

Directorate of Enforcement

v.

Subhash Sharma

(Criminal Appeal No. 310 of 2025)

21 January 2025

[Abhay S. Oka* and Ujjal Bhuyan, JJ.]

Issue for Consideration

Whether the High Court was justified in holding that the respondent's arrest was illegal and thus, granting him bail for an offence under Prevention of Money Laundering Act, 2002.

Headnotes[†]

Bail – Prevention of Money Laundering Act, 2002 – ss.45, 65 – Constitution of India – Art.22(2), 21 – Code of Criminal Procedure, 1973 – s.57 – Arrest vitiated if fundamental rights of the accused u/Arts.21 and 22 were violated – On facts, arrest of the respondent, if was illegal:

Held: Yes – Respondent was not produced before the Magistrate within 24 hours from his arrest – Therefore, the arrest was illegal as a result of the violation of his fundamental rights u/Art.22(2) – Since there was a violation of Art.22(2), even his fundamental right to liberty guaranteed u/Art.21 was violated – Further, the requirement of Art.22(2) has been incorporated in s.57, CrPC – There is no in-consistency between the PMLA and s.57, Cr.P.C – By virtue of s.65 of the PMLA, s.57 of the Cr.P.C applies to the proceedings under the PMLA – Once it is found that the fundamental rights of the accused u/Arts.21 and 22 have been violated while arresting the accused or after the arrest, it is the duty of the Court dealing with the bail application to release the accused on bail as the arrest in such cases is vitiated – It is the duty of every Court to uphold the fundamental rights guaranteed u/Arts.21 and 22 – Therefore, when arrest is illegal or vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests u/s.45(1)(ii) of PMLA – No error in the impugned order. [Paras 6-9]

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List of Acts

Constitution of India; Prevention of Money Laundering Act, 2002; Code of Criminal Procedure, 1973.

List of Keywords

Articles 22(2), 21 of the Constitution of India; Bail; Illegal arrest; Not produced before the Magistrate within 24 hours; Infringement of fundamental rights under Article 22(2); Right to liberty; Section 45 of Prevention of Money Laundering Act, 2002; Section 65 of Prevention of Money Laundering Act, 2002; Section 57 of Code of Criminal Procedure, 1973; Twin tests under clause (ii) of sub-section 1 of Section 45 of Prevention of Money Laundering Act, 2002.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 310 of 2025

From the Judgment and Order dated 21.09.2022 of the High Court of Chhattisgarh at Bilaspur in MCRC No. 5288 of 2022

Appearances for Parties

Suryaprakash V Raju, A.S.G., Mukesh Kumar Maroria, Merusagar Samantaray, Arkaj Kumar, Ashok Panigrahi, B.K. Satija, Annam Venkatesh, Zoheb Hussain, Arvind Kumar Sharma, Advs. for the Appellant.

Shivam Batra, Adv. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

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

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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 6th 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 6th 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

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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.

Result of the case: Appeal dismissed.

[†]Headnotes prepared by: Divya Pandey