) : MANU/UP/0263/1992*

63. It is further submitted that besides the above-mentioned submissions, the Petitioner herein has filed an application dated 28.06.2023 seeking Grounds of Arrest and the same is pending adjudication, thus, the present petition needs to be kept in abeyance till the time the abovementioned Application is decided.

64. The ld. Counsel for ED submits that the Petitioner had filed a Bail Application dated 12.07.2023 before the Ld. Trial Court wherein a

detailed order was passed dated 22.07.2023 stating that there is sufficient material on record showing commission of money laundering to the tune of Rs. 600 crores. The petitioner by way of the Present Writ petition has inter alia sought his release during the pendency of the present Writ Petition which can not be done without the satisfaction of this Hon'ble Court of the Twin Conditions enshrined under Section 45 of PMLA, 2002. Reliance is placed on the decision of the Hon'ble Supreme Court in the case *of Vijay Madanlal Chaudhary vs. Union of India & Ors., 2022 SCC OnLine SC 929*, which rejected the challenge to the abovementioned mandatory twin conditions u/s 45 of the PMLA and cemented its constitutional validity. Further reliance in this regard is placed on *Bimal Kumar Jain and Naresh Jain vs. Directorate of Enforcement, Bail Appln. 112/2021 and 122/2021, Christian Michel James vs. Directorate of Enforcement - Bail Appln. 2566/2021, Raj Singh Gehlot vs. Directorate of Enforcement Bail Appln. 4295/2021, Gautam Thapar vs. Directorate of Enforcement Bail Appl. 4185/2021, Sajjan Kumar vs. Directorate of Enforcement – Bail Appln. 926/2022)*

65. The counsel submits that the material placed on record is sufficient to persuade this Hon'ble Court that no satisfaction, as required u/s 45 of the PMLA, can be reached.

66. In order to respond to the questions of law raised by the petitioner the court is required to first prefer to the relevant provisions of law Section 19 of the PMLA provides 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.

(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 [1][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 [2][Special Court or] Magistrate's Court."

67. Reading of Section 19(1) of the PMLA makes it clear that the concerned officer must have a reason to believe on the basis of material in his possession that the accused person is guilty of an offence punishable under this Act. The statute also makes it clear that such reason has to be recorded in writing. However, the law mandates that the officer may arrest such person and shall "as soon as may be" inform him of the grounds of such arrest. The perusal of the section also makes it clear that it is not mandatory that a person must be arrested even if there are reasons to believe which have been recorded in writing.

However, if the officer proceeds with the arrest, he shall inform the arrestee the grounds for such arrest "as soon as may be".

68. The perusal of Section 19(2) makes it clear that if a person has been arrested in under Section 19(1) the officer shall forward a copy of the order along with the material in his possession to the adjudicating authority in a sealed envelope in the manner that has been prescribed. Thus, Section 19(2) makes it clear that the reasons to believe along with the grounds for arrest have to be recorded in writing and then be forwarded to the adjudicating authority immediately after arrest. This has to be read along with the Rule 2 of the Prevention of Money Laundering (the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the adjudicating authority. Hence its period of retention) Rules 2005. Rule 2(g) of therein provides that the "material" means any information or any material in the possession of the officer means the material on the basis of which he has recorded the reasons to believe that any person has been guilty of an offence. Section 2(h) also provides that the "order" means the order of arrest of a person and it includes the ground for such arrest under Section 19(1). In addition to this, Section 19(3) provides that the arrested person shall be within 24 hours be taken to the Special Court, Judicial Magistrate or MM as the case may be. Thus, the conjoint reading of Rule 2, Section 19(1) and Section 19(2) makes it clear that before affecting the arrest of an accused the following prerequisites are essential:

    a. There must be material in the possession of the concerned officer indicating the reason to believe, which

are recorded in writing, that any person has been guilty of an offence.

b. If the officer proceeds to arrest; the grounds for such arrest shall be informed to him, "as soon as may be".

69. Section 19(2) re-emphasizes that the material in his possession as defined under Section 2(g) has to be referred to the adjudicating authority.

70. Rule 3 of the 2005 rules also provides an additional safeguard in the form of the arresting officer having to prepare an index of the copy of the order (which has been defined under Section 2(h) so as to include grounds for such arrest under Section 19(1) and the material as defined under Rule 2(g)), and sign each page of such index of the copy of the order.

71. Rule(7) also provides that the arresting officer shall maintain register and other records such as Acknowledgement Register, Daak Register and shall ensure that necessaries entries are made in made in the register immediately as soon as the copy of the order and the material are forwarded to the adjudicating authority. Thus, if Section 19 and Rule 2(g) and Rule 2(h) and rule 3(1) and Rule 7 are taken together, it can be construed that the legislature has provided enough safeguards and provided a complete mechanism for affecting the arrest of an accused person. Such safeguards provided by the legislature have been aptly explained by the Hon'ble Supreme Court in *V. Senthil Balaji* wherein it was inter alia held as under:

> *"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."*

72. It is evident from the perusal of above para that keeping in mind the personal liberty and the constitutional safeguards, the Apex court made it mandatory to comply with the prerequisites stipulated under Section 19 and Rule 2(g), 2(h), 3(1) and 3(7). Moreover, if any of such rules are not complied with or if there is a non-compliance of the mandate under Section 19(1), it would vitiate the very arrest. It is pertinent to mention here that the rules are framed as an aid to the statue framed by the legislature and must be read in *ejusdem generis* with each other.

73. The question which lies at the heart of the entire case of the petitioner is that the grounds of arrest have to be supplied in writing to the accused contemporaneously at the time of arrest and if the same are not supplied in writing to the accused, the mandate of Section 19(1) is not complied with and thus, proceedings stands vitiated.

74. *Per contra* the case of the ED is that the mandate of the law has to be read as provided by the statute. The case of the ED is that the statute provides that the grounds of arrest have to be informed to the arrestee as soon as it may be possible, and it is not necessary that copy of such grounds of arrest have to be served to the arrestee contemporaneously at the time of the arrest. In this regard, the Hon'ble Supreme Court in *Vijay Madanlal Choudhary* made the following observation*:*

> *"458. The next issue is: whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22 (1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the Authority and recording satisfaction of reason to believe that the person is guilty of money-laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering. In any case, upon filing of the complaint before the statutory period provided in 1973 Code, after arrest, the person would get all relevant*

materials forming part of the complaint filed by the Authority under Section 44(1)(b) of the 2002 Act before the Special Court.

459. Viewed thus, supply of ECIR in every case to person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution. It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as unknown accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite that, the accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the concerned Court. On the same analogy, the argument of prejudice pressed into service by the petitioners for non-supply of ECIR deserves to be answered against the petitioners. For, the arrested person for offence of money-laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it is open to the Special Court to call upon the representative of

ED to produce relevant record concerning the case of the accused before him and look into the same for answering the need for his continued detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further."

75. The reading of Para 458 and 459 which has been relied upon by both the parties makes it clear that the Apex Court in *Vijay Madanlal Choudhary* inter alia held that so long as the person has been informed about the grounds of his arrest, it is sufficient compliance of the mandate of Article 22(1) of the Constitution. It has also been inter alia held that it is enough if ED at the time of arrest contemporaneously discloses the grounds of such arrest to such person. Thus it cannot be said that the law laid down in *V. Senthil Balaji* is any way *per incurium* or irreconcilable with the judgment of Hon'ble Supreme Court in *Vijay Madanlal Choudhary*. However, as has been held and relied upon by the Hon'ble Supreme Court in *V. Senthil Balaji* that the decision of a court cannot be read like a statute out of context and in ignorance of the requisite provisions. It was inter alia held in *Commissioner of Central Excise Bangalore v. Shri Kumar Agencies* Civil Appeal No.4872-4892 of 2000 as under:

"4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become

necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima vertra of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said, "Lord Atkin's speech.....is not to be treated as if it was a statute definition It will require qualification in new circumstances." Megarry, J in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

5. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a

single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

76. In this regard, reference can also be made to *Goa Real-estate and Construction vs. UOI* wherein it was inter alia held as under:

"31. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. On perusal of para 10 of the judgment, it is abundantly clear that even under the 1991 Notification which is the main notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved. Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification."

77. In *V. Senthil Balaji* it is not disputed that the arrest memo was prepared and though the grounds of arrest furnished; the applicant declined to acknowledge them. The Apex Court also recorded in Para7 of the judgment that the information pertaining to the arrest was also intimated to his brother, sister-in-law and wife.

78. It is also necessary to refer to the submissions made by the appellant in *V. Senthil Balaji* case. The appellant in that case had primarily raised 4 issued.

a) There is no power vested under the PMLA 2002 to seek custody in favour of unauthorised officer as such unauthorised officer is not a police officer and therefore Section 162 of Cr.P.C. with particular reference to a remand in his favour is not available.

b) Being a beneficial legislation non-compliance of Section 41A of Cr.P.C. would vitiate the orders of remand.

c) The outer limit of 15 days of custody to the police from the date of arrest has worked itself out therefore no court can extend it under any circumstances.

d) The High Court has committed an error in not appreciating the legislative scheme and the time line in the light of Article 22 of Constitution of India.

79. Thus, apparently the interpretation of Section 19 as held in *Vijay Madanlal Choudhary* was not specifically raised before in *V. Senthil Balaji case*. However, the Apex Court in *V. Senthil Balaji*, while discussing the provision of PMLA and in particular Section 19, specifically held that an authorised officer has to assess and evaluate the material in his possession and through such material he is expected

to form a reason to believe that a person has been guilty of a offence under the PMLA. Thereafter, he is at liberty to arrest by performing his mandatory duty of recording the reasons. It was further inter alia held that the said exercise has to be followed by way of information of the grounds of arrest being served on the arrestee. The Apex Court said that any non-compliance of the Section 19(1) of PMLA would vitiate the arrest itself. The Hon'ble Supreme Court further referred to Section 19(2) PMLA. The law laid down by the Hon'ble Supreme Court is binding on all courts as is provided in Article 141 of the Constitution of India. However, the directions of the court have to be read in the totality. The Apex Court in this case has specifically mentioned that all the requisite mandates of Section 19(1) have to be followed in letter and spirit.

80. Learned counsel for the petitioner has emphasized upon the word "served" in para 39 of *V. Senthil Balaji(Supra).* Learned senior counsel submitted that if the Apex Court has used the word "served" it means that the grounds of arrest have to be served in writing to the arrestee. Learned senior counsel submitted that the order cannot be served orally to the arrestee. In this regard, the Black Laws Dictionary (6th Edition, Sentinel Edition, 1891-1991) while defining the word "service" has stated that this term has a variety of meaning dependent upon the context or the sense in which used. In regard to the service of process, the Black Laws Dictionary (6th Edition, Sentinel Edition, 1891-1991) states that the service of writs, complaints, summons, etc. signifies the delivering to or leaving with the party to whom or with whom they

ought to be delivered or left; and when they are so delivered they are then said to have been served.

81. The question is that whether this meaning as given in Black Laws Dictionary has to be taken literally in the present case. The service of the pleadings in a civil case are entirely different in nature and the law has to be interpreted as a whole and it cannot be taken out of context. In the present case, we are dealing with a situation where the arrestee is accused of a serious offence under PMLA. Any sensitive information disclosed prematurely in such cases may hamper the case of the prosecution/investigating agency. It is also pertinent to refer to the court of Justice Benjamin Cardozo of US Supreme Court, as was quoted by the Apex Court in the V. Senthil Balaji case as well, stated that "justice, though due to the accused, is due to the accuser too." It is also pertinent to mention here that in the PMLA, the legislature in its wisdom has used the word "informed" and has not provided any mode for the same in the statute or in the rules. In absence of any such mode of information being prescribed in the statute, this court has to fall back to the common law. In this regard reference can be made to the division bench judgment of this court in *Moin Akhtar Qureshi vs. UOI* which held as under:

> *"90. Thus, we agree with Mr. Mahajan that, firstly, there was no illegality in the initial arrest of the petitioner. There was sufficient compliance of Article22(1) of the Constitution of India, as the petitioner stood informed of the grounds of his arrest when he was permitted to read the same. He was also informed of the same vide the remand application under Section 167 CrPC read with Section 65 of the PMLA moved on 26.08.2017. We also*

agree with the submission of Mr. Mahajan that a writ of habeas corpus does not lie in the facts of the present case, since the petitioner was placed initially in ED custody remand, and thereafter in judicial custody by orders passed by a competent court with due application of mind."

82. It is also necessary to refer to *Chhagan Chandrakant Bhujbal vs. UOI* 2016 SCC Online Bombay 9338. The Supreme Court in *Vijay Madanlal Choudhary* has also referred to that has also inter alia held that so long as the person has been informed about the grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution.

83. The ED has also emphasized that the judgment of *Vijay Madanlal Choudhary* is delivered by a larger bench. The ED has also referred to *Sandeep Bafana Vs. State of Maharashtra* 2014 wherein it was inter alia held as**:**

"19...A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previosaly pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court it must immediately be clarified that the per Incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

84. The plea of the ED is that the ground of arrest were verbatim mentioned in the remand application moved before the court when the petitioner was produced before the court within 24 hours of his arrest.

It is also pertinent to mention here that within 24 hours of his arrest the ED has disclosed the grounds of arrest in the remand application which this court has found to be identical. It is also pertinent to mention that this objection was also raised by the petitioner before the learned Special Judge on 28.06.2023. The learned Special Judge inter alia held that there is nothing to suggest from the case file produced by IO that the arrest of the accused has been affected in violation of Section 19 of PMLA or the same was otherwise illegal as the IO is found to have recorded the reason of his belief about accused being guilty of the offence under PMLA. The learned Special counsel for the ED has also placed before this court the grounds of arrest in which the petitioner has specifically written in his hand that "I have been informed and have also read the above mentioned grounds of arrest".

85. Learned senior counsel for the petitioner has referred to the Constitutional Bench Judgment of *State of Bombay Vs. Atmaram* to buttress that the grounds of arrest have to be furnished at the time of detention so as to enable the person to make the proper representation. I consider that in view of the specific law laid down on the point in question, the judgment is respectfully distinguished on the facts and circumstances of the case. The judgment cited by the learned senior counsel for the petitioner in *Madhu Limaye and Ors.,* 1969(1) SCC 292 is to the affect that the petitioners in that case were released on the ground that the show cause notices issued satisfied the constitutional requirement. However, it is pertinent to mention here that in *Madhu Limaye* the Apex Court inter alia held that once it is shown that the arrest made by the police officer were illegal, it was 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.

86. I consider that in view of the orders passed by learned Special Judge on 28.06.2023 whereby he found sufficient material on the record and recorded a finding that the investigating agency has complied with the provisions of law while arresting the applicant accused this judgement rather favours the ED.

87. As far as the contention of the learned senior counsel for the petitioner to release the petitioner on interim bail or to release him or to pass an order enabling him to attend the meetings in custody, I consider that such order cannot be passed in the present proceedings, particularly, in view of the fact that the bail application has already been rejected by the learned Special Judge vide a detailed order.

88. It is pertinent to mention here that the petitioner is required to visit Bombay to attend the meetings. I consider that it would be impractical to send the petitioner to Bombay in custody for attending the meetings with the financial creditors. It is pertinent to mention here that even for releasing the petitioner on interim bail the rigours of Section 45 have to be satisfied. However, in the peculiar facts and circumstances, if the petitioner so desires the Superintendent Jail may arrange meeting to be held through VC from the jail itself in accordance with the law.

89. Thus the question of law raised by the petitioner are answered as follows:

Q(A). Whether grounds of arrest need to be orally informed or given in writing?

Ans. In view of the crystal clear judgment in *Vijay Madanlal Choudhary(Supra)* read with *V. Senthil Balaji(Supra)* the mandate of Section 19 of the PMLA has to be followed in letter in spirit. In the present case the grounds of arrest were duly given and notified to the petitioner and he endorsed the same in writing under his signature. The core issue is of being "informed" and "as soon as". It if has been duly notified and brought to the notice at the time of arrest and further disclosed in detail in the remand application, it amounts be be duly informed and served.

Q(B). Whether the petitioner's fundamental rights have been violated as he has not been informed/served the grounds of his arrest (that are in writing) and thereby also denying him the right to consult and be defended by his legal practitioner?

Ans. In view of answer to Question(A) there is no violation of Fundamental Rights of the petitioner. There is nothing or the record to suggest that petitioner has been denied right to consult and defended by legal practioner.

Q(C). Whether the fundamental right of the petitioner guaranteed to him under Art. 21 of the Constitution of India has been violated by depriving him of his life and personal liberty – subjecting him to an illegal arrest by setting the criminal law in motion contrary to the procedure established by law?

Ans. In view of the discussion made herein above there is nothing on record to suggest that reason to believe "as required under

Section 19(1) of the PMLA was not recorded in writing and, therefore, it cannot be held that petitioner was arrested illegally.

Q(D). Whether the Petitioner's arrest is contrary to s. 19 of the Prevention of Money Laundering Act, 2002 – thereby violating the Petitioner's fundamental right under Art. 21 read with Art. 14 of the Constitution of India?

Ans. The petitioner here failed to show that the arrest of the petitioner is in violation of Section 19 of the PMLA.

90. In view of the discussions made herein above, the petition along with pending applications stands dismissed.

DINESH KUMAR SHARMA, J

SEPTEMBER 22, 2023/AR