V. Senthil Balaji vs The State Represented By Deputy ... on 7 August, 2023

Author: M.M. Sundresh

Bench: M. M. Sundresh, A.S. Bopanna

2023 INSC 677 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2284-2285 of 2023
(@SLP (Criminal) Nos. 8939-8940 of 2023)

V. SENTHIL BALAJI ...APPELLANT

VERSUS

THE STATE REPRESENTED BY
DEPUTY DIRECTOR AND ORS. ...RESPONDENTS

WITH

CRIMINAL APPEAL NOS. 2288-2289 of 2023
(@SLP (Criminal) Nos. 8652-8653 of 2023)

CRIMINAL APPEAL No.__2286 of 2023
(@SLP (Criminal) No.7437/2023)

CRIMINAL APPEAL No._2287__of 2023
(@SLP (Criminal) No.7460/2023)

CRIMINAL APPEAL No._____2290_____of 2023
(@SLP (Criminal) No. 8750/2023)

JUDGMENT

M.M. SUNDRESH, J.

1. Leave granted.

2. After the Scheduled Offence went through an elongated judicial journey, it is the turn of the Enforcement Case Information Report under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “the PMLA, 2002”).

What is under challenge before us are the orders passed by the majority of the Judges when a reference was made on a difference of opinion by the Division Bench of the Madras High Court,

while dealing with a Writ Petition filed seeking a writ of Habeas Corpus in pursuance of an arrest made, followed by a remand to the judicial custody, and then to the authority concerned. Though arguments at length are made at the Bar, the principal issue is only on the remand in favour of the investigating agency, without seeking any specific prayer challenging the remand orders, though additional grounds were raised.

3. Heard Shri Kapil Sibal and Shri Mukul Rohatgi learned Senior Advocates appearing for the appellant and Shri Tushar Mehta, learned Solicitor General appearing for the respondents. We have also perused the documents and the written arguments filed.

A BIRD'S EYE VIEW:

4. We shall first give a narration of the basic facts sufficient enough to decide the lis. For a proper understanding, we adopt the appeals arising out of Special Leave Petition (Criminal) Nos. 8939-8940 of 2023 as the lead case.

The appellant in the appeals arising out of Special Leave Petition (Criminal) Nos. 8652-8653 of 2023 is none other than the wife of the appellant in the appeals arising out of Special Leave Petition (Criminal) Nos. 8939-8940 of 2023, being the writ Petitioner before the High Court. Incidentally, the respondents, though filed separate appeals arising out of Special Leave Petition (Criminal) Nos. 7437 of 2023, 7460 of 2023, and 8750 of 2023, are appositely referred as respondents.

5. The appellant is a Cabinet Minister of the State of Tamil Nadu. After a see-

saw legal battle, his status remains that of an accused pursuant to the orders passed by this Court in the Scheduled Offence.

6. A case was registered in Enforcement Case Information Report No. 21 of 2021 by the Respondent No.1 against the appellant and others. It was followed by summons dated 04.08.2021 and 07.10.2021 requiring the attendance of the appellant. Further summons were issued on 07.03.2022 and 24.07.2022. A search was conducted by the Authorised Officer invoking Section 17 of the PMLA, 2002 at his premises on 13.06.2023.

7. Finding that the appellant was not extending adequate cooperation, the Authority had invoked Section 19 of the PMLA, 2002 by way of an arrest on 14.06.2023. An arrest memo was also prepared. Though grounds of arrest were furnished, the appellant declined to acknowledge them. The information pertaining to the arrest was also intimated to his brother, sister-in-law and wife.

8. The appellant was taken to the Tamil Nadu Government Multi Super Speciality Hospital, Chennai as he complained of chest pain. His wife rushed to the High Court and filed a Habeas Corpus petition being HCP No.1021 of 2023 on the very same day. In the meanwhile, the respondents filed an application before the learned Principal Sessions Judge seeking judicial custody for 15 days. An order of remand was passed sending him to judicial custody till 28.06.2023.

"At the request of the Special Public Prosecutor, Enforcement Directorate, Chennai filed along with ECIR, Remand Report and other documents I came down to Tamil Nadu, Government Multi Super Speciality Hospital, Omanthur, Chennai by 3.30 p.m. Dr. J. CECILY MARY MAJELLA, Associate Professor, Cardiology certified that the accused Senthil Balaji is conscious and oriented. Then I met Thiru. V. Senthil Balaji, the accused in the ICU ward of the said hospital and enquired in the presence of Dr. J. CECILY MARY MAJELLA. Heard the Special Public Prosecutor and the Senior Advocate Mr. N. R. Elango, who appeared for the accused. Grounds of Arrest was said to have been conveyed by the Investigating Officer, but the accused denied to acknowledge and signed the same. Also relatives of the accused are said to have been not available in the place of arrest and they have been informed through SMS and Email since they didn't pick the phone call. Proof has also been produced. I informed the accused about the grounds of arrest and his right of legal assistance. The accused complained that he was man handled by the ED officials but no complaint of any bodily injury. The prosecution has established prima facie case against the accused for the offences u/s. 3 of Prevention of Money Laundering Act, punishable u/s 4 of the said Act. Hence, the accused is remanded to Judicial custody till 28.06.2023."

9. Thereafter, the appellant filed an application for bail which was dismissed on 16.06.2023 by a speaking order considering all the contentions. This has attained finality. The respondents made a further application seeking custody for further investigation.

10. All the above activities took place on a single day, except the dismissal of the application for bail. The Habeas Corpus petition filed by the appellant's wife was taken up for hearing on 15.06.2023 on an urgent mentioning, whereby the appellant was directed to be shifted to a private hospital of his choice to undergo a bypass surgery. A surgery was accordingly done.

11. On the application filed by the respondents, the learned Principal Sessions Judge granted custody to them for a period of 8 days, while dismissing the bail application as noted earlier.

"24. In the result, the petition is allowed and Shri Karthik Dasari, Deputy Director, Directorate of Enforcement, Chennai is permitted to have the custody of the accused Sh. V. Senthil Balaji for 8 days from 16.06.2023 with the following conditions:

> (1) The Deputy Director of Enforcement Directorate shall not remove the accused from the Kaveri Hospital, who has been admitted for treatment.
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> (2) The Deputy Director of Enforcement Directorate shall interrogate the accused at the hospital by taking into consideration of his ailments and the treatment given to him in the hospital after obtaining necessary opinion from the team of Doctors, who are giving treatment to him about his fitness for interrogation.
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> (3) The Deputy Director of Enforcement Directorate interrogate the accused without any hindrance to the health conditions of the accused and also the treatment provided to him.

(4) The Deputy Director of Enforcement Directorate is directed to provide sufficient food and shelter to the accused and they should not use third degree method and should not cause any cruelty to the accused.

(5) No threat of coercion will be made on the Respondent/accused.

(6) The family members of the accused are to be permitted to see the accused during the custody, subject to the medical advice.

(7) The Deputy Director of Enforcement Directorate is directed to provide necessary security for the accused while he is in his custody.

(8) The Deputy Director of Enforcement Directorate is directed to produce the accused on 23.06.2023 by 3.00 p.m. through video conference and the petition is ordered accordingly."

12. After filing an application on 17.06.2023, seeking a direction that the first 15 days custody period should not come in the way of actual period of custody, before the learned Principal Sessions Judge, the respondents approached this Court in Special Leave Petition (Criminal) No. 7437 of 2023. Incidentally, another Special Leave Petition (Criminal) No. 7460 of 2023 was filed assailing the conditions imposed in the order dated 16.06.2023 by which 8 days custody was granted as afore-stated in favour of the respondents.

13. Taking note of the pendency of the Habeas Corpus petition, while keeping the Special Leave Petitions pending, the following order was passed on 21.06.2023, "1. We have heard Mr. Tushar Mehta, learned Solicitor General of India on behalf of the petitioner and S/Shri Neeraj Kishan Kaul, Devadatt Kamat and Vikram Chaudhry, learned Senior Counsel, who are on caveat, on behalf of the Respondents.

2. The High Court is yet to render its final opinion on the following issues: -

(i) Re. maintainability of the Habeas Corpus Petition;

(ii) The exclusion of the period of treatment undergone by the detenu from the period of custodial interrogation.

3. Since both these issues are likely to be examined by the High Court on the date fixed, i.e., 22-06-2023 or soon thereafter, we deem it appropriate to post these Special Leave Petitions for further hearing on 04-07-2023.

4. It is clarified that the pendency of these Special Leave Petitions shall not be taken as a ground to adjourn the matter, pending adjudication before the High Court.

5. The observations made by the High Court in the interim order dated 15-06-2023 or any oral observation made by this Court during the course of hearing shall have no bearing on the merits of the case."

14. In the meanwhile, in the pending Habeas Corpus petition additional grounds were raised questioning the orders of the learned Principal Sessions Judge granting both judicial and police remand, no specific prayer as such was sought for.

15. On 22.06.2023, the respondents filed an application before the High Court of Madras to exclude the period of hospitalisation for the purpose of counting custody period as no actual custody was taken.

16. By the order dated 04.07.2023, the Judges of the Division Bench differed with each other. Justice Nisha Banu allowed the Habeas Corpus petition, though either of the remand orders were not challenged:

> "(11) In the result, the Habeas Corpus Petition is allowed in the following terms:-
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> 1. The Writ of Habeas Corpus Petition is maintainable;
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> 2. Enforcement Directorate is not entrusted with the powers to seek police custody under the Prevention of Money Laundering Act, 2002;
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> 3. Miscellaneous petition filed by Respondent 1 seeking exclusion of the period is dismissed;"

17. Justice D. Bharata Chakravarty, recorded his views in differing with the one expressed by the other learned Judge:

> "(i) The Habeas Corpus Petition in H.C.P.No. 1021 of 2023 shall stand dismissed;
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> (ii) The period from 14.06.2023 till such time the detenu/accused is fit for custody of the respondent shall be deducted from the initial period of 15 days under Section 167(2) of the Code of Criminal Procedure;
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> (iii) The detenu/accused shall continue the treatment at Cauvery Hospital until discharge or for a period of 10 days from today whichever is earlier and thereafter, if further treatment is necessary, it can be only at the Prison/Prison Hospital as the case may be;
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> (iv) As and when he is medically fit, the respondents will be able to move the appropriate Court for custody and the same shall be considered on its own merits in accordance with law except not to be denied on the ground of expiry of 15 days from the date of remand;

(v) However, there shall be no order as to costs."

18. On a reference made, the third learned Judge, Justice C.V. Kartikeyan extended his concurrence with Justice D. Bharata Chakravarty:

> "(i) Whether Enforcement Directorate has the power to seek custody of a person arrested?
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> The answer given by this Court is 'Yes' in alignment with the views/opinion expressed by the Hon'ble Justice Mr. D. Bharatha Chakravarthy.
>
> (ii) Whether the Habeas Corpus Petition itself is maintainable after a judicial order of remand is passed by a Court of competent jurisdiction?

The Petition would be maintainable in exceptional circumstances, but this case does not attract any exceptional circumstance and consequently since an order of remand had been passed by a Court of competent jurisdiction, the relief sought in the petition cannot be granted. I would align with the view expressed by the Hon'ble Justice Mr. D. Bharatha Chakravarthy, with respect to this issue.

(iii) The consequential issue is as to whether Enforcement Directorate would be entitled to seek exclusion of time for the period of hospitalization beyond the first 15 days from the date of initial remand."

19. However, the learned Judge sent the file back to the Division Bench to adjudicate upon the date of custody to be reckoned followed by the actual days that might be required. Aggrieved, the appellant and his wife filed Special Leave Petition (Criminal) Nos. 8939-8940 of 2023 and Special Leave Petition (Criminal) Nos. 8652-8653 of 2023 respectively. With the limited grievance over the file being sent back by the third learned Judge, the respondents filed Special Leave Petition (Criminal) No. 8750 of 2023. Two more Special Leave Petitions have been filed by respondents being Special Leave Petition (Criminal) Nos. 7437 of 2023 and 7460 of 2023, challenging the interim order of the High Court and the conditions imposed by the learned Principal Sessions Judge while granting remand and for the exclusion of 15 days.

SUBMISSIONS OF THE APPELLANT:

20. We have had the pleasure of hearing Shri Kapil Sibal and Shri Mukul Rohatgi, learned Senior Advocates appearing on behalf of the appellant, at length. We would like to summarise their submissions in a nutshell together.

21. There is no power vested under the PMLA, 2002 to seek custody in favour of an authorized officer. Such an authorized officer is not a police officer and therefore, Section 167(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the CrPC, 1973"), with particular reference to a remand in his favour, is not available. Custody under Section 167(2) of the CrPC, 1973 can only be in favour of a police officer and not any other agency. There is no investigation under the PMLA, 2002

since it is to be taken as synonymous with inquiry. After the completion of 24 hours from the arrest, there cannot be further custody in favour of an officer. Being a beneficial legislation, non-compliance of Section 41A of the CrPC, 1973 would vitiate the orders of remand. The learned Principal Sessions Judge passed a cryptic order ignoring the clear non-compliance of Section 19 of the PMLA, 2002.

22. 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 circumstance.

The majority judgments did not apply the decision in CBI v. Anupam J.

Kulkarni (1992) 3 SCC 141 as followed thereafter by this Court, in the correct perspective. Reliance upon CBI v. Vikas Mishra, (2023) 6 SCC 49 is misplaced, with the decisions of the larger Bench and the Co-ordinate Bench acting as binding precedents. A writ of Habeas Corpus is certainly maintainable in the present case in view of procedural non-compliance.

Provisions of both the CrPC, 1973 and the PMLA, 2002 ought to be construed and interpreted strictly. There is a total non-application of mind on the part of the learned Principal Sessions Judge in passing the orders of remand.

23. The High Court has committed an error in not appreciating the legislative scheme and the timeline in the light of Article 22 of the Constitution of India, 1950. Articles 21, 22 of the Constitution of India, 1950 and Section 167 of the CrPC, 1973 ought to be read harmoniously. It is not for the Courts to legislate to provide extension of the period of 15 days. The decision rendered in Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 actually enures to the benefit of the appellant which the majority judgments failed to appreciate. Since the arrest was based upon the materials, over which a satisfaction was arrived at creating reasons to believe, the statute does not facilitate any more custodial interrogation. The appellant can very well be questioned and interrogated in prison.

SUBMISSIONS OF THE RESPONDENTS:

24. Shri Tushar Mehta, learned Solicitor General, while repelling the contentions raised, made further submissions.

25. The writ petition, as filed invoking Article 226 of the Constitution of India, 1950 is not maintainable. There was a legal arrest following which the arrested person was forwarded to the learned Principal Sessions Judge.

Orders were passed on merit, both for judicial custody and thereafter in favour of the respondents. The writ petition was filed only challenging the arrest as illegal. When it was taken up on 15.06.2023 the accused was produced already. Thus, even on that day the prayer was not in subsistence.

The respondents did not get the actual custody. The conditions attached are challenged before this Court. Even the appellant has stated in his arguments that he was not to be questioned during his so-called ailment in the hospital but was ready thereafter. The word "custody" cannot be given a restrictive meaning. The PMLA, 2002 is a special Act having its own distinct characteristics. It is a sui generis legislation. It provides for an elaborate mechanism for a thorough investigation through search, seizure and arrest.

Section 65 of the PMLA, 2002 clearly speaks of the overriding effect over the CrPC, 1973. There is due compliance of Section 19 of the PMLA, 2002.

The appellant has been hoodwinking the investigating agency, as rightly taken note of by the third learned Judge of the High Court.

26. The application of Sections 167(1) and (2) of the CrPC, 1973 to an investigation in connection with an offence under the PMLA, 2002, is no longer res integra in view of the decisions rendered in Deepak Mahajan (supra), followed by Ashok Munilal Jain v. Directorate of Enforcement, (2018) 16 SCC 158.

27. The reliance placed by the appellant on Anupam J. Kulkarni (supra), as followed thereafter by this Court is misconceived. In the said case, the facts are different as it was a case of counting the days after the arrestee was given custody in favour of the investigating agency, whereas no such custody has ever been made to the respondents. The principle governing actus curiae neminem gravabit was not the subject matter of those decisions. All legal actions taken by the appellant lack bona fides, they are solely to evade custody. The appellant has not even challenged the rejection of the bail wherein similar contentions have been taken note of and rejected.

28. To sum up, it is submitted that, both on facts and law, the appellant does not have a case as there is a complete abuse of the process of law. Incidentally, it is prayed that the Special Leave Petitions filed by the respondents will have to be allowed giving sufficient number of days for further investigation.

WRIT OF HABEAS CORPUS:

29. A writ of Habeas Corpus shall only be issued when the detention is illegal.

As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies.

When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of Habeas Corpus and that too by way of a challenge.

30. In a case where the mandate of Section 167 of the CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of Habeas Corpus may be entertained, provided a challenge is specifically made.

However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India, 1950. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of Habeas Corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-

compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the Court as mandated under sub-

section (3), since it becomes a judicial custody thereafter and the concerned Court would be in a better position to consider due compliance.

31. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. State of Maharashtra v. Tasneem Rizwan Siddiquee, (2018) 9 SCC 745:

> "10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436 : (2014) 5 SCC (Cri) 702 and Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475 . It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-

3-2018/19-3-2018 and decided by the High Court on 21-3- 2018 [Tasneem Rizwan Siddiquee v. State of Maharashtra, 2018 SCC OnLine Bom 2712] her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued." (emphasis supplied) SECTION 41A OF THE CODE OF CRIMINAL PROCEDURE, 1973 VIS-À-VIS SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002:

> Section 41A "41A. Notice of appearance before police officer.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
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> (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
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> (3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.
>
> (4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice."

32. Due interpretation of this provision of utmost importance has been given by this Court on more than one occasion [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 and Satender Kumar Antil v. CBI, (2022) 10 SCC 51].

The Interpretation of this provision, meant to preserve and safeguard the liberty of a person, is taken note of in the afore-stated judgments. This provision cannot be termed as a supplement to Section 19 of the PMLA, 2002. The PMLA, 2002 being a sui generis legislation, has its own mechanism in dealing with arrest in the light of its objectives. The concern of the PMLA, 2002 is to prevent money laundering, make adequate recovery and punish the offender. That is the reason why a comprehensive procedure for summons, searches, and seizures etc., has been clearly stipulated under Chapter V of the PMLA, 2002. An arrest shall only be made after due compliance of the relevant provisions including Section 19 of the PMLA, 2002. Therefore, there is absolutely no need to follow and adopt Section 41A of the CrPC, 1973 especially in the teeth of Section 65 of the PMLA, 2002.

33. In the absence of any mandate, one cannot force the Authorized Officer to ensure due compliance of Section 41A of the CrPC, 1973 especially when a clear, different and distinct methodology is available under the PMLA, 2002.

Following Section 41A of the CrPC, 1973 for an arrest under the PMLA, 2002 would only defeat and destroy the very inquiry/investigation under the PMLA, 2002. Till summons are issued to a person, he is not expected to be in the know-how. Any prior intimation, other than what is mandated under the PMLA, 1973 might seriously impair the ongoing investigation.

34. The Explanation to Section 45 of the PMLA, 2002 once again reiterates the role required to be performed by an Authorized Officer, duly fulfilling the conditions adumbrated under Section 19 of the PMLA, 2002. The Explanation goes on to state by way of a clarification that all offences under the Act shall be cognizable and non-bailable offences, notwithstanding anything contained to the contrary in the CrPC, 1973. Vijay Madanlal Choudhary v. Union of India, 2022 (10) SCALE:

> "THE 2002 ACT
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> 19. The Act was enacted to address the urgent need to have a comprehensive legislation inter alia for preventing money-

laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime. This need was felt world over owing to the serious threat to the financial systems of the countries, including to their integrity and sovereignty because of money-laundering. The international community deliberated over the dispensation to be provided to address the serious threat posed by the process and activities connected with the proceeds of crime and integrating it with formal financial systems of the countries. The issues were debated threadbare in the United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Basle Statement of Principles enunciated in 1989, the FATF established at the summit of seven major industrial nations held in Paris from 14th to 16th July, 1989, the Political Declaration and Noble Programme of Action adopted by United Nations General Assembly vide its Resolution No. S-17/2 of 23.2.1990, the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998, urging the State parties to enact a comprehensive legislation. This is evident from the introduction and Statement of Objects and Reasons accompanying the Bill which became the 2002 Act..." xxx xxx xxx PREAMBLE OF THE 2002 ACT

23. The Preamble of the 2002 Act reads thus:

> "An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.
>
> WHEREAS the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;
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> AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme; AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration." Even the Preamble of the Act reinforces the background in which

> the Act has been enacted by the Parliament being commitment of the country to the international community. It is crystal clear from the Preamble that the Act has been enacted to prevent money-laundering and to provide for confiscation of property derived from or involved in money- laundering and for matters connected therewith or incidental thereto. It is neither a pure regulatory legislation nor a pure penal legislation. It is amalgam of several facets essential to address the scourge of money-laundering as such. In one sense, it is a sui generis legislation.
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> xxx xxx xxx
>
> ARREST
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> 88. 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. Section 19, as amended from time to time, reads thus…" (emphasis supplied)

35. In light of the aforesaid discussion, an Authorized Officer under the PMLA, 2002 is not duty bound to follow the rigor of Section 41A of the CrPC, 1973 as against the binding conditions under Section 19 of the PMLA, 2002. The above discussion would lead to the conclusion that inasmuch as there is already an exhaustive procedure contemplated under the PMLA, 2002 containing sufficient safeguards in favour of the person arrested, Section 41A of the CrPC, 1973 has no application at all.

36. The need for the introduction of Section 41A has also been taken note of by the Law Commission in Chapter Five of its 177th Report:

> "But then it is said that since the conviction rate is very low, the very fact of arrest is a sort of punishment that can be meted out to the guilty. This argument is again misleading and unacceptable. Guilt or innocence has to be determined by the courts and not by the police. Police merely prosecutes on being satisfied that a person is guilty of an offence; it doesn't punish. It is also suggested that there is a distinct increase in crime because of enormous increase in population, unemployment and lack of adequate resources. May be so. But how does this phenomenon militate against the proposed changes in law. In fact, the attention of the police must be more on serious offences and economic offences and not so much on minor offences. The undesirable practice of arresting persons for minor offences and keeping them in jail for long periods (either because they cannot move for bail or because they cannot furnish bail to the satisfaction of the court – all because of their poverty) must come to an end. In fact, this aspect has already engaged the attention of the Supreme Court, which has given several directions for release/discharge of accused in case of minor offences and offences punishable up to seven years excepting therefrom the economic offences..." (emphasis supplied)

37. From the above, we could appreciate one of the main reasons for such introduction. It was meant not to be applied to certain categories of offences, including economic offences, but only to minor offences under the Indian Penal Code, 1860.

RELEVANT PROVISIONS OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002:

> "All power is of an encroaching nature" Justice Frankfurter of the U.S. Supreme Court Trop v. Dulles (1958).

38. Chapter V of the PMLA, 2002 deals with the power of an authority to conduct survey, search and seizure of both a place and a person followed by arrest, if so required. The provisions are step-in-aid in the conduct of inquiry/investigation.

Section 19 "19. Power to arrest.--(1) If the Director, Deputy Director, Assistant Director, or any other officer authorized 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 matter, 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 [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 [Special Court or] Magistrate's Court."

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.

40. Thereafter, the arrestee has to be taken to the Special Court, or the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, having the jurisdiction within 24 hours of such arrest. While complying with this mandate the time spent on the journey to the Court shall stand excluded.

Vijay Madanlal Choudhary (supra):

> "89... 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 & Anr. v. State of T.N. & Ors., (1994) 2 SCC 691, 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 & Ors. v. State of Punjab & Ors., (1982) 1 SCC 31, 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 v. State of Gujarat & Ors., (2005) 3 SCC 647, this Court opined that the provision cannot be held to be unreasonable or arbitrary and, therefore, unconstitutional merely because the authority vested with the power may abuse his authority. (Also see Manzoor Ali Khan v. Union of India & Ors., (2015) 2 SCC 33)." (emphasis supplied)

41. The conclusion thus arrived is that the Legislature in its wisdom has consciously created the necessary safeguards for an arrestee, keeping in mind his liberty, and the need for an external approval and supervision. This provision is in compliance with Article 21 and 22(2) of the Constitution of India, 1950.

Section 62 "Law can never be enforced unless fear supports them."

- Sophocles "62. Punishment for vexatious search.—Any authority or officer exercising powers under this Act or any rules made thereunder, who without reasons recorded in writing,—

(a) searches or causes to be searched any building or place; or

(b) detains or searches or arrests any person, shall for every such offence be liable on conviction for imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both."

42. This provision is a reiteration of the mandatory compliance of Section 19 of the PMLA, 2002. It is in the nature of a warning to an officer concerned to strictly comply with the mandate of Section 19 of the PMLA, 2002 in letter and spirit failing which he would be visited with the consequences. It is his bounden duty to record the reasons for his belief in coming to conclusion that a person has been guilty and therefore, to be arrested. Such a safeguard is meant to facilitate an element of fairness and accountability.

43. Section 65 "65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act." Section 65 provides for the application of the CrPC, 1973 with respect to arrest, search and seizure, etc. The provisions of the CrPC, 1973 being primarily procedural in nature, along with substantive elements, are to be applied, so long as they are not inconsistent with the provisions of the PMLA, 2002. Therefore, the PMLA, 2002 shall have precedence and when there is no inconsistency, a procedural assistance can be resorted to, as available under the CrPC, 1973. In other words, the provisions of the CrPC, 1973 are expected to be supplementary to the provisions of the PMLA, 2002.

44. To understand this provision, it would be appropriate to take note of Sections 4 and 5 of the CrPC, 1973:

Section 4 “4. Trial of offences under the Indian Penal Code and other laws.—(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.” Section 5 “5. Saving.—Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

45. Sub-section (2) to section 4 of the CrPC, 1973 amplifies the fact that any inquiry or investigation, along with their process, over an offence should necessarily be only under that statute and not under the CrPC, 1973. The aforesaid position has been reiterated under Section 5 of the CrPC, 1973 whereby a distinct clarification has been given that the CrPC, 1973 will not stand in the way of the operation of special law. Thus, a conjoint reading of Section 65 of the PMLA, 2002 along with Sections 4 and 5 of the CrPC, 1973 leaves no room for doubt on the precedence of the former over the latter when it comes to investigation.

ROLE OF THE DESIGNATED AUTHORITY UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002:

46. The PMLA, 2002 is a distinct and special statute having its own objective behind it. The scheme of the PMLA, 2002 provides for both prevention and action against money laundering. The object is to prevent the laundering and to recover when it happens, while extending punishment to the offender. In that process, materials collected can be used and exchanged for either of the purposes. In other words, for an inquiry and investigation there can be same materials, while there is no bar for reliance on additional ones. They can travel in the same channel, but their destinations are different. One material can be used for both purposes, along with numerous others. So long as they travel together, there is not much of a difference between an inquiry and investigation. When they take separate routes, an inquiry ends before the Adjudicating Authority, while the other leads to a Special Court in the form of a complaint. This distinction has to be kept in mind to avoid any possible conflict or confusion. Vijay Madanlal Choudhary (supra):

“27. The task of the Director or an authority authorised by the Central Government under the 2002 Act for the collection of evidence is the intrinsic process of adjudication proceedings. In that, the evidence so collected by the authorities is placed before the Adjudicating Authority for determination of the issue as to whether

> the provisional attachment order issued under Section 5 deserves to be confirmed and to direct confiscation of the property in question. The expression "investigation", therefore, must be regarded as interchangeable with the function of "inquiry" to be undertaken by the authorities for submitting such evidence before the Adjudicating Authority.
>
> 28. In other words, merely because the expression used is "investigation" — which is similar to the one noted in Section 2(h) of the 1973 Code, it does not limit itself to matter of investigation concerning the offence under the Act and Section 3 in particular. It is a different matter that the material collected during the inquiry by the authorities is utilised to bolster the allegation in the complaint to be filed against the person from whom the property has been recovered, being the proceeds of crime. Further, the expression "investigation" used in the 2002 Act is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act, including collection of evidence for being presented to the Adjudicating Authority for its consideration for confirmation of provisional attachment order. We need to keep in mind that the expanse of the provisions of the 2002 Act is of prevention of money-

laundering, attachment of proceeds of crime, adjudication and confiscation thereof, including vesting of it in the Central Government and also setting up of agency and mechanism for coordinating measures for combating money- laundering." (emphasis supplied)

47. The power of arrest under Section 19 of the PMLA, 2002 is meant for investigation alone. A clear position which is taken note of in Vijay Madanlal Choudhary (supra):

> "89. This argument clearly overlooks the overall scheme of the 2002 Act. As noticed earlier, it is a comprehensive legislation, not limited to provide for prosecution of person involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering. It also provides for prosecuting the person involved in such activity constituting offence of money-laundering. In other words, this legislation is an amalgam of different facets including setting up of agencies and mechanisms for coordinating measures for combating money-laundering. Chapter III is a provision to effectuate these purposes and objectives by attachment, adjudication and confiscation. The adjudication is done by the Adjudicating Authority to confirm the order of provisional attachment in respect of proceeds of crime involved in money-laundering. For accomplishing that objective, the authorities appointed under Chapter VIII have been authorised to make inquiry into all matters by way of survey, searches and seizures of records and property. These provisions in no way invest power in the Authorities referred to in Chapter VIII of the 2002 Act to maintain law and order or for that matter, purely investigating into a criminal offence. The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However, it is essentially an inquiry to collect evidence to facilitate the Adjudicating Authority to decide on the

confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of Section 9 of the 2002 Act. In other words, the role of the Authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the 2002 Act before the Special Court, if the fact situation so warrant. It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money-laundering. It is also not unusual to provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity. The respondent has rightly adverted to somewhat similar provisions in other legislations, such as Section 35 of FERA and Section 102 of Customs Act including the decisions of this Court upholding such power of arrest at the inquiry stage bestowed in the Authorities in the respective legislations. In Romesh Chandra Mehta v. State of West Bengal, (1969) 2 SCR 461: AIR 1970 SC 940, the Constitution Bench of this Court enunciated that Section 104 of the Customs Act confers power to arrest upon the Custom Officer if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 of that Act. Again, in the case of Union of India v. Padam Narain Aggarwal & Ors., (2008) 13 SCC 305, while dealing with the provisions of the Customs Act, it noted that the term “arrest” has neither been defined in the 1973 Code nor in the Indian Penal Code, 1860 nor in any other enactment dealing with offences. This word has been derived from the French word “ arrater” meaning “to stop or stay”. It signifies a restraint of a person. It is, thus, obliging the person to be obedient to law. Further, arrest may be defined as “the execution of the command of a court of law or of a duly authorised officer”. Even, this decision recognises the power of the authorised officer to cause arrest during the inquiry to be conducted under the concerned legislations. While adverting to the safeguards provided under that legislation before effecting such arrest, the Court noted as follows:

“Safeguards against abuse of power

36. From the above discussion, it is amply clear that power to arrest a person by a Customs Officer is statutory in character and cannot be interfered with. Such power of arrest can be exercised only in those cases where the Customs Officer has “reason to believe” that a person has been guilty of an offence punishable under Sections 132, 133, 135, 135-A or 136 of the Act. Thus, the power must be exercised on objective facts of commission of an offence enumerated and the Customs Officer has reason to believe that a person sought to be arrested has been guilty of commission of such offence. The power to arrest thus is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer.

> 37. The section Ed.: Section 104 of the Customs Act, 1962 also obliges the Customs Officer to inform the person arrested of the grounds of arrest as soon as may be. The law requires such person to be produced before a Magistrate without unnecessary delay.
>
> 38. The law thus, on the one hand, allows a Customs Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. ....” xxx xxx xxx “169. Notably, this dichotomy does not exist in the 2002 Act for more than one reason. For, there is no role for the regular Police Officer. The investigation is to be done only by the authorities under the 2002 Act and upon culmination of the investigation, to file complaint before the Special Court. Moreover, by virtue of Clause (ii) of Explanation in Section 44(1) of the 2002 Act, it is open to the authorities under this Act to bring any further evidence, oral or documentary, against any accused person involved in respect of offence of money-

laundering, for which, a complaint has already been filed by him or against person not named in the complaint and by legal fiction, such further complaint is deemed to be part of the complaint originally filed. Strikingly, in Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1, the Court also noted that, while dealing with the provisions of the NDPS Act, the designated officer has no express power to file a closure report unlike the power bestowed on the police officer, if he had investigated the same crime under the NDPS Act. Once again, this lack of authority to file closure report is not there in the 2002 Act. For, by the virtue of proviso in Section 44(1)

(b), after conclusion of investigation, if no offence of money-

laundering is made out requiring filing of a complaint, the Authority under the Act expected to file such complaint, is permitted to file a closure report before the Special Court in that regard. In that decision, while analysing the provisions of the Section 67 of the NDPS Act, the Court noted that the statement recorded under Section 67 of that Act was to be held as inadmissible in all situations. That renders Section 53A of the same Act otiose. Section 53A of the NDPS Act is about relevancy of statement made under certain circumstances. Realising the conflicting position emerging in the two provisions, the issue came to be answered.” (emphasis supplied)

48. Otherwise, an arrest will be termed as a punishment, which power can never be under Section 19 of the PMLA, 2002. This position being as clear as day light, the proviso to Section 44(1)(b) of the PMLA, 2002 throws further insight into it.

Section 44 “44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),— xxx xxx xxx

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or..."

49. Therefore, the power under Section 19(1) of the PMLA, 2002 can only be exercised during investigation and it is well open to the authority to file a closure report before the Special Court after conclusion, if it finds that there are no sufficient materials to proceed further.

SECTION 167 OF CODE OF CRIMINAL PROCEDURE, 1973:

"Justice, though due to the accused, is due to the accuser too"

- Justice Benzamin N. Cardozo of U.S. Supreme Court Section 167 "167. Procedure when investigation cannot be completed in twenty-four hours.—(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate. (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

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

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

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

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

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

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

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

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

xxx xxx xxx (3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing."

50. Before we consider this most important provision, let us have a comparison between the Code of Criminal Procedure, 1898 (hereinafter referred to as "CrPC, 1898") and the CrPC, 1973.

COMPARISON CHART ON SECTION 167 OF CRPC.

SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE 1898	SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE 1973
167. Procedure When Investigation Cannot be Completed in Twenty-Four Hours:	167. Procedure When Investigation Cannot be Completed in Twenty-Four Hours:
(1) Whenever it appears that any investigation under this Chapter cannot be completed within the period of twenty-four hours fixed by Section 61, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police-	(1) Whenever any person is arrested and detained in custody, and it cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or

information is well-founded, the station shall forthwith transmit to the officer in charge of the police station nearest, Magistrate a copy of the or the police officer making the entries in the diary hereinafter investigation, if he is not below the prescribed relating to the case, and rank of sub-inspector, shall shall at the same time forward the forthwith transmit to the nearest accused (if any) to such Magistrate.

Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

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

> Provided that—
>
> (a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,—
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> (i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
>
> (ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;
>
> (b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;]

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

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

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

Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(3) A Magistrate authorising under (3) A Magistrate authorising under this section detention in the custody this section detention in the custody of the police shall record his reasons of the police shall record his reasons for so doing. for so doing.

(4) If such order is given by a (4) Any Magistrate other than the Magistrate other than the District Chief Judicial Magistrate making Magistrate or Subdivisional- such order shall forward a copy of Magistrate, he shall forward a copy his order, with his reasons for of his order, with his reasons for making it to the Chief Judicial making it, to the Magistrate to Magistrate.

whom he is immediately subordinate.

As we could see, there is no difference between the provision as it existed earlier and now, except by way of an addition of a proviso, which we shall deal with later.

51. Seeds of liberty are sown in this provision while facilitating further investigation, upon being satisfied that the same cannot be completed within 24 hours. It is not a mere procedural provision but one having an inherent element of substantivity. While facilitating a fair play, it is introduced as a limb of Article 21 and 22(2) of the Constitution of India, 1950.

52. Under sub-section (1) of Section 167 of the CrPC, 1973, a competent officer shall forward the accused to the Magistrate when it appears that the investigation cannot be completed within 24 hours. Two factors are important as envisaged under sub-section (1). They are, it must be a case where investigation cannot be completed within 24 hours of arrest of an accused and that he has to be forwarded to the Magistrate, meaning thereby he comes into the judicial custody from that of the investigating agency. The object and rationale behind this provision is rather clear. By restricting the custody to 24 hours, the liberty of the accused is meant to be considered and taken note of by an

independent authority in the form a Magistrate. It is also an act of confirmation by the Magistrate on the arrest, followed by grant of custody of an accused person.

53. Sub-section (2) of Section 167 of the CrPC, 1973 deals with the power of the Magistrate. Such a Magistrate may or may not have the jurisdiction to try a case. There is no question of jurisdiction in any form that would stand in the way of the Magistrate from exercising the said power. By a mere designation he assumes such power. This is for the reason that liberty is paramount and any delay would amount to its curtailment. It may also delay further investigation. The words "time to time" would clearly indicate that a power to grant custody is not restricted to the first 15 days of remand, but the whole period of investigation. It is not referable to judicial custody as against police custody. It only means "as the occasion arises", which is from the point of investigation. Thus, when an investigation reveals new materials to be confronted with the accused, a need for custody might arise, subject to the satisfaction of the Magistrate. In State of Rajasthan v. Basant Agrotech (India) Ltd., (2013) 15 SCC 1 this Court has dealt with the words "time to time":

> 50. In The Law Lexicon, The Encyclopedic Law Dictionary (2nd Edn., 1997, p. 764) the words have been conferred the following meaning:
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> "From time to time.— ... 'as occasion may arise'.... The words 'from time to time' mean that an adjournment may be made as and when the occasion requires and they will not mean adjournment from one fixed day to another fixed day. ... 'The words "from time to time" are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and therefore not being able to act again in the same direction.' The meaning of the words 'from time to time' is that after once acting the donee of the power may act again; and either independently of, or by adding to, or taking from, or reversing altogether, his previous act."
>
> 51. In Black's Law Dictionary (5th Edn., p. 601), it has been defined as follows:
>
> "From time to time.—Occasionally, at intervals, now and then."
>
> 52. In Stroud's Judicial Dictionary (5th Edn., Vol. 2, p. 1071), it has been stated as follows:
>
> "From time to time.— ... 'as occasion may arise' (as per William, J., Bryan v. Arthur [(1839) 11 Ad & E 108 : 113 ER 354] Ad & E at p. 117)." (emphasis supplied) While authorizing the detention of an accused, the Magistrate has got a very wide discretion. Such an act is a judicial function and, therefore, a reasoned order indicating application of mind is certainly warranted. He may or may not authorize the detention while exercising his judicial discretion.
>
> Investigation is a process which might require an accused's custody from time to time as authorised by the competent Court. Generally, no other Court is expected to act as

> a supervisory authority in that process. An act of authorisation pre-supposes the need for custody. Such a need for a police custody has to be by an order of a Magistrate rendering his authorisation.

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

55. Interpreting the words “such custody”, the Law Commission in its 37th Report, while dealing with the pari materia provisions under the CrPC, 1898, has observed that the Magistrate is having wide powers as there is no express restriction under Section 167(2). It can be given to any investigating agency and, therefore, not meant to have a narrow interpretation by restricting it to the police alone.

“481. A suggestion of the Ministry of Defence may be noted regarding custody under section 167. Under sections 167(2) and 344, a Magistrate is empowered to remand an accused to any custody, that is to say, he can remand him to other than police custody. It is considered, that accused persons who are subject to military, naval or air force law may be permitted to be remanded to military, naval or air force custody. In fact, such custody has been ordered in some cases. In order that there may be no doubt left in the matter, the following additions should (it has been suggested) be made in the aforesaid sections after the word "custody" :--

> "including military, naval or air force custody where the accused belongs to any of these services."

We have considered the suggestion.

In section 167(2), the words used are "in such custody as the Magistrate thinks □t". These words are very wide (sic). In fact, it has been held even under section 344, that the Magistrate can remand the accused to whatever custody he thinks □t. We are therefore of the view, that no change is necessary.” (emphasis supplied) We give our fullest imprimatur to the views expressed by the Law Commission as Section 167 of the CrPC, 1973 is meant for not only protecting the liberty of a person but also to conclude the investigation in a fair manner. A balancing act is expected to be undertaken by the Magistrate.

56. Sub-section (2) of Section 167 of the CrPC, 1973 further makes a reference to the words “a term not exceeding 15 days in the whole”. The term has been introduced on purpose keeping in view the proviso which gives an outer limit for the conclusion of the investigation. Similarly, the words “not exceeding 15 days in the whole” should be understood in the very same manner. The word “whole” means “total, not divided, lacking no part, entire, full, and complete”. In Glaze v. Hart 225 M.O. App. 1205, the Kansas City Court of Appeals has dealt with the word “whole”:

> “...It would be doing violence to the plain, ordinary meaning of the word total to hold that claimant, in the circumstances revealed in said findings, was, at the time of

> injury, totally dependent upon the employee for support. The word total is defined as whole; undivided; entire; complete in degree; utter; absolute....” (emphasis supplied) As a sequitur, 15 days of maximum custody has to be seen contextually from the point of view of the period of investigation as provided under the proviso.

57. Section 167(2) of the CrPC, 1973 authorises the detention of the accused in custody by an order of the Magistrate. It does consciously treat a detention different from custody. Custody will be either to the court or an investigating agency. Detention is normally made only by an investigating agency prior to the production before the learned Magistrate. A custody from being judicial may turn into police through an order passed by the learned Magistrate.

Detention may at best be a facet of custody. However, they are not synonymous with each other. When detention is authorised, it would become custody. Custody does not mean a formal one. Rather, it can only be construed when an arrestee is given in physical custody. We make it clear that our interpretation of physical custody is meant to be applied to Section 167(2) of the CrPC, 1973 alone.

58. In Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623, while dealing with the interpretation of word “custody” this Court has relied upon several dictionaries:

> “Meaning of custody
>
> 9. Unfortunately, the terms “custody”, “detention” or “arrest” have not been defined in CrPC, and we must resort to few dictionaries to appreciate their contours in ordinary and legal parlance:
>
> 9.1.Oxford Dictionary (online) defines “custody” as imprisonment, detention, confinement, incarceration, internment, captivity; remand, duress, and durance.
>
> 9.2.Cambridge Dictionary (online) explains “custody” as the state of being kept in prison, especially while waiting to go to court for trial.

(emphasis supplied) 9.3.Longman Dictionary (online) defines “custody” as “when someone is kept in prison until they go to court, because the police think they have committed a crime”.

9.4.Chambers Dictionary (online) clarifies that custody is “the condition of being held by the police; arrest or imprisonment; to take someone into custody to arrest them”.

9.5.Chambers' Thesaurus supplies several synonyms, such as detention, confinement, imprisonment, captivity, arrest, formal incarceration.

9.6.Collins Cobuild English Dictionary for Advance Learners states in terms that someone who is in custody or has been taken into custody or has been arrested and is being kept in prison until they get tried in a court or if someone is being held in a particular type of custody, they are being kept in a

place that is similar to a prison.

9.7.Shorter Oxford English Dictionary postulates the presence of confinement, imprisonment, durance and this feature is totally absent in the factual matrix before us.

9.8.Corpus Juris Secundum under the topic of "Escape & Related Offenses; Rescue" adumbrates that "custody, within the meaning of statutes defining the crime, consists of the detention or restraint of a person against his or her will, or of the exercise of control over another to confine the other person within certain physical limits or a restriction of ability or freedom of movement." 9.9. This is how "custody" is dealt with in Black's Law Dictionary, (5th Edn. 2009):

> "Custody.—The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority.
>
> The term is very elastic and may mean actual imprisonment or physical detention or mere power, legal or physical, of imprisoning or of taking manual possession. Term 'custody' within statute requiring that petitioner be 'in custody' to be entitled to federal habeas corpus relief does not necessarily mean actual physical detention in jail or prison but rather is synonymous with restraint of liberty. US ex rel Wirtz v. Sheehan, 319 F Supp 146 at p. 147 (DC Wis 1970). Accordingly, persons on probation or released on own recognizance have been held to be 'in custody' for purposes of habeas corpus proceedings." To be noted, this Court was concerned with the bail application and therefore there was no occasion to draw a distinction between a judicial custody and a police custody.
>
> 59. We further note that sub-section (2) of Section 167 of the CrPC, 1973 consciously omits to mention the word "police custody". What is important is the grant of custody which is to be decided by the Magistrate. The fact that the proviso makes a mention about police custody would only mean the outer limit an investigating agency can have.
>
> 60. We are conscious of the fact that a different interpretation has been given as to how the total 15 days which could be sought for by an investigating agency, should be construed and reckoned. We have already made an elaborate discussion on this aspect. Even assuming that such custody can only be sought for by an agency within the first 15 days, there has to be a physical custody to count the days. In a case where custody is shifted from judicial to an investigating agency by an order of Court, the starting point will be from the actual custody. We would only reiterate that the moment a person is produced before the Court, it assumes custody, divesting the

agency of its own. When an order is passed granting police custody, any interdiction by any extraneous circumstance or a Court order would not kick-start the period of custody. The situation may be different in a case where a further custody is not possible due to external factors. Further, an order of Court can never be a factor to prevent an investigation when the said order merges with the final one, upholding such custody. In such a case, the doctrine of actus curiae neminem gravabit would certainly apply, as Court's action can never prejudice anyone, more so, an investigating agency performing its statutory mandate. In Bharat Damodar Kale v. State of A.P. (2003) 8 SCC 559:

"10. On facts of this case and based on the arguments advanced before us, we consider it appropriate to decide the question whether the provisions of Chapter XXXVI of the Code apply to the delay in instituting the prosecution or to the delay in taking cognizance. As noted above, according to the learned counsel for the appellants, the limitation prescribed under the above Chapter applies to taking of cognizance by the court concerned, therefore even if a complaint is filed within the period of limitation mentioned in the said Chapter of the Code, if the cognizance is not taken within the period of limitation the same gets barred by limitation. This argument seems to be inspired by the chapter heading of Chapter XXXVI of the Code which reads thus: "Limitation for taking cognizance of certain offences". It is primarily based on the above language of the heading of the Chapter, the argument is addressed on behalf of the appellants that the limitation prescribed by the said Chapter applies to taking of cognizance and not filing of complaint or initiation of the prosecution. We cannot accept such argument because a cumulative reading of various provisions of the said Chapter clearly indicates that the limitation prescribed therein is only for the filing of the complaint or initiation of the prosecution and not for taking cognizance. It of course prohibits the court from taking cognizance of an offence where the complaint is filed before the court after the expiry of the period mentioned in the said Chapter. This is clear from Section 469 of the Code found in the said Chapter which specifically says that the period of limitation in relation to an offence shall commence either from the date of the offence or from the date when the offence is detected. Section 470 indicates that while computing the period of limitation, time taken during which the case was being diligently prosecuted in another court or in appeal or in revision against the offender should be excluded. The said section also provides in the Explanation that in computing the time required for obtaining the consent or sanction of the Government or any other authority should be excluded. Similarly, the period during which the court was closed will also have to be excluded. All these provisions indicate that the court taking cognizance can take cognizance of an offence the complaint of which is filed before it within the period of limitation prescribed and if need be after excluding such time which is legally excludable. This in our opinion clearly indicates that the limitation prescribed is not for taking cognizance within the period of limitation, but for taking cognizance of an offence in regard to which a complaint is filed or prosecution is initiated beyond the period of limitation prescribed under the Code. Apart from the statutory indication of

> this view of ours, we find support for this view from the fact that taking of cognizance is an act of the court over which the prosecuting agency or the complainant has no control.

Therefore, a complaint filed within the period of limitation under the Code cannot be made infructuous by an act of court. The legal phrase " actus curiae neminem gravabit " which means an act of the court shall prejudice no man, or by a delay on the part of the court neither party should suffer, also supports the view that the legislature could not have intended to put a period of limitation on the act of the court of taking cognizance of an offence so as to defeat the case of the complainant. This view of ours is also in conformity with the earlier decision of this Court in the case of Rashmi Kumar [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] ." (emphasis supplied)

61. In Indore Development Authority v. Manoharlal (2020) 8 SCC 129, the Constitution Bench has exhaustively laid down the principle governing actus curiae neminem gravabit and restitution:

> "320. The maxim actus curiae neminem gravabit is founded upon the principle due to court proceedings or acts of court, no party should suffer. If any interim orders are made during the pendency of the litigation, they are subject to the final decision in the matter. In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In Mrutunjay Pani v. Narmada Bala Sasmal, AIR 1961 SC 1353, this Court observed that : (AIR p. 1355, para 5) "5. ... The same principle is comprised in the Latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act." xxx xxx xxx
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> 324. In Mahadeo Savlaram Shelke v. Pune Municipal Corpn., (1995) 3 SCC 33, it has been observed that the Court can under its inherent jurisdiction ex debito justitiae has a duty to mitigate the damage suffered by the defendants by the act of the court.

Such action is necessary to put a check on abuse of process of the court. In Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417 :

> (2010) 1 SCC (L&S) 1108, and Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620, it was observed that no person can suffer from the act of court and unfair advantage of the interim order must be neutralised. In Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108, this Court observed : (SCC pp. 422-23, paras 17-18) "17. No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the

> case, and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. In such a fact situation, the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court. (Vide Shiv Shankar v. U.P. SRTC, 1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018, GTC Industries Ltd. v. Union of India, (1998) 3 SCC 376 and Jaipur Municipal Corpn. v. C.L. Mishra, (2005) 8 SCC 423).

18. In Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620], this Court examined a similar issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191 : 1980 SCC (Tax) 230 and held that no person can suffer from the act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised."

325. In Karnataka Rare Earth v. Deptt. of Mines & Geology, (2004) 2 SCC 783, this Court observed that maxim actus curiae neminem gravabit requires that the party should be placed in the same position but for the court's order which is ultimately found to be not sustainable which has resulted in one party gaining advantage which otherwise would not have earned and the other party has suffered but for the orders of the court. The successful party can demand the delivery of benefit earned by the other party, or make restitution for what it has lost. This Court observed : (SCC pp. 790-91, paras 10-11) "10. In ... the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution that is attracted. When on account of an act of the party, persuading the court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered, but for the order of the court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the court would not have been passed. The successful party can demand : (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost.

11. In the facts of this case, in spite of the judgment Karnataka Rare Earth v. Department of Mines & Geology, WPs No. 4030-4031 of 1997, order dated 1-12-1998 (KAR) of the High Court, if the

appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-section (5) of Section 21. As the appellants have lost from the Court, they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay the price more than what they have realised from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable." (emphasis supplied)

326. In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372, this Court observed that it is a settled principle that an act of the court shall prejudice no man. This maxim actus curiae neminem gravabit is founded upon justice and good sense and affords a safe and certain guide for the administration of the law. No man can be denied his rights. In India, a delay occurs due to procedural wrangles. In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372, this Court observed : (SCC p. 687, para 102) "102. This being the apex court, no litigant has any opportunity of approaching any higher forum to question its decisions. Lord Buckmaster in Montreal Street Railway Co. v. Normandin, 1917 AC 170 (PC) (sic) stated:

> 'All rules of court are nothing but provisions intended to secure the proper administration of justice. It is, therefore, essential that they should be made to serve and be subordinate to that purpose.' This Court in State of Gujarat v. Ramprakash P. Puri, (1969) 3 SCC 156 : 1970 SCC (Cri) 29, reiterated the position by saying :
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> (SCC p. 159, para 5) '5. ... Procedure has been described to be a handmaid and not a mistress of law, intended to subserve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause.' Once judicial satisfaction is reached that the direction was not open to be made and it is accepted as a mistake of the court, it is not only appropriate but also the duty of the court to rectify the mistake by exercising inherent powers. Judicial opinion heavily leans in favour of this view that a mistake of the court can be corrected by the court itself without any fetters. This is on principle, as indicated in Alexander Rodger v. Comptoir D'Escompte De Paris, (1969-71) LR 3 PC 465 : 17 ER 120. I am of the view that in the present situation, the court's inherent powers can be exercised to remedy the mistake. Mahajan, J. speaking for a four-Judge Bench in Keshardeo Chamria v. Radha Kissen Chamria, (1952) 2 SCC 329 : 1953 SCR 136 : AIR 1953 SC 23, SCR p. 153 stated : (AIR p. 28, para 21) '21. ... The Judge had jurisdiction to correct his own error without entering

into a discussion of the grounds taken by the decree-holder or the objections raised by the judgment-

debtors.' "

xxx xxx xxx

In re : Principle of restitution

335. The principle of restitution is founded on the ideal of doing complete justice at the end of litigation, and parties have to be placed in the same position but for the litigation and interim order, if any, passed in the matter. In South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648, it was held that no party could take advantage of litigation. It has to disgorge the advantage gained due to delay in case lis is lost. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final order going against the party successful at the interim stage. Section 144 of the Code of Civil Procedure is not the fountain source of restitution. It is rather a statutory recognition of the rule of justice, equity and fair play.

The court has inherent jurisdiction to order restitution so as to do complete justice. This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it. In exercise of such power, the courts have applied the principle of restitution to myriad situations not falling within the terms of Section 144 CPC. What attracts applicability of restitution is not the act of the court being wrongful or mistake or an error committed by the court; the test is whether, on account of an act of the party persuading the court to pass an order held at the end as not sustainable, resulting in one party gaining an advantage which it would not have otherwise earned, or the other party having suffered an impoverishment, restitution has to be made. Litigation cannot be permitted to be a productive industry. Litigation cannot be reduced to gaming where there is an element of chance in every case. If the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order. This Court observed in South Eastern Coalfields Ltd. v. State of M.P., (2003) 8 SCC 648 thus : (SCC pp. 662-64, paras 26-28) "26. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue, U.P., 1984 Supp SCC 505). In law, the term "restitution" is used in three senses : (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for the injury done:

'Often, the result under either meaning of the term would be the same. ... Unjust impoverishment, as well as unjust enrichment, is a ground for restitution. If the

defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed.' The principle of restitution has been statutorily recognised in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree. The scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage. ...

27. ... This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami, 1970 SCC OnLine Mad

63). In the exercise of such inherent power, the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law. ... the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation." (emphasis supplied)

62. Under proviso (a) of Section 167(2) of the CrPC, 1973, a Magistrate may authorize the detention beyond a period of 15 days, other than in the custody of the police. This period of 15 days has to be reckoned, qua either a police custody or a custody in favour of the investigating officer, spanning over the entire period of investigation.

63. It is too well settled that a proviso has to be understood from the language used in the main provision and not vice versa. Proviso to Section 167(2) of the CrPC, 1973 speaks of authorisation of detention of an accused person otherwise than in police custody beyond the period of 15 days, subject to his satisfaction. It further goes on to state that in any case the total period of custody, either police or judicial, shall not exceed 60 or 90 days, as the case may be. To understand this proviso one has to go

> back to the main provision particularly the words "from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit", "for a term not exceeding 15 days in the whole". The interpretation given by us to the main provision would give ample clarity to the proviso. Therefore, the period of 15 days being the maximum period that can be granted in favour of the police would span from time to time with the total period of 60 or 90 days as the case may be. Any other interpretation would seriously impair the power of investigation. We may also hasten to add that the proviso merely reiterates the maximum period of 15 days, qua a custody in favour of the police while there is absolutely no mention of the first 15 days alone for the police custody.
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> 64. We would only reiterate that the proviso creates a fine balance between individual liberty and adequate investigation. The time limit fixed would help an accused person to come out of incarceration and thereafter lead to the faster conclusion of the trial, it also facilitates a proper investigation by way of police custody.
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> 65. It is to protect the interest of an accused person by restricting the period of investigation, a failure of which would entitle an arrestee to be released.

This again is yet another facet of Article 21 of the Constitution of India, 1950. In Satender Kumar Antil (supra):

> "39. Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect.
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> 40. Such a right cannot be taken away even during any unforeseen circumstances, such as the recent pandemic, as held by this Court in M. Ravindran v. Directorate of Revenue Intelligence, (2021) 2 SCC 485 : (2021) 1 SCC (Cri) 876 : (SCC pp. 502-06, para 17) "II. Section 167(2) and the Fundamental Right to Life and Personal Liberty
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> 17. Before we proceed to expand upon the parameters of the right to default bail under Section 167(2) as interpreted by various decisions of this Court, we find it pertinent to note the observations made by this Court in Uday Mohanlal Acharya v.

State of Maharashtra, (2001) 5 SCC 453 : 2001 SCC (Cri) 760 on the fundamental right to personal liberty of the person and the effect of deprivation of the same as follows : (SCC p. 472, para 13) '13. ...

Personal liberty is one of the cherished objects of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution. When the law provides that the Magistrate could authorise the detention of the accused in custody up to a maximum period as indicated in the proviso to sub-section (2) of Section 167, any further detention beyond the period without filing of a challan by the investigating agency would be a subterfuge and would not be in accordance with law and in conformity with the provisions of the Criminal Procedure Code, and as such, could be violative of Article 21 of the Constitution.' 17.1. Article 21 of the Constitution of India provides that 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. It has been settled by a Constitution Bench of this Court in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, that such a procedure cannot be arbitrary, unfair or unreasonable. The history of the enactment of Section 167(2) CrPC and the safeguard of "default bail" contained in the proviso thereto is intrinsically linked to Article 21 and is nothing but a legislative exposition of the constitutional safeguard that no person shall be detained except in accordance with the rule of law.

17.2. Under Section 167 of the Code of Criminal Procedure, 1898 ("the 1898 Code") which was in force prior to the enactment of the CrPC, the maximum period for which an accused could be remanded to custody, either police or judicial, was 15 days. However, since it was often unworkable to conclude complicated investigations within 15 days, a practice arose wherein investigating officers would file "preliminary charge-sheets" after the expiry of the remand period. The State would then request the Magistrate to postpone commencement of the trial and authorise further remand of the accused under Section 344 of the 1898 Code till the time the investigation was completed and the final charge- sheet was filed. The Law Commission of India in Report No. 14 on Reforms of the Judicial Administration (Vol. II, 1948, pp. 758-760) pointed out that in many cases the accused were languishing for several months in custody without any final report being filed before the courts. It was also pointed out that there was conflict in judicial opinion as to whether the Magistrate was bound to release the accused if the police report was not filed within 15 days.

recommended the need for an appropriate provision specifically providing for continued remand after the expiry of 15 days, in a manner that 'while meeting the needs of a full and proper investigation in cases of serious crime, will still safeguard the liberty of the person of the individual'. Further, that the legislature should prescribe a maximum time period beyond which no accused could be detained without filing of the police report before the Magistrate. It was pointed out that in England, even a person accused of grave offences such as treason could not be indefinitely detained in prison till commencement of the trial.

17.4. The suggestion made in Report No. 14 was reiterated by the Law Commission in Report No. 41 on The Code of Criminal Procedure, 1898 (Vol. I, 1969, pp. 76-77). The Law Commission re-emphasised the need to guard against the misuse of Section 344 of the 1898 Code by filing "preliminary reports" for remanding the accused beyond the statutory period prescribed under Section 167. It was pointed out that this could lead to serious abuse wherein 'the arrested person can in this manner be kept in custody indefinitely while the investigation can go on in a leisurely manner'. Hence the Commission recommended fixing of a maximum time-limit of 60 days for remand. The Commission considered the reservation expressed earlier in Report No. 37 that such an

extension may result in the 60-day period becoming a matter of routine. However, faith was expressed that proper supervision by the superior courts would help circumvent the same.

17.5. The suggestions made in Report No. 41 were taken note of and incorporated by the Central Government while drafting the Code of Criminal Procedure Bill in 1970. Ultimately, the 1898 Code was replaced by the present CrPC. The Statement of Objects and Reasons of the CrPC provides that the Government took the following important considerations into account while evaluating the recommendations of the Law Commission:

> '3. The recommendations of the Commission were examined carefully by the Government, keeping in view, among others, the following basic considerations:
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> (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
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> (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
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> (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community.' 17.6. It was in this backdrop that Section 167(2) was enacted within the present day CrPC, providing for time-limits on the period of remand of the accused, proportionate to the seriousness of the offence committed, failing which the accused acquires the indefeasible right to bail. As is evident from the recommendations of the Law Commission mentioned supra, the intent of the legislature was to balance the need for sufficient time-limits to complete the investigation with the need to protect the civil liberties of the accused. Section 167(2) provides for a clear mandate that the investigative agency must collect the required evidence within the prescribed time period, failing which the accused can no longer be detained. This ensures that the investigating officers are compelled to act swiftly and efficiently without misusing the prospect of further remand. This also ensures that the court takes cognizance of the case without any undue delay from the date of giving information of the offence, so that society at large does not lose faith and develop cynicism towards the criminal justice system.

17.7. Therefore, as mentioned supra, Section 167(2) is integrally linked to the constitutional commitment under Article 21 promising protection of life and personal liberty against unlawful and arbitrary detention, and must be interpreted in a manner which serves this purpose. In this regard we find it useful to refer to the decision of the three- Judge Bench of this Court in Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67: (2018) 1 SCC (Cri) 401, which laid down certain seminal principles as to the interpretation of Section 167(2)CrPC though the questions of law involved were somewhat different from the present case. The questions before the three-Judge Bench in Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67: (2018) 1 SCC (Cri) 401, were whether, firstly, the 90-day remand extension under Section 167(2)(a)(i) would be applicable in respect of offences where the maximum period of imprisonment was 10 years, though the minimum period was less

than 10 years. Secondly, whether the application for bail filed by the accused could be construed as an application for default bail, even though the expiry of the statutory period under Section 167(2) had not been specifically pleaded as a ground for bail. The majority opinion held that the 90-day limit is only available in respect of offences where a minimum ten years imprisonment period is stipulated, and that the oral arguments for default bail made by the counsel for the accused before the High Court would suffice in lieu of a written application. This was based on the reasoning that the court should not be too technical in matters of personal liberty. Madan B. Lokur, J. in his majority opinion, pertinently observed as follows: (SCC pp. 95-96 & 99, paras 29, 32 & 41) '29. Notwithstanding this, the basic legislative intent of completing investigations within twenty-four hours and also within an otherwise time-bound period remains unchanged, even though that period has been extended over the years. This is an indication that in addition to giving adequate time to complete investigations, the legislature has also and always put a premium on personal liberty and has always felt that it would be unfair to an accused to remain in custody for a prolonged or indefinite period. It is for this reason and also to hold the investigating agency accountable that time-limits have been laid down by the legislature.... ***

32. ... Such views and opinions over a prolonged period have prompted the legislature for more than a century to ensure expeditious conclusion of investigations so that an accused person is not unnecessarily deprived of his or her personal liberty by remaining in prolonged custody for an offence that he or she might not even have committed. In our opinion, the entire debate before us must also be looked at from the point of view of expeditious conclusion of investigations and from the angle of personal liberty and not from a purely dictionary or textual perspective as canvassed by the learned counsel for the State.

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41. We take this view keeping in mind that in matters of personal liberty and Article 21 of the Constitution, it is not always advisable to be formalistic or technical. The history of the personal liberty jurisprudence of this Court and other constitutional courts includes petitions for a writ of habeas corpus and for other writs being entertained even on the basis of a letter addressed to the Chief Justice or the Court.' Therefore, the courts cannot adopt a rigid or formalistic approach whilst considering any issue that touches upon the rights contained in Article 21.

17.8. We may also refer with benefit to the recent judgment of this Court in S. Kasi v. State, (2021) 12 SCC 1, wherein it was observed that the indefeasible right to default bail under Section 167(2) is an integral part of the right to personal liberty under Article 21, and the said right to bail cannot be suspended even during a pandemic situation as is prevailing currently. It was emphasised that the right of the accused to be set at liberty takes precedence over the right of the State to carry on the investigation and submit a charge-sheet.

17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of

procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case." (emphasis in original and supplied)

41. As a consequence of the right flowing from the said provision, courts will have to give due effect to it, and thus any detention beyond this period would certainly be illegal, being an affront to the liberty of the person concerned. Therefore, it is not only the duty of the investigating agency but also the courts to see to it that an accused gets the benefit of Section 167(2)." (emphasis supplied)

66. Sub-section (3) of Section 167 of the CrPC, 1973 warrants a Magistrate to record reasons by speaking, reasoned order while granting authorisation. As stated, this being a judicial order, touching upon the rights of an accused, adequate reasons are expected to be recorded. Needless to state that any such order passed is amenable to challenge before the higher judicial forum, though not by way of a Habeas Corpus petition.

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

67. We have already touched upon the mandatory function that a Magistrate is to undertake while dealing with a case of remand. He is expected to do a balancing act. As a matter of rule, the investigation is to be completed within 24 hours and therefore it is for the investigating agency concerned to satisfy the Magistrate with adequate material on the need for its custody, be it police or otherwise. This important factor is to be kept in mind by him while passing the judicial order. We reiterate that Section 19 of the PMLA, 2002, supplemented by Section 167 of the CrPC,1973 does provide adequate safeguards to an arrested person. If Section 167 of the CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise.

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

about the authority which is to take action for non-

compliance of the mandate of Section 19 of the PMLA, 2002. A remand being made by the Magistrate upon a person being produced before him, being an independent entity, it is well open to him to invoke the said provision in a given case. To put it otherwise, the Magistrate concerned is the appropriate authority who has to be satisfied about the compliance of safeguards as mandated under Section 19 of the PMLA, 2002. On the role required to be played by the Magistrate, qua a remand, we do not wish to go any further as it has been dealt with by this Court in Satyajit Ballubhai Desai v. State of Gujarat, (2014) 14 SCC 434:

> "9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers which at times may be at the instance of an interested party also. But it is also equally true that the police custody although is not the be-all and end-all of the whole investigation, yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and, has therefore, permitted limited police custody." (emphasis supplied)

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

70. An external aid would be required only when there is a lacuna, especially when the provisions are pari materia. We are conscious of the fact that in certain statutes like Foreign Exchange Regulation Act, 1973 and the Customs Act, 1962, etc. there is an express provision which confers the powers of police officers upon the authorised officers for the purpose of arrest and then custody to the police. That does not mean that there is no power under the PMLA, 2002 read with the CrPC, 1973 to the Authorised Officer to seek custody. There is a fallacy in the said argument. One cannot apply Section 167(2) of the CrPC, 1973 in piecemeal. There cannot be an application of the provision only for an arrest but not for custody. Such an argument is also dangerous from the point of view of

an arrestee as the benefit conferred under the proviso to Section 167(2) of the CrPC, 1973 will not be available.

Vijay Madanlal Choudhary (supra):

> "88. ...This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section 19(3), it has to be complied by the authorised officer. ..."

71. Deepak Mahajan (supra):

> "106. In our considered opinion, the view taken in O.P. Gupta and M.K.S. Abu Bucker and also of the Kerala High Court and Gujarat High Court is the logical and correct view and we approve the same for the reasons we have given in the preceding part of this judgment. We, indeed, see no imponderability in construing Section 35(2) of FERA and Section 104(2) of Customs Act that the said provisions replace Section 167(1) and serve as a substitute thereof substantially satisfying all the required basic conditions contained therein and that consequent upon such replacement of sub-section (1) of Section 167, the arrested person under those special Acts would be an accused person to be detained by the Magistrate under sub-section (2) of Section 167. In passing, it may be stated that there is no expression 'police officer' deployed in Section 167(1) nor does it appear in any part of Section 167(2). The authority for detaining a person as contemplated under Section 167(2) is in aid of investigation to be carried on by any prosecuting agency who is invested with the power of investigation.
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> 108. The word 'investigation' is defined under Section 2(h) of the present Code [which is an exact reproduction of Section 4(1)(b) of the old Code] which is an inclusive definition as including all the proceedings under the Code for the collection of evidence conducted by a police officer or any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. The said word 'investigation' runs through the entire fabric of the Code. There is a long course of decisions of this Court as well as of the various High Courts explaining in detail, what the word 'investigation' means and is? It is not necessary for the purpose of this case to recapitulate all those decisions except the one in H.N. Rishbud v. State of Delhi. In that decision, it has been held that:
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> (SCR pp. 1157-58) "Under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence

> relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under Section 173." The steps involved in the course of investigation, as pointed out in Rishbud case have been reiterated in State of M.P. v. Mubarak Ali.

109. No doubt, it is true that there are a series of decisions holding the view that an Officer of Enforcement or a Customs Officer is not a police officer though such officers are vested with the powers of arrest and other analogous powers. Vide Ramesh Chandra v. State of W.B. and Illias v. Collector of Customs, Madras. In the above decisions, this Court has held that the above officers under the special Acts are not vested with the powers of a police officer qua investigation of an offence under Chapter XII of the Code including the power to forward a report under Section 173 of the Code. See also State of Punjab v. Barkat Ram and Badku Joti Savant v. State of Mysore.

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113. Though an authorised officer of Enforcement or Customs is not undertaking an investigation as contemplated under Chapter XII of the Code, yet those officers are enjoying some analogous powers such as arrest, seizures, interrogation etc. Besides, a statutory duty is enjoined on them to inform the arrestee of the grounds for such arrest as contemplated under Article 22(1) of the Constitution and Section 50 of the Code. Therefore, they have necessarily to make records of their statutory functions showing the name of the informant, as well as the name of the person who violated any other provision of the Code and who has been guilty of an offence punishable under the Act, nature of information received by them, time of the arrest, seizure of the contraband if any and the statements recorded during the course of the detection of the offence/offences.

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116. It should not be lost sight of the fact that a police officer making an investigation of an offence representing the State files a report under Section 173 of the Code and becomes the complainant whereas the prosecuting agency under the special Acts files a complaint as a complainant i.e. under Section 61(ii) in the case of FERA and under Section 137 of the Customs Act. To say differently, the police officer after consummation of the investigation files a report under Section 173 of the Code upon which the Magistrate may take cognizance of any offence disclosed in the report under Section 190(1)(b) of the Code whereas the empowered or authorised officer of the special Acts has to file only a complaint of facts constituting any offence under the provisions of the Act on the receipt of which the Magistrate may take cognizance of the said offence under Section 190(1)(a) of the Code. After taking cognizance of the offence either upon a police report or upon receiving a complaint of facts, the Magistrate has to proceed with the case as per the procedure prescribed under the Code or under the special procedure, if any, prescribed under the special Acts. Therefore, the word

'investigation' cannot be limited only to police investigation but on the other hand, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whether he be a police officer or empowered or authorised officer or a person not being a police officer under the direction of a Magistrate to make an investigation vested with the power of investigation.

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120. From the above discussion it cannot be said that either the Officer of Enforcement or the Customs Officer is not empowered with the power of investigation though not with the power of filing a final report as in the case of a police officer.

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128. To sum up, Section 4 is comprehensive and that Section 5 is not in derogation of Section 4(2) and it only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the Special Act or any special provision excluding the jurisdiction or applicability of the Code. In fact, the second limb of Section 4(2) itself limits the application of the provisions of the Code reading, "... but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." xxx xxx xxx

131. The submission that as there is no investigation within the terms of the Code in the field of FERA or Customs Act, Section 4(2) of the Code can have no part to play, has to be rejected for the reasons given by us while disposing of the contention "What investigation means and is" in the preceding part of this judgment.

132. For the aforementioned reasons, we hold that the operation of Section 4(2) of the Code is straightaway attracted to the area of investigation, inquiry and trial of the offences under the special laws including the FERA and Customs Act and consequently Section 167 of the Code can be made applicable during the investigation or inquiry of an offence under the special Acts also inasmuch as there is no specific provision contrary to that excluding the operation of Section 167.

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134. There are a series of decisions of various High Courts, of course with some exception, taking the view that a Magistrate before whom a person arrested by the competent authority under the FERA or Customs Act is produced, can authorise detention in exercise of his powers under Section 167. Otherwise the mandatory direction under the provision of Section 35(2) of FERA or Section 104(2) of the Customs Act, to take every person arrested before the Magistrate without unnecessary delay when the arrestee was not released on bail under sub-section (3) of those special Acts, will become purposeless and meaningless and to say that the courts even in the event of refusal of bail have no choice but to set the person arrested at liberty by folding their hands as a helpless spectator in the

face of what is termed as "legislative casus omissus" or legal flaw or lacuna, it will become utterly illogical and absurd." (emphasis supplied)

72. Ashok Munilal Jain (supra):

> "3. We have gone through the orders passed by the trial court as well as by the High Court. We may state at the outset that insofar as the High Court is concerned, it has not given any reasons in support of its aforesaid view except endorsing the view of the trial court to the effect that the provisions of Section 167(2) CrPC are not applicable to the cases under the PMLA Act. This position in law stated by the trial court does not appear to be correct and even the learned Attorney General appearing for the respondent could not dispute the same. We may record that as per the provisions of Section 4(2) CrPC, the procedure contained therein applies in respect of special statutes as well unless the applicability of the provisions is expressly barred. Moreover, Sections 44 to 46 of the PMLA Act specifically incorporate the provisions of CrPC to the trials under the PMLA Act. Thus, not only that there is no provision in the PMLA Act excluding the applicability of CrPC, on the contrary, provisions of CrPC are incorporated by specific inclusion. Even Section 65 of the PMLA Act itself settles the controversy beyond any doubt in this behalf which reads as under:
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> "65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."
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> 4. We may also refer to the judgment of this Court in Directorate of Enforcement v. Deepak Mahajan, (1994) 3 SCC 440 : 1994 SCC (Cri) 785, wherein it was held as under: (SCC p. 480, para
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> 136) "136. In the result, we hold that sub-sections (1) and (2) of Section 167 are squarely applicable with regard to the production and detention of a person arrested under the provisions of Section 35 of FERA and Section 104 of the Customs Act and that the Magistrate has jurisdiction under Section 167(2) to authorise detention of a person arrested by any authorised officer of the Enforcement under FERA and taken to the Magistrate in compliance of Section 35(2) of FERA."
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> 5. We, thus, do not agree with the opinion of the High Court that the provisions of Section 167(2) CrPC would not be applicable to the proceedings under the PMLA Act. In the present case, as no complaint was filed even after the expiry of 60 days from the date when the appellant was taken into custody, he was entitled to statutory bail in view of the provisions contained in Section 167(2) CrPC." (emphasis supplied)
> PRINCIPLES GOVERNING THE INTERPRETATION OF STATUTES:

73. Having discussed the scope and ambit of Section 167 of the CrPC, 1973, we believe that it being a penal statute, a literal, natural and simple interpretation is to be given. When there is no need for a purposive interpretation and the statute clearly expresses its intendment, an act of judicial surgery is best avoided. Nowhere in the provision, it is stated that there cannot be any custody in favour of an investigating agency beyond the first 15 days of the remand, as against the express provision discussed in detail. Similarly, while understanding the intendment of Section 167 of the CrPC, 1973, the provision has to be read along with the proviso. This Court in Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67:

> "67. While interpreting any statutory provision, it has always been accepted as a golden rule of interpretation that the words used by the legislature should be given their natural meaning. Normally, the courts should be hesitant to add words or subtract words from the statutory provision. An effort should always be made to read the legislative provision in such a way that there is no wastage of words and any construction which makes some words of the statute redundant should be avoided. No doubt, if the natural meaning of the words leads to an interpretation which is contrary to the objects of the Act or makes the provision unworkable or highly unreasonable and arbitrary, then the courts either add words or subtract words or read down the statute, but this should only be done when there is an ambiguity in the language used. In my view, there is no ambiguity in the wording of Section 167(2) of the Code and, therefore, the wise course would be to follow the principle laid down by Patanjali Shastry, C.J. in Aswini Kumar Ghose v. Arabinda Bose, (1952) 2 SCC 237 : AIR 1952 SC 369, where he very eloquently held as follows: (AIR p. 377, para 26) "26. ... It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute." In Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376, S.R. Das, J., speaking for this Court, held as follows:
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> (AIR p. 381, para 6) "6. ... The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning."
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> 68. External aids of interpretation are to be used only when the language of the legislation is ambiguous and admits of two or more meanings. When the language is clear or the ambiguity can be resolved under the more common rules of statutory interpretation, the court would be reluctant to look at external aids of statutory interpretation.
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> 69. Gajendragadkar, J., speaking for this Court in Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907 held : (AIR p. 910, para 6) "6. ... the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself."

> 70. These sound principles of statutory construction continue to hold the field. When the natural meaning of the words is clear and unambiguous, no external aids should be used." (emphasis supplied)

74. A decision of a Court cannot be read like a statute, out of context and in ignorance of the requisite provisions. Commissioner of Central Excise, Bangalore v. Srikumar Agencies & Ors., (2009) 1 SCC 469:

> "5. "15. ...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 : (1951) 2 All ER 1 (HL)] (AC at p. 761) Lord Macdermott observed : (All ER p. 14 C-D) '... The matter cannot, of course, be settled merely by treating the ipsissima verba 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 ....'
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> 16. In Home Office v. Dorset Yacht Co. Ltd. [1970 AC 1004 :
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> (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said : (All ER p. 297g-h) '... Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' Megarry, J. in Shebherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] observed : (All ER p. 1274 d-e) '... One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament ....' And, in British Railways Board v. Herrington [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said : (All ER p.

761c) '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.'

17. 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.

18. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19) '19. ... 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 Cardozo) 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.' " [Ed. : As observed in Union of India v. Amrit Lal Manchanda, (2004) 3 SCC 75 at pp. 83-84, paras 15-18.]" (emphasis supplied)

75. Satya Pal Singh v. State of Madhya Pradesh, (2015) 15 SCC 613:

> "12. It is well established that the proviso of a statute must be given an interpretation limited to the subject-matter of the enacting provision. Reliance is placed on the decision of this Court rendered by a four-Judge Bench in Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128 , the relevant para 18 of which reads thus: (SCC p. 137) "18. ... A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context' (Thompson v. Dibdin, 1912 AC 533 (HL)). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction." (emphasis supplied)
>
> 13. Further, a three-Judge Bench of this Court by majority of 2:1 in S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591 has elaborately examined the scope of the proviso to the substantive provision of the section and rules of its interpretation.

The relevant paragraphs are reproduced hereunder: (SCC pp. 607-08, paras 30, 32-33 & 36-37) "30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:

> (a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation; but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision." (emphasis supplied)
DOES SECTION 167(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973 RESTRICT A POLICE CUSTODY ONLY TO THE FIRST 15 DAYS OF REMAND?

76. We have given our interpretation on the scope and ambit of Section 167(2) of the CrPC, 1973. With due respect, we are unable to concur with the views expressed in Anupam J. Kulkarni (supra) to the effect that a police custody shall only be within the first 15 days of remand. Nowhere under Section 167(2) of the CrPC, 1973 such a stipulation is found either directly or indirectly. The words such as "time to time", "such custody", and "in the whole" mentioned under Section 167(2) of the CrPC, 1973 have not been properly taken note of and interpreted. What is required is a simple and natural interpretation when there is no semblance of ambiguity.

77. The intendment behind the proviso has also not been construed. Section 167(2) of the CrPC, 1973, as stated, does a fine balancing act between the liberty of an individual and a proper investigation. Perhaps, this Court was keeping in mind the earlier CrPC, 1898 which restricts the period of investigation to 15 days alone. Once the period is given as 60 days or 90 days as the case may be, to an investigating agency, in tune with the proviso, Section 167(2) of the CrPC, 1973 by even normal interpretation facilitates a police custody spanning over the said period, but "whole" being for 15 days.

It appears to us that a clear provision has not been construed correctly, while adding certain words.

78. The decision in Chaganti Satyanarayana v. State of Andhra Pradesh, (1986) 3 SCC 141 has also been misconstrued. Though the facts are a bit different in the said decision, this Court has rightly understood sub-section (2) of Section 167 of the CrPC, 1973:

> "16. As sub-section (2) of Section 167 as well as proviso (1) of sub-section (2) of Section 309 relate to the powers of remand of a magistrate, though under different situations, the two provisions call for a harmonious reading insofar as the periods of remand are concerned. It would, therefore, follow that the words "15 days in the whole" occurring in sub-section (2) of Section 167 would be tantamount to a period of "15 days at a time" but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days. Where an accused is placed in police custody for the maximum period of 15 days allowed under law either pursuant to a single order of remand or to more than one order, when the remand is restricted on each occasion to a lesser number of days, further detention of the accused, if warranted, has to be necessarily to judicial custody and not otherwise. The legislature having provided for an accused being placed under police custody under orders of remand for effective investigation of cases has at the same time taken care to see that the interests of the accused are not jeopardised by his being placed under police custody beyond a total period of 15 days, under any circumstances, irrespective of the gravity of the offence or the serious nature of the case." The aforesaid passage has been taken note of in Anupam J.Kulkarni (supra) to mean that an investigation with custody is permissible only within the first 15 days of remand.

79. Even assuming that the rationale behind Anupam J. Kulkarni (supra) is correct, the legal maxim actus curiae neminem gravabit would certainly apply. This aspect has not been taken note of in the said judgment, followed by the others. The larger Bench of this Court in Budh Singh v. State of Punjab (2009) 9 SCC 266, mainly gave its imprimatur to the findings rendered in Anupam J. Kulkarni (supra). Allowing the said interpretation which in our respectful view is contrary to the very mandate of Section 167(2) of the CrPC, 1973 would cause serious prejudice to the investigation.

While agreeing with the views expressed by this Court in Vikas Mishra (supra) which actually dealt with the issue of counting the days, we are inclined to refer the larger issue of the actual import of Section 167(2) of the CrPC, 1973 as to whether the 15 days period of custody in favour of the police should be only within the first 15 days of remand or spanning over the entire period of investigation - 60 or 90 days, as the case may be, as a whole.

This issue needs to be put to rest as a legal proposition on an authoritative pronouncement by a larger Bench, though it does not alter our consideration herein in the facts and circumstances arising in this case. Notwithstanding the same, we proceed further to discuss and conclude to decide these petitions since a conclusion can be reached in the facts of this case guided by the law as it exists and noticed herein.

DISCUSSION

80. We have already narrated the foundational facts without going in detail. This case has got a chequered history with the pendulum swinging in favour of one side to another. On the earlier two occasions, the appellant has succeeded before the High Court to be reversed only by this Court. We would record only one fact, namely that the order rejecting the bail has attained finality.

81. We shall first consider the maintainability of the writ petition filed. A writ of Habeas Corpus was moved questioning the arrest made. When it was taken up for hearing on a mentioning, the next day by the Court, the appellant was duly produced before the learned Principal Sessions Judge in compliance with Section 19 of the PMLA, 2002. The custody thus becomes judicial as he was duly forwarded by the respondents. Therefore, even on the date of hearing before the High Court there was no cause for filing the Writ Petition being HCP No. 1021 of 2023. Added to that, an order of remand was passed on 14.06.2023 itself. The two remand orders passed by the Court, as recorded in the preceding paragraphs, depict a clear application of mind. Despite additional grounds having been raised, they being an afterthought, we have no hesitation in holding that the only remedy open to the appellant is to approach the appropriate Court under the Statute. This was obviously not done. We may also note that the appellant was very conscious about his rights and that is the reason why, by way of an application he even opposed the remand.

82. Despite our conclusion that the writ petition is not maintainable, we would like to go further in view of the extensive arguments made by the learned Senior Advocates appearing for the appellant. As rightly contended by the learned Solicitor General the scheme and object of the PMLA, 2002 being a sui generis legislation is distinct. Though we do not wish to elaborate any further, we find adequate compliance of Section 19 of the PMLA, 2002 which contemplates a rigorous procedure before making an arrest. The learned Principal Sessions Judge did take note of the said fact by passing a reasoned order. The appellant was accordingly produced before the Court and while he was in its custody, a judicial remand was made. As it is a reasoned and speaking order, the appellant ought to have questioned it before the appropriate forum. We are only concerned with the remand in favour of the respondents. Therefore, even on that ground we do hold that a writ of Habeas Corpus is not maintainable as the arrest and custody have already been upheld by way of rejection of the bail application.

83. The arguments of the learned Senior Advocates on the interpretation of Section 167(2) of the CrPC, 1973 cannot be accepted as the law has been quite settled by this Court in Deepak Mahajan (supra). One cannot say that while all other safeguards as extended under Section 167(2) of the CrPC, 1973 would be available to a person accused but nonetheless, the provision regarding remand cannot be applied. Section 167(2) of the CrPC, 1973 merely complements and supplements Section 19 of the PMLA, 2002. We do not find any inherent contradiction between these two statutes. Obviously, an arrest under Section 19 of the PMLA, 2002 can only be made after the compliance of much more stringent conditions than the one available under Section 41 of the CrPC, 1973.

84. The interplay between an investigation and inquiry conferring the same meaning is only for the usage of common materials arising therefrom. Such materials are to be utilized for both the

purposes. This is the basis upon which they are read together, giving the same meaning at a particular stage.

In Vijay Madanlal Choudhary (supra) it was in the context of a challenge to the enactment, particularly in the light of Section 25 of the Evidence Act, 1872.

85. Shri Kapil Sibal, learned Senior Advocate, in his inimitable style once again placed reliance upon Vijay Madanlal Choudhary (supra) to press home his view that an authorised officer under the PMLA, 2002 is not a police officer as declared in Vijay Madanlal Choudhary (supra). As stated, an officer is expected to perform as per the statute. In the process of investigation, he has been given certain powers. One shall not confuse such powers conferred under the statute with the police power, however, when it comes to application of Section 167(2) of the CrPC, 1973 such an authority has to be brought under the expression "such custody" especially when the words "police custody" are consciously omitted. Therefore, the ratio laid down in Vijay Madanlal Choudhary (supra) has to be understood contextually, in its own perspective.

86. Much arguments have been made on the basis of Anupam J. Kulkarni (supra). As rightly submitted by the learned Solicitor General, the facts are different and therefore distinguishable. In the case on hand, there is no custody in favour of the respondents, a fact even acknowledged by the appellant earlier through the arguments of his advocates. The learned Solicitor General is right in his submission that apart from the fact that the word "custody" is different from "detention", it can only be physical. As pointed out by him even the High Court has observed that the appellant continues to be in judicial custody. Admittedly, physical custody has not been given to the respondents. Admission of the appellant to the hospital of his choice cannot be termed as a physical custody in favour of the respondents.

Custody could not be taken on the basis of the interim order passed by the High Court which certainly shall not come in the way of calculating the period of 15 days. An investigating agency is expected to be given a reasonable freedom to do it's part. To say that the respondents ought to have examined the appellant in the hospital, and that too with the permission of the doctors, can never be termed as an adequate compliance.

87. Any order of the Court is not meant to affect a person adversely despite its ultimate conclusion in his favour. The doctrine actus curiae neminem gravabit would certainly apply in calculating the period of 15 days.

88. SUMMATION OF LAW:

> i. When an arrestee is forwarded to the jurisdictional Magistrate under Section 19(3) of the PMLA, 2002 no writ of Habeus Corpus would lie.
>
> Any plea of illegal arrest is to be made before such Magistrate since custody becomes judicial.

ii. Any non-compliance of the mandate of Section 19 of the PMLA, 2002 would enure to the benefit of the person arrested. For such non-

compliance, the Competent Court shall have the power to initiate action under Section 62 of the PMLA, 2002.

iii. An order of remand has to be challenged only before a higher forum as provided under the CrPC, 1973 when it depicts a due application of mind both on merit and compliance of Section 167(2) of the CrPC, 1973 read with Section 19 of the PMLA 2002.

iv. Section 41A of the CrPC, 1973 has got no application to an arrest made under the PMLA 2002.

v. The maximum period of 15 days of police custody is meant to be applied to the entire period of investigation – 60 or 90 days, as a whole.

vi. The words "such custody" occurring in Section 167(2) of the CrPC, 1973 would include not only a police custody but also that of other investigating agencies.

vii. The word "custody" under Section 167(2) of the CrPC, 1973 shall mean actual custody.

viii. Curtailment of 15 days of police custody by any extraneous circumstances, act of God, an order of Court not being the handy work of investigating agency would not act as a restriction. ix. Section 167 of the CrPC, 1973 is a bridge between liberty and investigation performing a fine balancing act. x. The decision of this Court in Anupam J. Kulkarni (supra), as followed subsequently requires reconsideration by a reference to a larger Bench.

CONCLUSION:

89. In view of the abovesaid discussion, we have no hesitation in holding that the appeals arising out of Special Leave Petition (Criminal) Nos. 8939- 8940 of 2023 and the appeals arising out of Special Leave Petition (Criminal) Nos. 8652-8653 of 2023, are liable to be dismissed, upholding the views expressed in the impugned judgments. Accordingly, they are dismissed.

90. The only other question to be considered is with respect to the custody of the appellant. The learned Solicitor General submitted that the period of 15 days expires by 12.08.2023. Even the learned Principal Sessions Judge has granted 8 days of custody, though could not be given effect to. Conscious of the time constraint, we are inclined to permit the respondents to have custody of the appellant till 12.08.2023. Accordingly, the appeals arising out of Special Leave Petition (Criminal) Nos. 7437 of 2023, 7460 of 2023, and 8750 of 2023 filed by the respondents are disposed of. Application for intervention is dismissed. Application for direction stands disposed of giving liberty

to the applicant to have recourse to the remedy known to law.

Pending applications, if any, also stand disposed of.

91. As already noted hereinabove, the Registry is directed to place the matter before Hon'ble the Chief Justice of India for appropriate orders to decide the larger issue of the actual import of Section 167(2) of the CrPC, 1973 as to whether the 15 days period of custody in favour of the police should be only within the first 15 days of remand or spanning over the entire period of investigation – 60 or 90 days, as the case may be, as a whole.

.....J. (A.S. BOPANNA) .....J. (M. M. SUNDRESH) New Delhi, August 07, 2023