

# Directorate Of Enforcement vs Subhash Sharma on 21 January, 2025

**Author: Abhay S Oka**

**Bench: Abhay S.Oka**

2025 INSC 141

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. \_\_\_\_\_/2025  
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.1136/2023]

DIRECTORATE OF ENFORCEMENT

APPELLANT(S)

VERSUS

SUBHASH SHARMA

RESPONDENT(S)

J U D G M E N T

ABHAY S OKA J.

1. Leave granted.

2. Heard learned counsel appearing for the appellant.

3. The appellant is the Directorate of Enforcement. By the impugned order, the High Court has granted bail to the respondent in connection with an offence punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA'). The High Court found that the respondent's arrest was illegal, and on that ground, he was granted bail.

4. In paragraph 10 of the impugned judgment, the High Court has recorded factual findings which read thus:

“From the documents available in the case diary and the aforesaid order, it is crystal clear that the applicant was detained and taken into custody at 18.00 hours (6 pm) on

04.03.2022 at IGI Airport, New Delhi when the Bureau of Immigration executed the LOC issued against the applicant and held him in custody on behalf of ED. It is also not in dispute that ED took physical custody of the applicant from the Bureau of Immigration at 11.00 hours (11 am) at IGI Airport on 05.03.2022 and brought him to Raipur where the ED in the afternoon on 06.03.2022 before the remand Court.”  
(underline supplied)

5. The submission of the learned counsel appearing for the appellant is that pursuant to the Look Out Circular (for short, ‘the LOC’) issued against the respondent, he was detained at IGI Airport from 11.00 hours, on 5th March, 2022. But he was shown as arrested at 01.15 hours on 6th March, 2022 by the appellant Enforcement Directorate and was produced before the Court of the learned Magistrate within 24 hours from 1.15 hours on 6 th March, 2022.

6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant -

Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6 th March, 2024. The perusal of the arrest order(Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

7. The requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (for short ‘the Cr.P.C). There is no inconsistency between the provisions of the PMLA and Section 57 of Cr.P.C. Hence, by virtue of Section 65 of the PMLA, Section 57 of the Cr.P.C applies to the proceedings under the PMLA.

8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

9. Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA.

10. Hence, we find no error in the impugned order, and accordingly, the appeal is dismissed.

11. Pending application(s), if any, shall stand disposed of.

.....J. (ABHAY S.OKA) .....J. (UJJAL BHUYAN) NEW DELHI;

JANUARY 21, 2025.

ITEM NO.14

COURT NO.5

SECTION II-C

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

Petition for Special Leave to Appeal (Crl.)No.1136/2023 [Arising out of impugned final judgment and order dated 21-09-2022 in MCRC No. 5288/2022 passed by the High Court of Chhatisgarh at Bilaspur] DIRECTORATE OF ENFORCEMENT Petitioner(s) VERSUS SUBHASH SHARMA Respondent(s) (IA No. 16672/2023 - EXEMPTION FROM FILING O.T.) Date : 21-01-2025 This matter was called on for hearing today. CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA HON'BLE MR. JUSTICE UJJAL BHUYAN For Petitioner(s) :Mr. Suryaprakash V Raju, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mr. Merusagar Samantaray, Adv.

Mr. Arkaj Kumar, Adv.

Mr. Ashok Panigrahi, Adv.

Mr. B.K. Satija, Adv.

Mr. Annam Venkatesh, Adv.

Mr. Zoheb Hussain, Adv.

Mr. Arvind Kumar Sharma, Aor, Adv.

For Respondent(s) : Mr.Shivam Batra, Adv. UPON hearing the counsel the Court made the following  
O R D E R Leave granted.

The appeal is dismissed in terms of the signed Reportable Judgment.

Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)  
ASTT. REGISTRAR-cum-PS

(AVGV RAMU)  
COURT MASTER (NSH)

[Signed Reportable Judgment is placed on the file]