Pankaj Bansal vs Union Of India on 3 October, 2023

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Bench: Sanjay Kumar, A.S. Bopanna

Rep

2023INSC866

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos 3051-3052 of 2023
{@ Special Leave Petition (Crl.) Nos. 9220-21 of 2023}

Pankaj Bansal … Appellant

Versus

Union of India & Ors. … Respondents

With
Criminal Appeal Nos. 3053-3054 of 2023
{@ Special Leave Petition (Crl.) Nos. 9275-76 of 2023}

JUDGMENT

SANJAY KUMAR, J

1. Leave granted.

2. Challenge in these appeals is to the orders dated 20.07.2023 and 26.07.2023 passed by a Division Bench of the Punjab & Haryana High Court dismissing CWP No. 14536 of 2023 filed by Pankaj Bansal and CWP No. 14539 of 2023 filed by his father, Basant Bansal. By the order dated 20.07.2023, the Division Bench opined that, as the constitutional validity of Section 19 of the Prevention of Money Laundering Act, 2002 (for brevity, 'the Act of 2002'), had been upheld by the Supreme Court, the challenge to the same by the writ petitioners could not be considered only because of the fact that a review petition was pending before the Supreme Court. The prayer of the writ petitioners to that effect was accordingly rejected. By the later order dated 26.07.2023, the Division Bench rejected the prayer of the writ petitioners to quash/set aside their arrest orders along with their arrest memos and the consequential proceedings arising therefrom, including the orders dated 15.06.2023, 20.06.2023 and 26.06.2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, whereby they were remanded to the custody of the Directorate of Enforcement (for brevity, 'the ED') and thereafter, to judicial custody. The Division Bench further held that, keeping in view the gravity of the allegations against them, their prayer to be released from custody did not deserve acceptance and rejected the same. In consequence, the Division Bench dismissed both the writ petitions. Hence, these appeals by Pankaj Bansal and Basant Bansal.

3. The genesis of these appeals is traceable to FIR No. 0006 dated 17.04.2023 registered by the Anti-Corruption Bureau, Panchkula, Haryana, under Sections 7, 8, 11 and 13 of the Prevention of Corruption Act, 1988, read with Section 120B IPC for the offences of corruption and bribery along with criminal conspiracy. The names of the accused in this FIR are:

> 'i). Mr. Sudhir Parmar (the then Special Judge, CBI and ED, Panchkula);
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> ii). Mr. Ajay Parmar (nephew of Mr. Sudhir Parmar and Deputy Manager (Legal) in M3M Group);
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> iii). Mr. Roop Bansal (Promotor of M3M Group); and
>
> iv). other unknown persons.'
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> 4. Significantly, prior to this FIR, between the years 2018 and 2020, 13 FIRs were gotten registered by allottees of two residential projects of the IREO Group, alleging illegalities on the part of its management. On the strength of these FIRs, the ED recorded Enforcement Case Information Report No. GNZO/10/2021 dated 15.06.2021 (hereinafter, 'the first ECIR') in connection with the money laundering offences allegedly committed by the IREO Group and Lalit Goyal, its Vice-Chairman and Managing Director.

Neither in the FIRs nor in the first ECIR were M3M Group or the appellants herein arrayed as the accused. Further, no allegations were levelled against them therein. On 14.01.2022, the ED filed Prosecution Complaint No. 01/2022, titled 'Assistant Director, Directorate of Enforcement vs. Lalit Goyal and others', against seven named accused, under Section 200 Cr.P.C read with Sections 44 and 45 of the Act of 2002. Notably, M3M Group and the appellants did not figure amongst those named accused. The number of FIRs had also increased from 13 to 30, as per this complaint. This case was numbered as COMA/01/2022, titled 'Directorate of Enforcement vs. Lalit Goyal and others', and was pending in the Court of Sudhir Parmar, Special Judge. At that stage, the Anti-Corruption Bureau, Panchkula, received information that Sudhir Parmar was showing favouritism to Lalit Goyal, the owner of IREO Group, and also to Roop Bansal and his brother, Basant Bansal, the owners of M3M Group. This led to the registration of FIR No. 0006 dated 17.04.2023. On 12.05.2023, the ED issued summons to M3M India Pvt. Ltd., calling upon it to provide information and documents pertaining to transactions with certain companies. Thereafter, on 01.06.2023, the ED raided the properties of M3M Group and effected seizures of assets and bank accounts. Roop Bansal was arrested by the ED on 08.06.2023 apropos the first ECIR.

5. Apprehending that action would be taken against them also in the context of the first ECIR, Pankaj Bansal and Basant Bansal secured interim protection from the Delhi High Court in Bail Application Nos. 2030 and 2031 of 2023. By separate orders dated 09.06.2023 passed therein, the Delhi High Court noted that Pankaj Bansal and Basant Bansal had not been named in the first ECIR and that the ED had not yet been able to implicate them in any of the scheduled offences under the Act of 2002. Further, the High Court noted that Pankaj Bansal had not even been summoned by the

ED in that case. The High Court accordingly granted them interim protection by way of anticipatory bail, subject to conditions, till the next date of hearing, i.e., 05.07.2023. Special Leave Petition (Crl.) Nos. 7384 and 7396 of 2023 were filed by the ED assailing the orders dated 09.06.2023 before this Court and the same are stated to be pending.

6. In the meanwhile, on the basis of FIR No. 0006 dated 17.04.2023, the ED recorded another ECIR, viz., ECIR/GNZO/17/2023, on 13.06.2023 (hereinafter, 'the second ECIR') against:

i). Mr. Sudhir Parmar;
ii). Mr. Ajay Parmar;
iii). Mr. Roop Bansal; and
iv). others who are named in the FIR/unknown persons.

However, summons were issued by the ED to Pankaj Bansal and Basant Bansal on 13.06.2023 at 06.15 pm in relation to the first ECIR, requiring them to appear before the ED on 14.06.2023 at 11.00 am. Though the copy of the summons placed before this Court pertains to Pankaj Bansal alone, the email dated 13.06.2023 of the Assistant Director of the ED, bearing the time 06.15 pm, was addressed to both Pankaj Bansal and Basant Bansal and required their compliance with the summons on 14.06.2023 at 11 am. While Pankaj Bansal and Basant Bansal were at the office of the ED at Rajokri, New Delhi, in compliance with these summons, Pankaj Bansal was served with fresh summons at 04.52 pm on 14.06.2023, requiring him to be present before another Investigating Officer at 05.00 pm on the same day. This summons was in connection with the second ECIR. There is lack of clarity as to when summons in relation to the second ECIR were served on Basant Bansal. According to the ED, he was served the summons on 13.06.2023 itself and refused to receive the same. However, it is an admitted fact that Basant Bansal was also present at the ED's office at Rajokri, New Delhi, on 14.06.2023 at 11.00 am. It is also not in dispute that, while he was there, Basant Bansal was arrested at 06.00 pm on 14.06.2023 and Pankaj Bansal was arrested at 10.30 pm on the same day. These arrests, made in connection with the second ECIR, were in exercise of power under Section 19(1) of the Act of 2002. The arrested persons were then taken to Panchkula, Haryana, and produced before the learned Vacation Judge/Additional Sessions Judge, Panchkula. There, they were served with the remand application filed by the ED. The learned Vacation Judge/Additional Sessions Judge, Panchkula, initially passed order dated 15.06.2023 holding that custodial interrogation of the arrested persons was required and granted their custody to the ED for 5 days with a direction to produce them before the Court on 20.06.2023. By the later orders dated 20.06.2023 and 26.06.2023, their remand to the custody of the ED was extended by 5 more days and thereafter, they were sent to judicial custody.

7. Assailing the first remand order dated 15.06.2023, Pankaj Bansal and Basant Bansal approached the Delhi High Court, vide WP (Crl.) Nos. 1770 and 1771 of 2023. However, by order dated 16.06.2023, the Delhi High Court opined that the appropriate remedy for them would be to approach the Punjab & Haryana High Court and challenge the said order of remand. Holding so, the Delhi High Court dismissed their miscellaneous applications but ordered notice in the writ petitions.

Aggrieved by the Delhi High Court's order, Pankaj Bansal and Basant Bansal filed SLP (Crl.) Nos. 7443 and 7444 of 2023 before this Court. The SLPs were disposed of as withdrawn on 04.07.2023, reserving liberty to approach the Punjab & Haryana High Court against the remand orders. This Court further held that WP (Crl.) Nos. 1770 and 1771 of 2023 before the Delhi High Court were rendered infructuous. Thereupon, Pankaj Bansal and Basant Bansal filed the subject writ petitions before the Punjab & Haryana High Court which came to be dismissed, vide the impugned orders of the Division Bench.

8. Though Basant Bansal is not shown as an accused along with his brother, Roop Bansal, in FIR No. 0006 dated 17.04.2023 on the file of the Anti- Corruption Bureau, Panchkula, his name finds mention in the body of the FIR as one of the owners of M3M Group to whom favouritism was shown by Sudhir Parmar, Special Judge. However, the name of Pankaj Bansal does not find mention even in the contents of the FIR. It was the specific case of the father and son in their writ petitions before the High Court that their arrest under the provisions of the Act of 2002 was a wanton abuse of power/authority and an abuse of process by the ED, apart from being blatantly illegal and unconstitutional. They also asserted that the ED acted in violation of the safeguards provided in Section 19 of the Act of 2002. In this milieu, they made the following prayers:

> 'In view of the facts and circumstances mentioned above, it is, therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to issue appropriate writ(s), order(s) and/or direction(s) to:-
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> A. Read Down and/or Read Into as well as expound, deliberate upon and delineate the ambit, sweep and scope of Section 19(1) of PMLA in consonance with the principles, inter alia, enunciated by the Hon'ble Supreme Court in "Vijay Madanlal Choudhary Versus Union of India & Ors. 2022 SCC OnLine SC 929" and hold that: -
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> i. The expression "material in possession" occurring therein must be confined, circumscribed and limited to legally admissible evidence of sterling quality and unimpeachable character on the basis whereof "reasons to believe" could be recorded in writing that the arrestee is "guilty" of the offence under Section 4 of PMLA;
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> ii. The word "guilt" occurring therein would qualify a higher yardstick than a mere suspicion and the Ld. Court at the stage of remand is required to apply its judicial mind to the grounds as well as necessity for arrest as, inter alia, held in "Arnesh Kumar Versus State of Bihar, (2014) 8 SCC 273" and as accorded imprimatur in "Satender Kumar Antil Versus Central Bureau of Investigation and another 2022 SCC online sc 825";
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> iii. The expression 'communicate' occurring therein would definitely entail physical communication and furnishing the grounds of arrest to the arrestee in the context of the obligation for "reason for such belief to be recorded in writing" read with Rules 2(1)(g) & 2(1)(h) of the PMLA Rules 2005 (Arrest Rules) which postulates the meaning of the word "order" to include the grounds of such arrest.'

9. It is, therefore, clear that Pankaj Bansal and Basant Bansal did not assail the constitutional validity of Section 19 of the Act of 2002 but sought 'reading down' and/or 'reading into' the provisions thereof. Further, they asserted that the remand orders were passed in a patently routine and mechanical manner by the learned Vacation Judge/Additional Sessions Judge, Panchkula, without satisfying himself about due compliance with the mandate of Section 19 of the Act of 2002, and more particularly, whether the threshold requirements of the provision were duly satisfied. In consequence, they prayed for a direction to quash the remand orders as well as the underlying arrest orders and arrest memos.

10. Though the appellants did not challenge the constitutional validity of Section 19 of the Act of 2002 in their writ petitions and had only sought 'reading down' and/or 'reading into' the provisions thereof in the light of the judgment of this Court in Vijay Madanlal Choudhary and others vs. Union of India and others1, the Division Bench of the Punjab & Haryana High Court failed to note this distinction and disallowed their prayer under the mistaken 2022 (10) SCALE 577 impression that they were challenging the constitutional validity of the provision. The finer connotations and nuances of the language used in Section 19 of the Act of 2002, to the extent left uncharted by this Court in Vijay Madanlal Choudhray (supra), were still open to interpretation and resolution and, therefore, the High Court would have been well within its right to undertake that exercise. Be that as it may.

11. Saket Singh, IRS, Deputy Director, Directorate of Enforcement, Gurugram Zonal Office, Rajokri, New Delhi, deposed to the replies filed by the ED before this Court. Therein, he acknowledged that the second ECIR was recorded on 13.06.2023 based on FIR No. 0006 dated 17.04.2023. He stated that the name of Pankaj Bansal and the owners of M3M Group specifically found mention in the said FIR. However, perusal of the FIR reflects that the name of Pankaj Bansal is not mentioned. Reference to 'the owners of M3M Group' was in the context of Roop Bansal and his brother, Basant Bansal, and not in a generic sense, as is now sought to be made out so as to rope in Pankaj Bansal also. Saket Singh further stated that though M3M Group, Pankaj Bansal and Basant Bansal were not named in the connected FIRs of the first ECIR, investigation therein had shown that the promoters of M3M Group were also involved in money laundering. According to him, Basant Bansal refused to accept the summons issued on 13.06.2023 in relation to the second ECIR and did not give any information relating thereto. Manual summons dated 14.06.2023 were stated to have been issued to Pankaj Bansal on 14.06.2023 for his personal appearance and for recording of his statement before the ED's Investigating Officer on the same day. He alleged that Pankaj Bansal accepted the summons but remained evasive in providing relevant information to the ED. He justified the issuance of summons on an immediate basis, by claiming that it was a necessity as the promoters/key persons of M3M Group, including Pankaj Bansal and Basant Bansal, had been deliberately avoiding investigation in the first ECIR as well and were not complying with the previously issued summons on multiple occasions. He alleged that Pankaj Bansal failed to comply with the summons in respect of the first ECIR on multiple occasions, i.e., with the summons dated 04.06.2023, 06.06.2023 and 07.06.2023. Again, this statement is factually incorrect as these summonses were issued to Basant Bansal and not to Pankaj Bansal.

12. Saket Singh then went on to state that when Pankaj Bansal came to the ED's office on 14.06.2023, the Investigating Officer of the second ECIR served a summons upon him and as the Investigating Officer had evidence to show that Pankaj Bansal was guilty of the offence of money laundering, he arrested him after following the due procedure prescribed under the Act of 2002 and the rules framed thereunder. He asserted that the arrests were made in accordance with Section 19 of the Act of 2002 and the information/details regarding the arrests of Pankaj Bansal and Basant Bansal were duly communicated to Mrs. Abha Bansal and Ms. Payal Kanodia over the telephone immediately after their arrests. He stated that the written grounds of arrest were first read out to Basant Bansal but he refused to sign the same. Subsequently, the written grounds of arrest were read over and explained in his language, viz., Hindi, to Basant Bansal in the presence of witnesses and the witnesses signed on the same as a token of correctness. Saket Singh again asserted that issuance of summons on immediate basis was a necessity as both of them had been deliberately avoiding investigation in the other case as well and were not complying with the previously issued summons on multiple occasions. This reiteration is incorrect as the first summons issued to Pankaj Bansal was on 13.06.2023 at 06.15 pm requiring him to appear at 11.00 am on 14.06.2023 in connection with the first ECIR, which he duly complied with, and again, while he was in the ED's office at New Delhi, he was served with the summons in connection with the second ECIR at 04.52 pm requiring him to be present at 05.00 pm, which he again complied with. According to Saket Singh, during the investigation, both of them were found to be actively involved in money laundering and deliberately attempted to withhold information, that was in their exclusive knowledge, which was crucial to establish their roles and to take the money laundering investigation to its logical end. He asserted that they adopted an attitude of non-cooperation during the investigation and the fact that they had bribed the ED Judge to take benefit in the existing proceedings showed that they were capable of influencing witnesses/authorities involved in the case. He alleged that they were capable of tampering with the evidence and hence, Pankaj Bansal was arrested on 14.06.2023 around 10.30 pm on the basis of incriminating evidence. The written grounds of arrest were stated to have been read by Pankaj Bansal in the presence of witnesses and, thereafter, Pankaj Bansal and the witnesses signed on the same.

13. Though much was stated and argued by both sides on the merits of the matter in terms of the involvement of the appellants in the alleged offence of money laundering, we make it clear that we are not concerned with that issue at this point. The only issue for consideration presently is whether the arrest of the appellants under Section 19 of the Act of 2002 was valid and lawful and whether the impugned orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, measure up. In that context, we may also make it clear that the mere passing of an order of remand would not be sufficient in itself to validate the appellants' arrests, if such arrests are not in conformity with the requirements of Section 19 of the Act of 2002. Though judgments were cited by the ED which held to the effect that legality of the arrest would be rendered immaterial once the competent Court passes a remand order, those cases primarily dealt with the issue of a writ of habeas corpus being sought after an order of remand was passed by the jurisdictional Court and that ratio has no role to play here. The understanding of the ED and its misplaced reliance upon that case law begs the question as to whether there was proper compliance with Section 19(1) of the Act of 2002 and as to whether the learned Vacation Judge/Additional Sessions Judge, Panchkula, correctly considered that issue while passing the remand orders. Therefore, as the very validity of the remand

orders is under challenge on that ground, the issue as to whether the arrest of the appellants was lawful in its inception may also be open for consideration.

14. At this stage, it would be apposite to consider the case law that does have relevance to these appeals and the issues under consideration. In Vijay Madanlal Choudhary (supra), a 3-Judge Bench of this Court observed that Section 65 of the Act of 2002 predicates that the provisions of the Code of Criminal Procedure, 1973, shall apply insofar as they are not inconsistent with the provisions of the Act of 2002 in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings thereunder. 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. It was noted that the authorized officer has to forward a copy of the order, along with the material in his possession, to the Adjudicating Authority and this safeguard is to ensure fairness, objectivity and accountability of the authorized officer in forming an opinion, as recorded in writing, regarding the necessity to arrest the person involved in the offence of money laundering. The Bench also noted that it is the obligation of the authorized officer to produce the person so arrested 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 Cr.P.C. It was pointed out that there is nothing in Section 19 of the Act of 2002 which is contrary to the requirement of production under Section 167 Cr.P.C and being an express statutory requirement under Section 19(3) of the Act of 2002, it has to be complied by the authorized officer. It was concluded that the safeguards provided in the Act of 2002 and the preconditions to be fulfilled by the authorized officer before effecting arrest, as contained in Section 19 of the Act of 2002, are equally stringent and of higher standard when compared to the Customs Act, 1962, and such safeguards ensure that the authorized officers do not act arbitrarily, by making them accountable for their judgment about the necessity to arrest any person involved in the commission of the offence of money laundering, even before filing of the complaint before the Special Court. It was on this basis that the Bench upheld the validity of Section 19 of the Act of 2002. The Bench further held that once the person is informed of the grounds of arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution and it is not necessary that a copy of the ECIR be supplied in every case to the person concerned, as such a condition is not mandatory and it is enough if the ED discloses the grounds of arrest to the person concerned at the time of arrest. It was pointed out that when the arrested person is produced before the Court, it would be open to the Court to look into the relevant records presented by the authorized representative of the ED for answering the issue of need for continued detention in connection with the offence of money laundering. It was, in fact, such stringent safeguards provided under Section 19 of the Act of 2002 that prompted this Court to uphold the twin conditions contained in Section 45 thereof, making it difficult to secure bail.

15. This Court had occasion to again consider the provisions of the Act of 2002 in V. Senthil Balaji vs. The State represented by Deputy Director and others2, and more particularly, Section 19 thereof.

It was noted that the authorized officer is at liberty to arrest the person concerned once he finds a reason to believe that he is guilty of an offence punishable under the Act of 2002, but he must also perform the mandatory duty of recording reasons. It was pointed out that this exercise has to be followed by the information of the grounds of his arrest being served on the arrestee. It was affirmed that it is the bounden duty of the authorized officer to record the reasons for his belief that a person is guilty and needs to be arrested and it was observed that this safeguard is meant to facilitate an element of fairness and accountability. Dealing with the interplay between Section 19 of the Act of 2002 and Section 167 Cr.P.C, this Court observed that the Magistrate is expected to do a Criminal Appeal Nos. 2284-2285 of 2023, decided on 07.08.2023 balancing act as the investigation is to be completed within 24 hours as a matter of rule and, therefore, it is for the investigating agency to satisfy the Magistrate with adequate material on the need for custody of the accused. It was pointed out that this important factor is to be kept in mind by the Magistrate while passing the judicial order. This Court reiterated that Section 19 of the Act of 2002, supplemented by Section 167 Cr.P.C., provided adequate safeguards to an arrested person as the Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the Act of 2002. It was held that the Magistrate is under a bounden duty to see to it that Section 19 of the Act of 2002 is duly complied with and any failure would entitle the arrestee to get released. It was pointed out that Section 167 Cr.P.C is meant to give effect to Section 19 of the Act of 2002 and, therefore, it is for the Magistrate to satisfy himself of its due compliance by perusing the order passed by the authority under Section 19(1) of the Act of 2002 and only upon such satisfaction, the Magistrate can consider the request for custody in favour of an authority. To put it otherwise, per this Court, the Magistrate is the appropriate authority who has to be satisfied about the compliance with safeguards as mandated under Section 19 of the Act of 2002. In conclusion, this Court summed up that any non-compliance with the mandate of Section 19 of the Act of 2002, would enure to the benefit of the person arrested and the Court would have power to initiate action under Section 62 of the Act of 2002, for such non-compliance. Significantly, in this case, the grounds of arrest were furnished in writing to the arrested person by the authorized officer.

16. 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.

17. In the matter of Madhu Limaye and others 3 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.

18. Viewed in this context, the remand order dated 15.06.2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, reflects (1969) 1 SCC 292 total failure on his part in discharging his duty as per the expected standard. The learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reasons to believe that the appellants were guilty of an offence under the Act of 2002 and that there was proper compliance with the mandate of Section 19 of the Act of 2002. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of the ED! The sentence – 'It is further (sic) that all the necessary mandates of law have been complied with' follows – 'It is the case of the prosecution....' and appears to be a continuation thereof, as indicated by the word 'further', and is not a recording by the learned Judge of his own satisfaction to that effect.

19. In consequence, it would be necessary for us to examine how the appellants were arrested and verify whether it was in keeping with the safeguards in Section 19 of the Act of 2002. In this context, the sequence of events makes for an interesting reading. The first ECIR was registered by the ED on 15.06.2021 and Roop Bansal was arrested in connection therewith on 08.06.2023. Neither of the appellants was shown as an accused therein. However, it is the case of the ED that investigation in relation to the first ECIR is still ongoing. In any event, after the arrest of Roop Bansal, both the appellants secured interim protection by way of anticipatory bail on 09.06.2023, albeit till the next day of hearing, viz., 05.07.2023, from the Delhi High Court. However, both the appellants were summoned on 14.06.2023 for interrogation in connection with the first ECIR, in which they had interim protection. Summons in that regard were served upon them on 13.06.2023 at 06.15 pm. Significantly, the second ECIR was recorded only on that day, i.e., on 13.06.2023, in connection with FIR No. 0006 which was registered on 17.04.2023. Therein also, neither of the appellants was shown as an accused and it was only Roop Bansal who stood named as an accused. In compliance with the summons received by them vis-à-vis the first ECIR, both the appellants presented themselves at the ED's office at Rajokri, New Delhi, at 11.00 am on 14.06.2023. While they were there, Pankaj Bansal was served with summons at 04.52 pm, requiring him to appear before another Investigating Officer at 05.00 pm in relation to the second ECIR. As already noted, there is ambiguity as to when Basant Bansal was served with such summons. It is the case of the ED that he refused to receive the summons in relation to the second ECIR and he was arrested at 06.00 pm on 14.06.2023. Pankaj Bansal received the summons and appeared but as he did not divulge relevant information, the Investigating Officer arrested him at 10.30 pm on 14.06.2023.

20. This chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style of functioning. Being a premier investigating agency, charged with the onerous responsibility of curbing the debilitating economic offence of money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action. The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness. In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters.

21. In this regard, we may note that, though the appellants did not allege colourable exercise of power or malafides or malice on the part of the ED officials, they did assert in categorical terms that their arrests were a wanton abuse of power, authority and process by the ED, which would tantamount to the same thing. On that subject, we may refer to the observations of this Court in State of Punjab vs. Gurdial Singh4 : -

> 'The question, then, is what is malafides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but (1980) 2 SCC 471 irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.' A few years later, in Collector (District Magistrate), Allahabad and another vs. Raja Ram Jaiswal5, this Court held as under:

> 'Where power is conferred to achieve a purpose, it has been repeatedly reiterated that the power must be exercised reasonably and in good faith to effectuate the purpose. And in this context "in good faith" means "for legitimate reasons". Where power is exercised for extraneous or irrelevant considerations or reasons, it is unquestionably a colourable exercise of power or fraud on power and the exercise of power is vitiated.' Again, in Ravi Yashwant Bhoir vs. Collector6, it was held thus:

> 'Malafide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the preju- dice of another, a depraved inclination on the part of the authority to disre- gard the rights of others, where intent is manifested by its injurious acts.

(1985) 3 SCC 1 (2012) 4 SCC 407 Passing an order for unauthorized purpose constitutes malice in law.'

22. The way in which the ED recorded the second ECIR immediately after the appellants secured anticipatory bail in relation to the first ECIR, though the foundational FIR dated back to 17.04.2023, and then went about summoning them on one pretext and arresting them on another, within a short span of 24 hours or so, manifests complete and utter lack of bonafides. Significantly, when the appellants were before the Delhi High Court seeking anticipatory bail in connection with the first ECIR, the ED did not even bring it to the notice of the High Court that there was another FIR in relation to which there was an ongoing investigation, wherein the appellants stood implicated. The second ECIR was recorded 4 days after the grant of bail and it is not possible that the ED would have been unaware of the existence of FIR No. 0006 dated 17.04.2023 at that time.

23. Surprisingly, in its 'Written Submissions', the ED stated that it started its inquiries in respect of this FIR in May, 2023, itself, but strangely, the replies filed by the ED do not state so! It is in this background that this suppression before the Delhi High Court demonstrates complete lack of probity on the part of the ED. Its prompt retaliatory move, upon grant of interim protection to the appellants, by recording the second ECIR and acting upon it, all within the span of a day, so as to arrest the appellants, speaks for itself and we need elaborate no more on that aspect.

24. Further, when the second ECIR was recorded on 13.06.2023 'after preliminary investigations', as stated in the ED's replies, it is not clear as to when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours. This is a sine qua non in terms of Section 19(1) of the Act of 2002. Needless to state, authorities must act within the four corners of the statute, as pointed out by this Court in Devinder Singh v. State of Punjab 7, and a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof.

25. We may also note that the failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002. Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19. As per its replies, it is the claim of the ED that Pankaj Bansal was evasive in providing relevant information. It was however not brought out as to why Pankaj Bansal's replies were categorized as 'evasive' and that record is not placed before us for verification. In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an 'evasive reply'. In (2008) 1 SCC 728 Santosh S/o Dwarkadas Fafat vs. State of Maharashtra 8, this Court noted that custodial interrogation is not for the purpose of 'confession' as the right against self-incrimination is provided by Article 20(3) of the Constitution. It was held that merely because an accused did not confess, it cannot be said that he was not co-operating with the investigation. Similarly, the absence of either or both of the appellants during the search operations, when their presence was not

insisted upon, cannot be held against them.

26. The more important issue presently is as to how the ED is required to 'inform' the arrested person of the grounds for his/her arrest. Prayer (iii) in the writ petitions filed by the appellants pertained to this. Section 19 does not specify in clear terms as to how the arrested person is to be 'informed' of the grounds of arrest and this aspect has not been dealt with or delineated in Vijay Madanlal Choudhary (supra). Similarly, in V. Senthil Balaji (supra), this Court merely noted that the information of the grounds of arrest should be 'served' on the arrestee, but did not elaborate on that issue. Pertinent to note, the grounds of arrest were furnished in writing to the arrested person in that case. Surprisingly, no consistent and uniform practice seems to be followed by the ED in this regard, as written copies of the grounds of arrest are furnished to arrested persons in certain parts of the country but in other areas, that practice is not followed and the grounds of arrest are either read out to them or allowed to be read by them.

27. In this context, reliance is placed by the ED upon the decision of a (2017) 9 SCC 714 Division Bench of the Delhi High Court in Moin Akhtar Qureshi vs. Union of India and others9, wherein it was observed that Section 19 of the Act of 2002 uses the expression 'informed of the grounds of such arrest' and does not use the expression 'communicate the grounds of such arrest' and, therefore, the obligation cast upon the authorized officer under Section 19(1) is only to inform the arrestee of the grounds of arrest and the provision does not oblige the authority to serve the grounds for such arrest on the arrestee. Reliance is also placed by the ED on the judgment of a Division Bench of the Bombay High Court in Chhagan Chandrakant Bhujbal vs. Union of India and others10, which held that the grounds of arrest are to be informed to the person arrested and that would mean that they should be communicated at the earliest but there is no statutory requirement of the grounds of arrest being communicated in writing.

28. No doubt, in Vijay Madanlal Choudhary (supra), this Court held that non-supply of the ECIR in a given case cannot be found fault with, as the ECIR may contain details of the material in the ED's possession and revealing the same may have a deleterious impact on the final outcome of the investigation or inquiry. Having held so, this Court affirmed that so long as the person is 'informed' of the grounds of his/her arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution.

29. In this regard, we may note that Article 22(1) of the Constitution WP (Crl.) No. 2465 of 2017, decided on 01.12.2017 = 2017 SCC OnLine Del 12108 2017 Cri LJ (NOC 301) 89 = 2017 (1) AIR Bom R (Cri) 929 provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 of the Act of 2002 enables the person arrested under Section 19 thereof to seek release on bail but it postulates that unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the

offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's 'reason to believe' that he/she is guilty of an offence punishable under the Act of 2002. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.

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

31. That apart, Rule 6 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 and its Period of Retention) Rules, 2005, titled 'Forms of records', provides to the effect that the arresting officer while exercising powers under Section 19(1) of the Act of 2002, shall sign the Arrest Order in Form III appended to those Rules. Form III, being the prescribed format of the Arrest Order, reads as under: -

> 'ARREST ORDER Whereas, I……. Director/Deputy Director/Assistant Director/ Officer authorized in this behalf by the Central Government, have reason to believe that ….. [name of the person arrested] resident of ….. has been guilty of an offence punishable under the provisions of the Prevention of Money-laundering Act, 2002 (15 of 2003); Now, Therefore, in exercise of the powers conferred on me under sub-section (1) of section 19 of the Prevention of Money-laundering Act, 2002 (15 of 2003), I hereby arrest the said ….. [name of the person arrested] at ….. hours on ….. and he has been informed of the grounds for such arrest.
>
> Dated at ….. on this ….. day of ….. Two thousand …..
>
> Arresting Officer Signature with Seal To …….

.....

> [Name and complete address of the person arrested]' Needless to state, this format would be followed all over the country by the authorized officers who exercise the power of arrest under Section 19(1) of the Act of 2002 but, in certain parts of the country, the authorized officer would inform the arrested person of the grounds of arrest by furnishing the same in writing, while in other parts of the country, on the basis of the very same prescribed format, the authorized officer would only read out or permit reading of the contents of the grounds of arrest. This dual and disparate procedure to convey the grounds of arrest to the arrested person cannot be countenanced on the strength of the very same arrest order, in the aforestated prescribed format.

32. That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.

33. The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in V. Senthil Balaji (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the

authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.

34. We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.

35. On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.

36. The appeals are accordingly allowed, setting aside the impugned orders passed by the Division Bench of the Punjab & Haryana High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, and all orders consequential thereto.

The appellants shall be released forthwith unless their incarceration is validly required in connection with any other case.

In the circumstances, we make no orders as to costs.

.....,J (A.S. BOPANNA) .....,J (SANJAY KUMAR) October 3, 2023;

New Delhi.

ITEM NO.1501 COURT NO.16 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 3051-3052/2023

PANKAJ BANSAL Appellant(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

FOR ADMISSION and I.R. and IA No.147707/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 147707/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT IA No. 155713/2023 - INTERLOCUTARY APPLICATION) WITH Crl.A. No. 3053-3054/2023 (II-B) (FOR ADMISSION and I.R. and IA No.148433/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT) Date : 03-10-2023 These appeals were called on for pronouncement of judgment today.

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Mr. Malak Manish Bhatt, AOR
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Mr. Madhumitha Kesavan, Adv.
Ms. Manisha Dubey, Adv.

Mr. Hitarth Raja, Adv.
Mr. Mukesh Kumar Maroria, AOR

Leave granted.

Appeals are allowed in terms of the reportable signed judgment, which is placed on the file.

Pending application(s),if any stands disposed of.

(DR. NAVEEN RAWAL)
ASTT. REGISTRAR-cum-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)