IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	**27.06.2023**
PRONOUNCED ON :	**04.07.2023**

CORAM:

THE HON'BLE MRS.JUSTICE J. NISHA BANU

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

HABEAS CORPUS PETITION NO.1021 OF 2023

and H.C.M.P. in U.S.R.No.4735 of 2023

Megala .. Petitioner

Versus

1. The State represented by
   Deputy Director,
   Directorate of Enforcement,
   Chennai

2. The State represented by
   Assistant Director,
   Directorate of Enforcement,
   Chennai .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for a direction to the respondents herein to produce the body of the detenu by name Shri V. Senthil Balaji, S/o Velusamy, aged about 48 years before this Court and set him at liberty.

For Petitioner : Mr. Mukul Rohatgi, Senior Advocate
Mr. N.R.Elango, Senior Advocate
For Mr.N. Bharanikumar

For Respondents : Mr. Tushar Mehta,
Solicitor General of India,
Assisted by Mr.Zoheb Hossain,
Special Counsel, ED *and*
Mr.A.R.L. Sundaresan,
Addl. Solicitor General of India
Assisted by Mr.N.Ramesh, SPP-ED

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O R D E R

J.NISHA BANU J.,

1) This Habeas Corpus Petition is filed under Article 226 of the Constitution of India praying to issue a Writ directing the respondents to produce the body of the detenu Shri V.Senthil Balaji, S/o Velusamy aged

about 48 years before this Court and set him free.

1.2) The petitioner is the wife of the detenu in CC Nos.19, 24 &25 of 2021 on the file of the Learned Additional Special Court against MP/MLA for offences under Sec 406, 409 420, 506 (1) read with Sec 34 of the Indian Penal Code.

1.3) The allegation against the detenu is that, during 2014, while officiating as a Transport Minister in the Government of Tamil Nadu, he had obtained money from third parties promising jobs in the Transport Department and thereafter cheated them. On the basis of the said offences, a case is now registered by the Enforcement Directorate under Sec 4 of the PMLA, 2002 and he was arrested at about 1.30 AM on 14.06.2023.

1.4) The petitioner complains that Notice under Sec 41-A CrPC was not issued to him and the grounds of arrest was not informed to him at the time of arrest and he was not permitted to avail the right to consent a legal counsel in violation of Article 22 (1) of the Constitution of India

necessitating this Petition.

1.5) The petitioner alleges that the Officers descended into his official house of the detenu without notice at about 7.30 AM on 13.06.2023 and started interrogating him for about 16 hours without proper food and water, manhandled and during the proceeding he fell sick, suffered severe chest pain and breathing trouble and he was admitted to the Tamil Nadu Government Multi Super speciality hospital in the ICU and treated as inpatient.

1.6) The petitioner submits that after the arrest, for taking the medical fitness certificate at the hospital at 2.10 AM for the purpose of remand, the doctors upon examining him found him to have Tachycardia with Acceleration.

1.7) The petitioner alleges that the detenu was illegally detained in his house and not allowed to meet any of his relatives, friends and advocates. It is alleged that despite giving full cooperation for the enquiries conducted by

the officers, they had detained him without observing the due process of law.

1.8) The petitioner alleges that the detenu was arrested at about 1.30AM on 14.06.2023 and she got to know of it only when the electronic media flashed the news that he was arrested.

1.9) The petitioner submits that under section 4 of the PMLA, 2002, the maximum punishment is seven years and therefore the provisions of Sec 41 A of Cr.P.C. is attracted.

1.10) The petitioner submits that since the grounds of arrest was not informed to the detenu, the factum of arrest was not informed to his relatives, no notice under Sec 41 A of CrPC was issued to the detenu prior to his arrest, search person did not sign the sign the statement before taking the detenu into custody and no signature obtained in the arrest form, the arrest and detention is illegal and unconstitutional.

1.11) The petitioner submits that Sec 60 A of the Cr.P.C mandates that no

arrests shall be made except as provided under this code.

1.12) The petitioner submits that the actions of the respondents is politically motivated. It submits that the respondents which is one of the agency of the Union Government is used to defame and demoralise the detenu who is a successful minister in the Government of Tamil Nadu. She submits that the present action is also to bring disrepute to the government of Tamil Nadu due to political malafides.

1.13) The petitioner submits that if the detenu is removed from the care of the hospital, or sent to judicial custody, his life would be put to grave prejudice that can not be reversed and that they have no effective alternative or efficacious remedy and therefore have no option except to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India.

2. Counter Affidavit of the 1st Respondent:-

2.1) The first respondent submits that the Habeas Corpus Petition is not maintainable in law and on facts as the alleged detenu can, by no stretch of imagination, be considered as in illegal detention as he is in Judicial Custody pursuant to an order of Remand passed by the Learned Special Court for PMLA cases by an order dated 14.6.2023.

2.2) The 1st Respondent submits that the Central Crime Branch, Chennai, had invoked the provisions of Indian Penal Code (IPC) and Prevention of Corruption Act (PC Act), which are Scheduled Offences to Prevention of Money Laundering Act (PMLA). As it appeared prima facie that Sh. V.Senthil Balaji & ors had acquired proceeds of crime as defined u/s. 2(1)(u), 2(1)(v) and 3 of PMLA, by commission of scheduled offence, an Enforcement Case Information Report (ECIR) bearing No. ECIR/MDSZO/21/2021 dated 29.07.2021 was recorded by the Respondent Department and investigation under the provisions of PMLA was initiated.

2.3) The first respondent submits that based on the reasons to believe that

Sh. V Senthil Balaji had committed the offence of money laundering and that he has been in the possession of proceeds of crime involved in money laundering and also the records related to money laundering, Search operations under Section 17(1) of the PMLA, 2002 were carried out at the premises of Sh. V Senthil Balaji and others on 13.06.2023. By virtue of section 17(2) of the PMLA, the details of search and seizure were forwarded to the Hon'ble Adjudicating Authority (PMLA), New Delhi immediately. During search, he was not detained as alleged. He was present at his official residence during search.

2.4) The 1st respondent submits that as stated above, after completion of search proceedings on 13.06.2023, the Summons u/s 50(2) of PMLA was issued and communicated to Sh. V Senthil Balaji but he refused to sign and receive it. He started behaving in intimidating manner, shouted, and yelled at the officer that he is a sitting minister in the State. With no other option, in the presence of two witnesses, the Respondent attempted to record the statement of Sh. V Senthil Balaji on 14.06.2023, but he has not responded to

any of the questions posed. Therefore, he has been completely non cooperative during the summon proceedings.

2.5) The 1st respondent submits that the alleged transactions and the materials gathered during the investigation including the statements given by some accused/victims/witnesses clearly point out the commission of offence of money laundering. There was neither justification nor evidence to show that the source of huge cash deposits is from his genuine income. Furthermore, the accused is still likely to destroy material evidences, material objects etc. and influence the witnesses which will frustrate the proceedings under PMLA.

2.6) The 1st respondent submits that in view of the above and considering the seriousness and gravity of the matter, in exercise of the powers conferred u/s 19(1) of the PMLA, 2002, the Respondent and the Investigating Officer in this case, on the basis of material in possession, had reasons to believe that Sh. V. Senthil Balaji, is guilty of the offence of Money Laundering u/s. 3 of the PMLA, 2002, punishable u/s. 4 of the

PMLA, 2002 and thus arrested him on 14.06.2023 at about 1.39 am under the provisions of section 19(1) of the PMLA, 2002 r/w Rule 6 of the PMLA (The Forms and Manner of Forwarding a Copy of Order of Arrest of a Person Along With The Material To The Adjudicating Authority and Its Period of Retention) Rules, 2005.

Communication of information of arrest to his relatives:

2.7) The 1st respondent submits that at the time of arrest he was informed of the grounds of his arrest and the grounds of arrest were specifically read over to him but he has refused to acknowledge and refused to sign. Therefore, the arrest order/memo was executed in the presence of two independent witnesses. While arresting Sh. V Senthil Balaji, the guidelines laid down by the Hon'ble Apex Court in the case of DK Basu were fully complied without any omission and also scrupulously followed the ingredients of the Article 22 of Constitution of India.

2.8) The 1st respondent submits that, immediately after the arrest 1.39am,

the Respondent had duly complied with the Constitutional requirements such as intimation of grounds of arrest to the Petitioner's husband and intimation of arrest to the Petitioner herein as well. There were no relatives of detenu staying at the premises. It is said relatives of detenu were at Karur and the detenu alone was staying at his official residence on the given day However, the Respondent had duly attempted to convey the information arrest of her husband over available contact numbers, viz., phone call Mr. Ashok Kumar, brother of Mr. Senthil Balaji & Mrs. Nirmala, Sister-in law of Mr. Senthil Balaji at about 1.41am, but efforts went futile as they failed to respond to the call. Further, information of arrest was conveyed through text message to Mr. Ashok Kumar, brother of Mr. Senthil Balaji at about 1.44 am and finally information was even conveyed to (i) the Petitioner herein, (ii) Mr.Ashok Kumar and (ii) Mr. Sathish Kumar. Chartered Accountant of Mr. Senthil Balaji on the authenticated Email Id available on the records at about 8.12 am. It is pertinent to note that the Petitioner has not disputed on the same. Thus, it is evident that the Respondent has taken due care and steps in complying with the procedure established under law at the time of arrest.

2.9) The Respondent further places reliance on the Order dated 16.06.2023 of the Ld. Principal Sessions Judge, Chennai, dismissing the bail petition, in which duly records that,

> "*12: The learned senior counsel who appeared for the accused would also submit that intimation has not been given by the respondent to the relative of the accused to the effect of arrest of the accused and also the grounds of arrest The relatives of the accused are not available at the place of arrest and it is not disputed. The respondent attempted to intimate the arrest of the accused and the Grounds of arrest over phone to the wife and brother of the accused, but they did not pick the phone calls. Therefore, intimation was given through SMS and Emails of the wife and brother of the accused and the prove the same, copies of the call, SMS history and computer-generated Email copy has been produced before this court."*

Therefore, the contention of the Petitioner that the Grounds of Arrest was not informed to the relatives of the arrestee is false and bereft of merits and are liable to rejected in limine.

Non-applicability of Section 41A of Cr PC in respect of arrest made under Section 19 of PMLA

2.10) The 1st respondent submits that Sec. 41, 41A, 50A and 61A of Cr.P.C. will not be applicable to the present case as PMLA is a special enactment which contains provisions for Arrest, and PMLA has an overriding effect as against any other law for the time being in force. The same has been considered by the Hon'ble Court in ***Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.*** **2022 SCC OnLine SC 929**. In the said judgment arguments were advanced on the side of the petitioners/accused that section 19 of PMLA was violative of Article 21 and 22 of the Constitution of India as there was no mandate to comply with the mandatory requirements under the Code of Criminal Procedure was negatived by the Hon'ble Supreme Court. The Hon'ble 3 Judges Bench held that section 19 of PMLA was not unconstitutional and had all inbuilt safeguards and procedures which comply with Article 22 of the Constitution of India. In para 325, the Hon'ble 3 Judges Bench has categorically held provisions of Criminal Procedure Code are not comparable to the provisions of PMLA and PMLA stands on a different footing. In the light of the said judgment, the argument that the provisions of the Criminal Procedure Code have not been followed before

effecting arrest is misconceived and is untenable, that too in a Habeas Corpus Petition and the Habeas Corpus Petition is therefore not maintainable and deserves to be dismissed. Further, the Hon'ble 3 Judges Bench of Hon'ble Supreme Court in Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors. 2022 SCC OnLine 929 at Paras 322-326 has reiterated that Section 19 has in-built safeguards. The relevant extract is as under.

> *"325. 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 2002 Act. The safe guards 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.*

> **326. Considering the above, we have no hesitation in upholding the validity of Section 19 of the 2002 Act. We reject the grounds pressed into service to declare Section 19 of the 2002 Act as unconstitutional On the other hand, we hold that such a provision has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act of prevention of money-laundering and confiscation of proceeds of crime involved in money-laundering, including to prosecute persons involved in the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof"*

2.11) The 1st respondent submits that the Petitioner's husband Mr. Senthil Balaji, on 14.06.2023, filed a petition for Bail and also a petition objecting to the remand, before the Ld. Principal Sessions Judge, Chennai. The learned Special Judge was pleased to dismiss the said petition objecting remand on 14.6.2023 as infructuous as the accused was already remanded to Judicial custody. After hearing, the Bail petition was dismissed by the Ld. Principal Sessions Judge vide its order dated 16.06.2023 holding as follows;

> *"11…….Now, the court has to consider that whether the Investigating Agency has fulfilled the conditions as per Sec. 19 of PMLA or not? Sec. 19 of the PMLA requires certain conditions to be fulfilled prior to the arrest. In particular, the authorised officer on the basis of materials in his possession has to record the reasons to believe in writing in the File. The respondent has complied the said condition by recording his reason to*

belief in writing and it is available in File and a copy of the same has been produced before this court. Proof has also been produced to show that the Deputy Director of Enforcement Directorate has been authorised to investigate the matter. Another aspect of Sec. 19 of PMLA is the communication of the grounds of arrest to the accused and a mere communication of grounds of arrest would not suffice and the authorised officer has to record his reasons to believe in writing and it has to be communicated to the detenu. But, the accused in the present case Sh. V.Senthil Balaji was said to have refused to receive the Grounds of Arrest and also refused to sign. As he is not co-operating for the same, the arrest memo was said to have been executed in the presence of two witnesses and the same has been recorded by the authorised officer in the Grounds of Arrest and the two witnesses have also signed in the arrest memo. In these circumstances, the non-communication of Grounds of Arrest to the accused is not considered as a violation. From the above discussion, the court is of the opinion that the respondent /complainant is not expected to follow the procedure u/s 41-A Cr.P.C and on the other hand, they are expected to fulfill the conditions as required u/s 19 of PMLA and it has been followed".

2.12) In this case, summons for his appearance were issued long back on 17.3.2022, 1.4.2022 and 29.4.2022 and he is aware of the registration of case, and is also aware of the facts of the case and the allegations against him, however he did not appear. He chose to challenge the summons by way of a Writ Petition in WP No. 18213/2022 in this Hon'ble Court and by order

dated 1.9.2022 the Respondents/ED were refrained from proceeding any further till the disposal of (1)Crl O P No.15122/2021, (2) Crl RC No.224/2021 and (3) SLP (Crl) 3941/2022. The said order dated 1.9.2022 was set aside by the Hon'ble Supreme Court on 16.5.2023 in SLP Cri No. 12779 to 12781 of 2022 and the Respondent was permitted to proceed further. Under such circumstances when the Respondent continued with the investigation there was total non-cooperation from the accused Mr. Senthil Balaji and further, his arrest was "required" and hence the arrest was effected. As such there is no violation of any LAW.

Habeas Corpus Petition is Not maintainable once remand order is passed by the competent court

2.13) The husband of the Petitioner herein, i.e., Mr. V. Senthil Balaji was arrested after compliance with the requirements of Section 19 of the PMLA on 14.06.2023 and the Ld. Principal Sessions Judge, Chennai, Special Court, PMLA by way of a judicial order dated 14.06.2023, remanded him to custody till 28.06.2023 after being satisfied with the compliance of the legal requirements. As such the alleged detenu is in lawful Judicial Custody. The

same cannot be challenged at this stage by way of a Habeas Corpus Petition. The Respondent places reliance on the Judgment of the Hon'ble Supreme Court in the case of Serious Fraud Investigation Office vs. Rahul Modi (2019) 5 SCC 266, where it was held as follows:

> *"21. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition. The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the order was passed by it, not only were there orders of remand passed by the Judicial Magistrate as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14-12-2018. The legality, validity and correctness of the order or remand could have been challenged by the original writ petitioners by filing appropriate proceedings. However, they did not raise such challenge before the competent appellate or revisional forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however, considered the matter from the standpoint whether the initial order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent order of remand.*

Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in the said order dated 20-6-2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14-12-2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on 14-12-2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus petition, the High Court was not justified in entertaining the petition and passing the order".

2.14) Further reference is drawn to the case of a Five Judge Constitution Bench of the Hon'ble Supreme Court in ***Sanjay Dutt v. State through CBI Bombay (II)***, **(1994) 5 SCC 410**, has held as under:

48...It is settled by Constitution Bench decisions that a p seeking the writ of habeas corpus on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab (1952) 1 SCC 118: 1952 SCR 395: AIR 1952 SC 106: 1952 Cri LJ 656]; Ram Narayan Singh v. State of Delhi (1953 SCR 652: AIR 1953 SC 277: 1953 Cri LJ 1113 and A.K. Gopalan v. Government of India [(1966) 2 SCR 427: AIR 1966 SC 816:1966 Cri LJ 602].)".

Exclusion of the Period of treatment undergone by the detenu from the

period of custodial interrogation.

2.15) The 1st respondent submits that the Ld. Principal Sessions Judge, Chennai was pleased to grant ED custody of Mr. V. Senthil Balaji, vide its order dated 16.06.2023in Crl.M.P.No. 13572 of 2023 for 8 days from 16.06.2023 to 23.06.2023,with the following conditions.

> *i. "The Deputy Director of Enforcement Directorate shall not remove the accused from the Kaveri Hospital, who has been admitted for treatment.*
>
> *ii. 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*
>
> *iii. 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..."*

2.16) The 1st respondent submits that accordingly. immediately by an e-mail communication a medical opinion was sought and obtained from the team of doctors of Kaveri Hospital, giving treatment to Sh. V Senthil Balaji. In their opinion medical dated 17 June 2023, 07.45 am., the doctors have opined as

follows,

> "*...He is presently hemodynamically stable and is under continuous cardiac monitoring in the ICU, He is advised bed rest and to avoid stressful conditions which might precipitate as adverse cardiac event.*
>
> *If he needs interrogation, it must be done under continuous cardiac monitoring in the ICU under medical supervision. The interrogation session must be interrupted with adequate rest to avoid any adverse health outcome. If there are any changes in his health condition, the interrogation must be stopped."*

2.17) The 1st respondent submits that considering the opinion of doctors about the condition of accused, in the light of the conditions imposed for examination /interrogation of the accused by Ld. Principal Sessions Judge, Chennai, it becomes impossible for the Respondent to conduct any meaningful interrogation or take ED custody of the accused for interrogation and hence ED custody could not be taken and custody order could not be implemented/enforced. Instantly, the Respondent had filed a Memo dated 17.06.2023 before the Ld. Ld. Principal Sessions Judge, Chennai with the following prayer: -

> *"Therefore, it is respectfully prayed that this Hon'ble Court may be pleased to pass an order, to the effect that though the accused was remanded to custody, as the accused was hospitalised of his choice immediately from*

1st day of remand and undergoing treatment, he is to be deemed not under effective custody so that the first 15 days custody period does not come in the way of right of the investigation agency for effective investigation and interrogation and thus render complete justice".

2.18) The 1st respondent submits that the alleged detenu was arrested on 14.6.2023 at 1.39 am and since he complained of chest-pain he was taken to Omandurar Government Super Speciality Hospital and the Doctors after examining him opined that he should be admitted. We were informed on 14.6.2023 that an angiogram was performed and it was reported that there were blocks. On 15.6.2023 the alleged detenu continued in Omandurar Hospital in ICU. On 15.6.2023 pursuant to the orders of this Hon'ble Court in this Habeas Corpus Petition, the alleged detenu was shifted on his request to the private hospital namely, Kauvery Hospital.

2.19) The 1st respondent submits that ED Custody was ordered by the Ld Sessions Judge on 16.6.2023 in the evening at about 6 pm. From 16.6.2023 till date the alleged detenu is in Kauvery Hospital. The Hospital has given a press release that he has undergone "Beating Heart Coronary Artery By-pass

surgery on 21.6.2023. I submit that from 14.6.2023 till date no effective time was available for the Investigating agency to exercise its right for custody as per Sec 167 of the Code and hence it should be deemed that the accused is not under any effective custody so that the first 15 days custody period does not come in the way of the right of the investigating agency for effective investigation and interrogation of the accused. Hence this Hon'ble High Court may be pleased to exclude the period of treatment to be undergone in the hospital from the period of custody as interrogation and investigation would be rendered meaningless during hospitalization. Reliance in this regard is placed on the recent decision of Hon'ble Supreme Court in the case of ***CBI v. Vikas Mishra***, **2023 SCC Online SC 377**, wherein in a similar fact situation, this Hon'ble Court was pleased to hold that period spent in a private hospital would be excluded from the period of custody

> "*21. No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to*

frustrate. Therefore, by not permitting the CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process".

2.20) The 1st respondent further submits that as the order of remand was not put to challenge by the Petitioner this habeas corpus petition is not maintainable. There was no pleading regarding the ground(s) on which the order of remand was bad. Further, the order of remand was not even placed on record. Considering the above well settled legal principle that the validity of arrest cannot be challenged in a habeas corpus petition, once the person arrested has been validly remanded to custody. When this Hon'ble Court entertained the habeas corpus petition Mr. V. Senthil Balaji was already been duly remanded to custody by the Ld. Special Court, hence, the petition is liable to be dismissed at the outset as not maintainable.

2.21) Without prejudice to the question of maintainability of the Habeas Corpus Petition this respondent submits that the accused Mr Senthil Balaji was informed of his Grounds of arrest, his close relatives were informed of the arrest as stated above, Mr Senthil Balaji refused to receive and

acknowledge the arrest order and the arrest memo. All the contentions in para 14 of the affidavit are denied as false and incorrect. The respondent stoutly denies that the alleged detenu was manhandled by the respondent and its officers. He was not illegally detained from 7 am on 13.6.2023 to 2 am on 14.6.2023 as alleged. He was present during the search in his residence. He was not detained as alleged. Contentions in para 15 are stoutly denied as false. All other submissions, assertions and contentions by the petitioner in the affidavit filed in support of the Habeas Corpus petition, contrary to the facts set out in this Counter are denied as false and incorrect.

2.22) The 1st respondent submits that the Respondent herein approached the Hon'ble Supreme Court by way of a Special Leave Petitions in SLP (Crl) No.7437 of 2023 and SLP (Crl) 7460 of 2023, wherein the Hon'ble Division Bench of Supreme Court after hearing the both the sides at length, has posted the matter on 04.07.2023 for further hearing vide its order dated 21.06.2023. Copy of the order dated 21.6.2023 is filed in the typed set of papers.

3) Additional grounds of Petition filed by the petitioner:-

3.1) After craving leave for filing the additional submissions the petitioner submits that when the above-captioned Habeas Corpus Petition was taken up for hearing on 15.06.2023, this Hon'ble High Court of Madras (hereinafter, "this Hon'ble Court") was pleased to pass an order on 15.06.2023 containing certain directions wherein this Petitioner was permitted to file a copy of the remand order and to raise any additional grounds. I, therefore, crave leave of this Hon'ble Court to treat this Affidavit of additional grounds as part and parcel of the affidavit filed along with the above-captioned Habeas Corpus Petition.

3.2) The petitioner submits that that the detenu was one of the Members of the 15th Legislative Assembly of Tamil Nadu, returned as a candidate of the AIADMK party from Aravakurichi Assembly Constituency in the year 2016. I further submit that he was one of the 18 MLAS disqualified at the instance of Thiru. Edapaddi.K.Palanisamy, the then Chief Minister. I further submit that due to intra party disputes, he quit the party and joined the AIADMK faction AMMK in the year 2017 and thereafter the Dravida

Munnetra Kazhagam on December 2018. Out of political vengeance, the then AIADMK Government, led by Edappadi K. Palaniswamy, falsely implicated him in the cases in which the investigations were conducted from the year 2017; and filed a final report in Calendar Case numbers 19, 24 & 25 of 2021, which are pending on the file of Additional Special Court for Trial Cases of M.P. and M.L.A. The detenu is defending himself in those cases in the manner known to law.

3.3) The petitioner submits that in this background the detenu contested 2021 elections from Karur Constituency and won with a margin of around 12,400 votes. I further submit that he was nominated by the DMK party as in-charge of western region of Tamil Nadu. I submit Thiru.K. Annamalai who is the State president of Bharathiya Janata Party, which is the ruling party in the Union Government, has always nursed a grudge against the detenu as he perceives him to be a direct threat in the political arena. It is part of public record that Thiru K. Annamalai has been speaking in public platforms and the media, as early as August 2022, that the detenu will be proceeded against by the central law enforcement agencies.

3.4) The petitioner submits that the detenu was detained between 13.06.2023 @ 07.45 AM to 14.06.2023 @ 02.00 AM by the Enforcement Directorate with the help of Rapid Action Force (Unit of Central Reserve Police Force) of the Union Government. The detenu was so detained in his official residence. His friends and relatives, who were present there, were driven out of the house and the main gates were closed and heavily guarded by the Rapid Action Force. No body knew what was happening inside the house from 13.06.2023 @ 07.45 AM to 14.06.2023 02.00 AM. At around 2.30 AM, he was taken to Government Omandhurar General Hospital, Chennai and was admitted by the Respondent themselves, due to complaints of chest pain.

3.5) The petitioner further submits that as the detenu was arrested in violation of sections 41, 41A, 50 and 50A of the Code of Criminal Procedure 1973, Sections 19 of the Prevention of Money Laundering Act and in violation of Articles 21 and 22(1) of the Constitution of India, I moved this Hon'ble Court at 10.30 AM with available facts on 14.06.2023

and filed the above-captioned Habeas Corpus Petition. When the Habeas Corpus Petition was taken up a Hon'ble Division Bench of this Hon'ble Court at 02.15 PM on 14.06.2023, one of the Hon'ble judges recused from the case and hence the matter was transferred to another Hon'ble Bench. Due to administrative reasons and procedures to place the matter before another Hon'ble Bench, the matter came to be heard only on 15.06.2023.

The Order of Judicial Custody Passed On 14.06.2023 Is Illegal

3.6) The petitioner submits that in the meanwhile on 14.06.2023, the Learned Principal Sessions Judge/Special Judge PMLA cases at the request of the Respondent visited Omandurar Government General Hospital, Chennai and remanded the detenu to Judicial Custody till 28.06.2023. At the time of remand, the detenu explained the ill treatment meted out by him at the hands of the Respondent and also that he was physically manhandled by the Respondent. He also represented that he was not informed about the grounds of arrest. A petition (this Petition was later numbered as Crl.M.P.No. 13521 of 2023) was also filed on his behalf to reject the request for remand. However, without applying her mind judiciously, the Learned

Principal Sessions Judge dismissed the petition. In fact, when the petition was presented to her in the Hospital, the Learned Principal Sessions Judge directed the counsel for the detenu to argue the objection for the remand on the same day evening i.e., on 14.06.2023 in open court. However, on returning to the court, Learned Principal Sessions Judge rejected the petition filed by the detenu as infructuous. In view of this illegality, the subsequent detention of the detenu is illegal. I further submit that the order of the learned Principal Sessions Judge reads as follows:

> *"since the accused has already been remanded to Judicial Custody, this Petition for rejection of remand doesn't arise. Hence this Petition is dismissed as infructous"*

3.7) The petitioner submits that when the counsel for the detenu submitted before the Learned Principal Sessions Judge that Section 50 of Cr.P.C and Article 22(1) of the Constitution of India were not followed, the Special Public Prosecutor appearing for the Respondent replied that the detenu denied to acknowledge the arrest memo. This submission was accepted by the Learned Principal Sessions Judge mechanically and without any examination.

3.8) The petitioner submits that intimation of arrest to the family members as per section 50A of Cr.P.C is mandatory. Non-compliance will make the arrest as illegal as per section 60A of the Cr.P.C. The claim of the Respondent that SMS and mail services were pressed in to service is unknown to law; and cannot be accepted a valid and lawful means of service.

3.9) The petitioner submits that Section 19(1) of Prevention of Money Laundering Act 2002 ("PMLA 2002") reads as follows:

> *"If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest."*

3.10) The petitioner submits that a conjoined reading of Article 22(1) of the Constitution of India and Section 19(1) of PMLA 2002 would go to

show that none of them are inconsistent with each other. Hence, the right to be informed of the grounds of arrest is both a fundamental and a statutory right. I further submit that violation of Article 22(1) of the Constitution of India amounts of violation of fundamental right and hence, a Habeas Corpus Petition under Article 226 of the Constitution of India is maintainable and permissible. I further submit that violation of statutory provisions like Section 50(1) of Cr.P.C and Section 19(1) of PMLA 2002 are violation of fundamental right guaranteed under Article 21 of Constitution of India. Since those two provisions are the procedure established by law, depriving the detenu of his personal liberty in violation of them is amenable to exercise of jurisdiction under Habeas Corpus.

3.11) The petitioner submits that the Hon'ble Supreme Court has held the right under Article 22 (1) is an absolute right and the same cannot be deviated by any authority. This was followed by this Hon'ble Court in 1988 LW Cr. 503 Selvanathan alias Raghavan vs State and in Guruswamy vs State reported in 2004 1 LW Cr. 418. The claim of the Respondent is that the detenu denied to acknowledge the memo of arrest is an afterthought.

Even admitting that the Respondent attempted to serve the arrest memo and the same was refused by the detenu, the said arrest memo has contained only the ECIR/MD and provisions of law. It does not contain the reason of the arresting officer to believe that the detenu is guilty of the offence and It also does not provide any grounds for arrest.

3.12) The petitioner submits that the 'grounds of arrest' means and includes the gist of the offence committed by the detenu, the reasons for the arresting officer to believe that he has committed that offence, the details of the Notice issued under section 41A of CrPC or in the alternative by the officer is dispensing with the issuance of 41A Notice of CrPC. Failure to inform the above requirements will be a violation of Article 22 (1) of Constitution of India, Section 19 (1) of PMLA and Section 50 (1) of CrPC. Hence, the arrest of the detenu is illegal.

3.13) The petitioner submits that Section 19 deals with the power of the officer of the Enforcement Directorate to arrest a person if reasonable grounds appear but however, immediately upon the arrest he has to Inform

the grounds of arrest to the arrestee. This provision is in consonance with Article 22 (1) of Constitution of India and Section 50 (1) of CrPC. Hence, the judgments reported in ***Naranjan Singh Nathawan vs State of Punjab*** **(1952) 1 SCC 118**, ***Ram Narayan Singh vs State of Delhi*** **AIR 1953 SC 277**, In the ***Madhu Limaye*** **(1969) 1 SCC 292** AND ***R. Gurusamy Vs State*** **2004 LW Cri 418** clearly support the case of the detenu.

3.14) The petitioner further submits that the Respondent, on 15.06.2023 when this Habeas Corpus Petition was taken for admission, has submitted that the provisions of Code of Criminal Procedure are not applicable to the proceedings under the PMLA 2002. In support of the argument, the Respondent has relied upon the case of ***Vijay Madanlal Choudhary vs Union of India*** reported in **(2023) 12 SCC 1**. In this regard, I am advised to submit that the Hon'ble Supreme Court has not laid down any proposition to the effect that the provisions of Code of Criminal Procedure are not applicable to the proceedings under the PMLA 2002. In fact, I submit that Sections 65 and 71 of PMLA read as follows:

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."

"71. Act to have overriding effect.

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

3.15) The petitioner submits that, in this context, it is imperative to read section 41A of Code of Criminal Procedure Code, which states follows.

"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.

(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.

(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."

3.16) The petitioner submits that a reading of Section 65 r/w Section 71 of PMLA 2002 states that provisions of the Code of Criminal Procedure 1973 shall apply insofar as they are not inconsistent with the provisions of PMLA 2002 to arrest, search, seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. This proposition has been upheld by the Hon'ble Supreme Court in **Ashok Munilal Jain & Anr vs Assistant Director (2018) 16 SCC 158.**

3.17) The petitioner further submits that the proposition of the provisions of Cr.P.C are applicable to the proceedings under PMLA 2002 has been categorically held in **Rana Ayyub vs Directorate of Enforcement (2023) 4**

SCC 357 in which the Hon'ble Supreme Court also considered the decision in Vijay Madanlal Choudhary case.

3.18) The petitioner submits that for a better under understanding, a comparative chart of Section 50 of PMLA and Section 41 A of the Code of Criminal Procedure is produced:

SECTION 50 OF PMLA	SECTION 41 A OF THE CODE OF CRIMINAL PROCEDURE
Powers of authorities regarding summons, production of documents and to give evidence, etc.- (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:- a. Discovery and inspection; b. Enforcing the attendance of any officer, including any office of a banking company or a financial institution or a company, and examining him on oath; c. compelling the production of records; d. receiving evidence on affidavits;	**41.A. 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, credible or 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. (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.

SECTION 50 OF PMLA	SECTION 41 A OF THE CODE OF CRIMINAL PROCEDURE
e. issuing commissions for examination of witnesses and documents; and f. any other matter which may be prescribed. (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation proceeding under this Act.	(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.

SECTION 50 OF PMLA	SECTION 41 A OF THE CODE OF CRIMINAL PROCEDURE
(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.	

SECTION 50 OF PMLA	SECTION 41 A OF THE CODE OF CRIMINAL PROCEDURE
(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860). 5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not- (a)impound any records without recording his reasons for so doing; or (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.	

3.19) The petitioner submits that it can be seen that section 41A of CrPC and section 19 r/w 50 of PMLA are operating on two different fields. However, they are not inconsistent with one another. I further submit that section 41A of Cr.P.C is also a procedure established by law and the

Hon'ble Supreme Court in Satyender Antil case that all investigating agencies will have to follow the procedure established under Section 41A of Cr.P.C., and any violations of which are equivalent to violations under Article 21 of the Constitution of India.

3.20) The petitioner submits that it is undisputed that members of the Central Reserve Police Force were present from around 1 PM on 14.06.2023 during the search operations conducted by the Respondent. The legality of the presence of C.R.P.F is a central issue to the events culminating in the unlawful detention of the detenu on 14.06.2023 and 15.06.2023. It is submitted that the C.R.P.F can only be present in aid to the civil power, as per Entry 2A in List I and Entry 1 in List II of the Seventh Schedule to the Constitution of India. As such, C.R.P.F, by virtue of being under the control of the Union Government, cannot exercise any powers in lieu of the civil force i.e., state police. I further submit that the presence of C.R.P.F itself vitiates the entire detention procedure as there was no request from the civil force to provide any further policing personnel from the Union Government. There is no law providing for the Respondent to take

assistance of C.R.P.F nor is it within the duties enumerated for the C.R.P.F (which is essentially under the Union Ministry of Home Affairs) to provide assistance for the Respondent authority. Even PMLA 2002 is silent about any situation where the Respondent is empowered to take the assistance of C.R.P.F or any other Central policing force. As such, the present C.R.P.F was unlawful and against the established principles of law.

3.21) The petitioner submits that alternatively, the presence of C.R.P.F signals the start of detention period; and the detenu was not produced before the jurisdictional Special Court within 24 hours of this event, as per Section 19 of PMLA 2002, which was not done. In **Naga People's Movement of Human Rights vs Union of India (1998) 2 SCC 109**, the Constitution Bench of the Hon'ble Supreme Court of India has held that even armed forces can only be deployed in aid of civil power and provisions of Cr.PC governing search and seizure shall apply over special legislation. According to paragraph 172 of Vijay Madanlal Choudhry case, the Respondent, who is an authority under the PMLA 2002 is not a police. As such, this gives rise to the question around the legality of the Respondent seeking custody of the

Petitioner. The petition for custody is alien to the PMLA 2002 especially when the Respondent is empowered under Section 50 of PMLA 2002 to summon any person for investigation.

The order of the Learned Principal Sessions Judge Granting Police Custody is Illegal.

3.22) The petitioner submits that the order of Learned Principal Sessions Judge in Cri.M.P. 13572 of 2023 on 16.06.2023 placing the detenu in the custody of the Respondent is illegal as this order prima facie proceeds on the footing that the detenu has not co-operated with the investigation. It is specifically averred by the investigation officer as noted by the Learned Principal Sessions Judge in paragraph 15 of the said order as follows:"…

> *On perusal of the remand report, grounds of arrest and memo, it would reveal that accused has refused to sign and receive the summons issued under section 50 of PMLA by the Enforcement officials on 14.06.2023 and said to have started behaving in an intimidating manner and therefore, he has been completely non-cooperative during the summons proceeding. The Ground of Arrest was said to have been conveyed to Sh.V. Senthil Balaji As he is not co-operating, Arrest Memo has been executed in the presence of two witnesses and those witnesses have also signed in the Arrest Memo."*

3.23) The petitioner submits that however, on the same date, the Learned Principal Sessions Judge was pleased to dismiss the bail petition in Cri.M.P. 13522 of 2023 at para 5 of the said order noted as follow:

> *"The learned Senior Counsel appearing for the Petitioner would submit that the ECIR No.MDSZO/21/2021 has been registered in the year 2021 and the petitioner/ accused has not been interrogated and arrested till 14.06.2023. He has co-operated with the interrogation / investigation from 7.00 a.m. on 13.06.2023 to 2.00 a.m on 14.06.2023. It is admitted by the respondent/complainant that the accused has co-operated for Interrogation."*
>
> (Emphasis Supplied)

3.24) The petitioner submits that it is not only this oral statement recorded by the Learned Principal Sessions Judge that the detenu has cooperated with the investigation. It is admitted that the detenu was In the custody of the Respondent from 9.30 AM on 13.06.2023 till 1.58 AM on 14.06.2023. From the Panchanama prepared in the presence of witnesses, the search proceedings commenced on 8:20 AM on 13.06.2023 and continued till 11:00 PM on 13.06.2023. In that Panchanama, it is noted by the Respondent as follows:

> "...

Before the actual start of search and after the conclusion of search, Shri Ritesh Kumar, Assistant Director, Directorate of Enforcement and said accompanying officers/ staff offered their personal search which was politely declined by Shri.V. Senthil Balaji on both the occasions in our presence."

...

"...

During the course of search, Shri V. Senthil Balaji gave sworn statement under section 17(1)(f) of PMLA 2002 in our presence and no threat, coercion or inducement was used by the officers for getting the said statement of above said person."

3.25) The petitioner submits that Section 17(1)(f) of PMLA 2002 reads as follows:

"1. Where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person :...

(iv) is in possession of any property related to crime then subject to the rules made in this behalf, he may authorise any officer subordinate to him to-/...

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act."

3.26) The petitioner submits that the order granting police custody on the

grounds that the detenu was not cooperating with the investigation is factually incorrect and mechanically passed, and hence, illegal. It is to be noted that the detenu was under the custody of the Respondent from 9:30 AM till 11 PM on 13.06.2023 as recorded in the Panchanama and continuously interrogated, excluding the presence of any other person. It is also to be noted that the claim of the Respondent that when the Arrest Memo was attempted to be served on the detenu, he refused to receive it, is falsified from the facts stated in the Panchanama because the Panchanama informs that the search proceedings were over at 11 PM on 13.06.2023 and the arrest I was shown only at 1:58 AM on 14.06.2023. What has transpired between 11 PM on 13.06.2023 and 1:58 AM on 14.06.2023 is not known. Mere refusal of the notice under Section 19(1) of PMLA 2002 would not have taken three [3] hours. Hence, the claim of the Respondent stands falsified.

3.27) The other reasons assigned by the Respondent for seeking police custody for an investigation which is pending from the year 2021 (and the predicate offence is from the year 2014) are not sustainable. I further submit

that the order granting police custody has been passed in a mechanical manner and therefore not sustainable in law. I further submit that on these additional grounds also the continued detention of the detenu is per se illegal and unconstitutional.

3.28) The petitioner submits that the procedure to seek custody under Section 167 of Cr.P.C, only a police officer is empowered to forward the detenu / Accused person to a Magistrate and seek custody. As the authorities under PMLA 2002 are not police, it naturally follows that they are not empowered to seek police custody under Section 167 of Cr.P.C. Summons under Section 50 of PMLA 2002 is similar to Section 61 summons under Cr.P.C. Therefore, there is no inconsistency with the issuance of Section 41A Cr.P.C notice. Hence the detention/remand cannot be sustained and liable to be set-aside the remand order at the threshold and set the détenu at liberty forthwith.

3.29) The petitioner submits that Section 19 of PMLA Act 2002 expressly provides for custody of maximum period of 24 hours of a person arrested by

an officer authorized to make such arrest. Within the said period the person so arrested is mandated to be produced before the nearest Magistrate. It may be noted that there is a conspicuous absence of any provision under PMLA 2002 regarding custody of a person arrested beyond 24 hours. By virtue of Section 65 of the Act, provisions of Section 167 Cr.P.C. would be applicable to such arrest made by the authorized officer under PMLA. Since such authorized officer is not a police officer as held in Vijay Madanlal Choudhary, the period of custody of such arrested person with the ED officials cannot be beyond the first 24 hours of arrest.

4) Sur Rejoinder filed by the 1st Respondent:-

4.1) The 1st Respondent submits that it has been categorically established that the main Habeas Corpus Petition itself is not maintainable in law and on facts as the detenu is in valid Judicial Custody pursuant to an order of remand dated 14.6.2003 passed by the competent and jurisdictional Leamed Special Court for PMLA cases.

4.2) The 1st Respondent submits that after having availed opportunity of

effective participation every stage of judicial proceeding from remand on 14.6.2013, b proceeding on 14.6.2023, ED Custody proceedings on 14.6.201 15.6.2023 & 16.6.2023, and after being unsuccessful in all, now this petitioner cannot be heard to raise doubt on the conduct of Lat special Judge by saying that the two documents, vie, arrest memo" and "grounds of arrest" were NOT filed on 14.0.2023 and that they were prepared later and received by the Court on 16.6.2033. These unfounded allegations amount to contempt of Court.

4.3) The 1st Respondent submits that under the guise of filing Rejoinder, the petitioner has attempted to widen the scope of the petition and set up a new case based on imaginary grounds.

4.4) The 1st Respondent submits that he denies the averment in para-1 of rejoinder affidavit that the remand order was passed by the learned Judge in the capacity of Principal Sessions Judge and not as a Special Judge for PMLA cases, though she is invested with the powers of both the courts. This statement is mischievous. Principal Sessions Court, Chennai is designated as "Special Court" under sub section (1) of Section 43 and the

"Special Court" has been empowered to remand the accused arrested under Section 19 of PMLA. (Copy of the notification is Annexed herewith)

4.5) The 1st Respondent submits that he denies the averment in para-3 of rejoinder affidavit that since CRP was deployed, it is to be construed as 'detention' in all its legal meaning. This averment has already been replied in the Additional counter affidavit as to why the Enforcement Directorate was forced to seek the assistance of CRPF and the same is being adopted herein.

4.6) The 1st Respondent submits that he denies the averment in para-4 of rejoinder affidavit that a summons under section 50(2) PMLA should necessarily be served on the person who is "not in detention". I reiterate that the arrestee was not detained till he was arrested at 1.39 am on 14.6.2023. Prior to arrest, an attempt was made to serve the summons on the arrestee which he refused to receive and refused acknowledge. It also to be noted that out of the 6-summons served on him on earlier occasions, the arrestee appeared only once but did not produce the required documents and did not

cooperate with the investigation. Thereafter he sent his auditors when the summons was issued for personal appearance to record his statements. He has filed a writ petition challenging the 6th summons. Thus, on all the earlier summons as well as for the summons issued after arrest, the arrestee did not cooperate. Mere presence will not amount to appearance or cooperation.

4.7) The 1st Respondent submits that in additional grounds, the petitioner has stated that accused was detained from 7.30 am on 13.6.2023. After filing of our additional counter, petitioner has changed her stand and now stated, in Para-5 that the detenu reached the residence at 9.30 am on 13.6.2023. This shows that the petitioner is trying to improve upon his case and manufacturing wrong facts as per his convenience.

4.8) The 1st Respondent submits that he denies the averment in para-6 of rejoinder affidavit that no prudent man will believe the claim of ED that "Arrest memo" and "Grounds of Arrest" consisting of 6 pages were

prepared and executed before 1.39 am. It is submitted that what is required is, "informing" of grounds of arrest and not service of Grounds of arrest. I submit that "informing" of 'grounds of arrest' to an arrestee is provided where a person is suddenly taken into custody. In this case, the arrestee is aware of the registration of ECIR in 2021 and the about the facts of the ED case which is evident from the Court cases filed by him against ED. He was aware about the details of the cases, when he appeared for the summons dated 7.10.2021. He is aware of the ED case when he challenged the subsequent summons before this Hon'ble Court and then before the Hon'ble Supreme Court. The arrestee was aware of the details of the case, for which the search was being conducted on 13.6.2023. After arrest, the arrestee was duly informed "the grounds" of arrest and case for which he is arrested. That is the reason why he refused to acknowledge that "communication" of arrest and refused to sign the arrest memo, a single page printed form. In such background of facts, the arrestee cannot be allowed to feign ignorance that he was not informed of "grounds" for which he was arrested. If this is allowed, this would defeat the purpose of section 19 of PMLA which is to aid investigations.

4.9) The 1st Respondent submits that he stoutly denies the averments in para 6 of rejoinder affidavit that the arrest memo and grounds of arrest were not presented before the Learned Judge on 14.6.2023 or 15.6.2023 and that they were prepared much later and as an afterthought to suit the convenience of the respondent. I submit that at the time of seeking remand on 14.6.2023, ECIR, Remand Report/request. "Arrest memo & Ground of arrest" were duly presented to the Learned Judge in open Court. These documents (ECIR, Remand Report, arrest memo and grounds of arrest) are also referred to by the Learned Judge while passing "remand order". In addition, and without prejudice to the above factual position, it is submitted that even the Remand Report/request contains all the averment of grounds of arrest. After participating in all the legal proceedings in the Special Court, to raise the plea that the documents were not presented to the Court on 14.6.2023 at this belated stage, is false and deserves to be rejected. No such averment was made before the Ld Special Judge in the Bail Application which was made immediately after the first order remanding

petitioner to Judicial Custody.

4.10) The 1st Respondent submits that he denies the averments in para-7 of rejoinder affidavit that the above referred documents were prepared much later. As far as the mentioning of the telephone number of Ashok Kumar as 944225356 (Nine digits), 1 submit his telephone number is 9442253536. He was called on the said number 9442253536 but he did not pick up the call and hence I sent the text message to the phone number 9442253536 of Mr. Ashok Kumar. The mentioning of 9 digits in the arrest memo is an accidental clerical mistake which would not vitiate any proceeding and the petitioner is attempting to make a mountain out of a mole hill in this regard. As a precaution, print out of screen-shot of mobile call along with print out of email sent were enclosed along with the arrest memo. The learned Special Court Judge, after having perused the same has recorded that 'proof filed' for communication of arrest to relatives. That is the reason, at about 11.49 am on 14.6.2023, the petitioner was able to send email to ED office that her husband was arrested in the above case by giving the details of the

case in which he was arrested. Receipt of email is not denied by the petitioner.

4.11) The 1st Respondent submits that he denies the averment in para-8 of rejoinder affidavit that this document of communication of arrest to relatives, should have come into existence at or before 1.39 am on 14.6.2023. This statement seems to have been made by the petitioner on the assumption that communication of arrest to be given prior to arrest. However, the legal position is that Information about the arrest need to be communicated only after arrest and NOT before effecting arrest. As stated already in arrest memo, immediately after arrest, efforts were made to communicate arrest by sending SMS to the mobile phone of brother of accused as he did not pick up call. In addition, email address of petitioner traced out from the income tax records and email was sent at 8.12 am. Email communication was NOT the only mode but in addition to SMS already sent.

4.12) The 1st Respondent submits that he denies the further averment in para-8 of rejoinder affidavit that 'Grounds of arrest' nowhere records that the grounds of arrest were informed to the detenu. "Grounds of arrest" will have the contents as to the reasons leading to arrest. Informing of grounds of arrest is recorded in arrest memo. Only after informing of "grounds of arrest" orally, arrest was effected.

4.13) The 1st Respondent submits that he strongly denies the averment in para-9 of rejoinder affidavit that "Grounds of arrest" and "memo of arrest" are incorrectly framed documents, which falls under the 2nd limb of Section 464 IPC. It is stoutly denied that these documents are incorrectly framed. Till the filing of pleading into Court, aparty is entitled to add/delete/modify the content. Such addition will not make the document "incorrect document". These documents were filed, verified, and accepted by the competent Court on 14.06.2023. Having failed to make out any case for maintainability of Habeas Corpus Petition, now the petitioner has raised this unwarranted allegation which amount to casting aspersion on the judicial

proceedings before Ld Special Judge.

5) Interim Order dated 15.06.2023 and aftermath

5.1) On 15.06.2023, the present Habeas Corpus Petition came up before this court and at the admission stage, the learned senior counsel for the petitioner was heard. On behalf of the respondents, the learned Additional Solicitor General of India took notice and made submissions to the limited extent he had instructions. Upon considering the same, this court passed the order dated 15.06.2023 by framing two questions as to whether or not the complaints made on behalf of the petitioner were factually correct and even if so, whether still the same would amount to absolute illegality in passing the remand order so as to entertain and grand relief in the Habeas Corpus Petition. Yet another question as to whether or not the period spend by the detenu in the hospital should be excluded from the first 15 days of judicial custody for the purposes of granting custody of the detenu to the respondents, was also framed as per the submissions made by the learned Additional Solicitor General of India.

5.2) The matter was posted to 22.06.2023 for filing of counter and disposal of the Habeas Corpus Petition. By the same order, by considering the medical records and the medical bulletin issued by the Omandurar Hospital upon the request made on behalf of the petitioner, this court found that the detenu needed emergency By-pass surgery and treatment for blockages in arteries, Since on behalf of the detenu, it was pleaded that their regular physician is at Kauvery Hospital, Chennai, this Court directed shifting of the detenu from the Government Hospital to Kauvery Hospital, Chennai so as to undergo the treatment at the hospital of the choice of the detenu at their own cost.

5.3) The further developments are that the detenu was shifted to Kauvery hospital and it is represented that he had undergone the said surgery and treatment and is presently continuing his treatment in the said hospital. On 16.06.2023, the respondents pressed for custody of the detenu and order has also been passed by the learned Principal sessions Judge, Chennai granting the custody. But however, on condition not to remove him from the hospital

and to act as per the fitness directions of the treating doctors. Pursuant thereto, the parties have filed their additional pleadings in the form of additional affidavits , counter affidavits, rejoinders and additional counter affidavits and this court took up the mater for hearing on 22.06.2023.

5.4) After elaborate arguments put forth by the petitioner's counsel on 22.06.2023 the learned Solicitor General of India sought an adjournment for presenting his arguments owing to his preoccupied commitments and the case was posted for hearing on 27.06.2023. On that date, the arguments of both parties concluded and the order was reserved.

5.5) In the intervening time, the respondents assailed the order of this court dated 15.06.2023 in SLP's filed before the Hon'ble Supreme Court and the Hon'ble Supreme Court was pleased to pass its interim order dated 21.06.2023. It observed that the final opinion of this court on the two issues viz, (1) maintainability of the Habeas Corpus Petition and (2) Exclusion of the period of treatment undergone by the detenu from the period of custodial interrogation is likely to be considered in subsequent hearings and

adjourned the case to 04.07.2023.

6) Contestation of parties:-

6.1) We have heard the counsels for both sides at length, perused the petitions, additional grounds, counters, rejoinders , sur-rejoinders and the case laws presented by them. We also appreciate and thank the counsels for filing lengthy written submissions summarizing the arguments in quick time.

6.2) It is the case of the petitioner that the detenu is innocent, there is no direct allegations against him in the predicate offences and the agencies are hounding him at the behest of his political adversaries whose interests are directly in conflict with that of the detenu. In the process, he is harassed, his right to life and liberty is trampled and the constitutional safeguards for curtailing the liberties by established procedures of law is given a go by. It is pointed out that the case pertains to offences said to have been committed during the year 2014.

6.3) The respondents on the other hand contend that the respondents had sufficient grounds for detaining the detenu, the officers are only doing their duties and the detenu being an influential minister in the ruling government has not cooperated in the investigation process and threatened the investigating officers and that the procedures of Sec 19 of PMLA, 2022 is scrupulously followed.

7) Arguments of the counsels:-

7.1) Learned senior counsels for the petitioner Shri. Mukul Rohatgi & Shri N.R Elango framed their arguments on the 3 contested points viz. (1) on the question of exclusion of time. (2) Maintainability of Habeas Corpus Petition and (3) ED cannot seek custody as they are not Police Officers. Shri Tushar Mehta, learned Solicitor General of India and Shri.A.R.L.Sundaresan, learned Additional Solicitor General of India, framed their arguments on the 3 contested points in 7 sub titles viz. (1) Maintainability of Habeas Corpus Petition. (2) No legal requirement to comply with Sec 41 A of CrPC in the lights of additional safeguards under Sec 19 of PMLA, 2002. (3) Rules of Sec 19 of PMLA duly followed and

hence no violation of Articels 20-22. (4) Exclusion of the period of treatment undergone by the detenu from the period of custodial interrogation. (5) Power of ED to take custody under Sec 167 CrPC. (6) Absence of malice (7) Reasons for presence of CRPF and no presumption of detention. Learned Additional Solicitor General Shri.A.R.L.Sundaresan would vehemently contend that the period of hospitalization of the arrestee should be excluded until the date of actual custody.

7.2) They had filed detailed written submissions listing their arguments and analysis of case laws they intended to rely in support of their case.

7.3) The sum and substance of the arguments on law advanced by all the counsels are in harmonious agreement that the right to liberty and the safeguards against unlawful detention enshrined under Article 20, 21 & 22 is a fundamental right that is absolute and non negotiable. Depriving such a valuable right should be resorted to only in exceptional circumstances. There was no quarrel to the preposition that the procedure to safeguard the

guaranteed rights is postulated in the Code of Criminal Procedure, 1973. There is no contestation to the idea that Agencies empowered to detain or arrest a person, that in effect curtail his liberties, should have to follow the statutory safeguards postulated under CrPC if similar procedural safeguards are not provided for in the special Acts that empower them. There is no disagreement that no person can be detained to curtail his fundamental right to liberty except by an established procedure of law. Against the background of this harmony, amidst the allegations and counter allegations on facts and the contestations on law and precedents, we proceed to discuss the queries on an order of convenience.

8) Whether ED has the power to seek Custody of the persons arrested.

8.1) Learned senior counsel for the petitioner asserts that ED is not entitled for police custody as they are not police officers empowered under Sec 167 of CrPC in as much as the PMLA, 2002 does not entrust the ED Officers with the powers to act as Officer in Charge of Police Station as defined under Sec 2 (o) of CrPC. They contend that the procedure for SHO is established through Rule 637 of Tamil Nadu Police Standing Order.

They take support from the decision of the Hon'ble Supreme Court of India in the Case of **Vijay Madanlal Choudhary & Ors vs UOI & Ors 2022 SCC Online SC 929** holding that the Enforcement Directorate officials under PMLA are not Police officers. Per contra, learned Solicitor General of India contends that the issue is settled and relies on the decision of the Hon'ble Supreme Court in the case of **Directorate of Enforcement vs Deepak Mahajan 1994 (3) SCC 440**, **Vijay Madanlal Choudhary & Ors vs UOI & Ors 2022 SCC Online SC 929, Anupam Gulkarni Case, P Chidambaram vs Directorate of Enforcement (2019) 9 SCC 24 the Assistant Director ED vs Hassan Ali Khan (2011) 12 Supreme Court Cases 684.** Perusal of the case laws cited by the respondents indicated that the first four cases had no connection with the issue on hand namely the question of remand of police custody to ED officers under Sec 167 CrPC for investigation of offences under PMLA, 2002 and therefore are distinguishable from the present case. **In Hassan Ali Khan case,** the Hon'ble Supreme court has indeed allowed custody under extra ordinary circumstances as recorded by Bench in para 3 and para 4 of its order dated

17.03.2011. The question whether the parliament intended to award custody to the ED Officers under PMLA or not does not appear to have been agitated before any court as on date and appears a matter res integra.

8.2) Normally, the CrPC governs the operations of all investigations including the powers of arrest search and seizure. However, the powers such as arrest, search and seizures are all entrusted to the officers enforcing the special acts like NDPS, Customs, FERA, PMLA etc under the said acts. Usually, the officers who file final report under Sec 173 CrPC after completion of investigation are police officers. The officers under special laws usually file complaint (Private) under Section 200 of CrPC after investigations. However, that alone is not the test to determine whether a particular officer has the powers of a police officer or not though it is the dominant test. The colour and character of the powers entrusted with the officers will determine whether the officers enforcing special enactments can be termed as police officers. Accordingly, the Hon'ble Supreme Court has gone on to pronounce whether an officer empowered under special laws were police officers or not in a number of cases. In the Case of **Vijay**

Madhanlal Choudhary, the Hon'ble Supreme Court has held that ED Officials under PMLA, 2002 are not police officers.

8.3) In terms of Section 2 (O) of CrPC, "Officer in Charge of Police Station" includes when the Officer in Charge of Police Station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of the constable or when the state government so directs, any other police officer so present. Rule No 637 of Tamil Nadu Police Standing Order establishes the procedure to be followed by a station house officer in matters of Police Custody. And the Station House Officer is the sole person responsible for the safety and well being of the detenu in police custody. And police custody shall be awarded only to such officers who are entrusted with the powers of a Station House Officer under the CrPC. It is for this reason, the Officers of Customs, Central Excise, GST & FERA are empowered to act as Officer in Charge of Police Station under the respective special acts.

8.4) It is the scheme of the constitution and the statutes that no person shall be detained beyond 24 hrs for any offence under any law passed by the parliament except under a judicial order passed by a competent court. This applies to all investigating agencies including Police officers. Meaning, an accused or suspect will be available for custodial interrogation immediately after arrest for 24 hours for all agencies after which they have to necessarily produce the detenu to a competent court for further orders. A 60 day judicial remand for offences carrying punishment of less than 7 years and a 90 day judicial remand for those offences carrying punishment above 7 years is contemplated under the statutes. Thereafter, if the detenu can furnish bail, he would be released from judicial custody. In rare cases where custodial interrogation is necessary, on an application made by a competent authority under Sec 167 of CrPC, the competent court will take a judicious decision to award custody to the empowered agencies for a maximum period of 15 days from the date of initial remand. Since custody other than judicial custody is an exception and not a rule as it heavily impinges on the fundamental right of citizens Sec 167 CrPC is the lone provision under which such custody is awarded. No special act has ever intended to

empower officers to seek custody otherwise than through the provisions of Sec 167 CrPC. Wherever officers are empowered to conduct investigations, the machinations of CrPC becomes applicable. If any of the above provisions is violated the detention becomes illegal. Thus parliament has consciously maintained a balance between the fundamental right to liberty and the need for restraining persons in conflict with laws and the need for custodial detention to conduct investigations.

8.5) Therefore, it becomes necessary to examine whether ED is entitled to seek custody under Sec 167 of the CrPC. A reading of Section 167 together with Sec 2 (o) of CrPC and the special acts like The Customs Act, 1962, The Central Excise Act, 1944, The CGST Act, 2017 and FERA, 1973 indicates that Sec 167 applies only to those officers who enjoy the powers of a station house officer by virtue of them being empowered to act as an officer in charge of a police station under the CrPC and the concerned special acts. Similar provisions to empower ED Officers as Station House Officers are not provided under PMLA, 2002. It appears that the Parliament has consciously omitted to confer with the ED Officers acting under PMLA,

2002 the power of a Station House Officer.

8.6) The power of Station House Officer is necessary as holding a citizen in custody comes with specific duties and responsibilities. The Safety and well being of the detenu is the exclusive responsibility of the Station House Officer. The procedure is established in Rule 637 of the Tamil Nadu Police Standing Order as under:

> *637. Prisoners in Police Custody —*
>
> *(1) (a) A Prisoner in Police custody shall not be permitted to leave the lockup after night fall, except in special and emergent circumstances and that with adequate escort, which shall be recorded in the General Diary and the Sentry Relief Book. A prisoner in Police custody prior to remand is entitled to see a Pleader and his relations.*
>
> *(b) Whenever any punitive action is taken or contemplated against any foreign national, he should be provided with facilities, if he so desires, to communicate over the telephone or by telegram or letter, with his Counsel or High Commissioner or Consular-General or his representative, as the case may be. (G.O. Ms. 4148,*

Home, 18 Oct. 1949)

(2) (a) He should not at any time be allowed to talk to members of the public.

(b) (i) No person in Police custody shall be allowed to be garlanded or make speeches. He shall not also be allowed to receive food direct from other people. (G.O. Ms. 1512, Home 13 May 1964)

(ii) If a prisoner at the time of arrest is already garlanded, a complete search shall be made immediately after arrest and the garlands as well as the other articles except wearing apparel shall be removed and taken possession of after preparing a Seizure Mahazar.

(3) (a) Dhurries and blankets are supplied for the use of prisoners in Police lock-ups according to the scale noted below:—

(i) All Police Lockups .. Two dhurries each.

(ii) Police Lock-ups in Stations where the Police Staff are supplied with blankets. .. Two blankets each. These articles will be treated as Station property and the officer in charge of the Station or Out-Post will be responsible for their issue to such of the prisoners who do not provide themselves with their own bedding.

(b) The Police Lock-up if it contains a prisoner or prisoners shall be unlocked at day-break. The bedding of the prisoners shall be at once brought outside, well shaken and, if it is clean, left for some hours in the sun. (G.O. 3017, Home 2nd Aug- 1937)

(c) The night vessels shall be removed and the lock -up thoroughly cleaned. As far as possible a flush out seat should be provided in each lockup cell in Police Stations.

(d) The prisoners shall be taken to the latrine and shall be allowed to wash. They shall be fed daily at 10 a.m. or earlier if necessary, in time to be taken to Court after meals, and again at 5 p.m. If prisoners are not brought to the Station till after the hours prescribed for meals they should be fed as soon as possible after they are confined.

(e) Officers in charge of Police Stations and Officers in-charge of Guards will be held personally responsible for seeing that these orders are carried out.

(4) (a) Custody of woman in Police lock-ups during night should be avoided. This should be ensured by avoiding arrest of women at times when their custody during night may be necessary and by sending them off

for remand as soon as possible after arrest. Where the custody of women in a Police Lock -up during night becomes inevitable, either two to three women Police Constables should be detailed to guard the prisoner or a reliable elderly Female Warder should be engaged for the full duration of the Women's custody in the Police lock-up. (G.O. Ms. 1227, Home 6th Apri1 1963)

(b) Every Police Station should have a list of Female Warder who can be called for duty whenever necessary and they may be paid for their services from contingencies

So under Sec 167, police custody can be given by a magistrate only to an officer who is competent to function as a Station House Officer. Under the PMLA, 2022, the ED Officers are not vested with the power to act as Station House Officers unlike in Customs Act, 1962, Central Excise Act, 1944 and even FERA enforced by its own Officers.

8.7) The reliance placed by the learned Solicitor General of India in the **Directorate of Enforcement vs Deepak Mahajan reported in 1994 (3) SCC 440** is misplaced. It is a case related to the Foreign Exchange

Regulation Act, 1973 where under the officers of enforcement directorate are empowered to act as a Officer in charge of a Police Station. Also, in the said case, the court dealt with the issue of judicial custody and not police custody.

8.8) It is nobody's case to argue that it is a careless omission. The decision to not empower ED Officers appears a conscious bridle considering the sweeping powers granted to the authorities under the Act. Though the offences of Money Laundering is distinct from any or all of the scheduled offences under PMLA, 2002, there is a bar on the ED officials to suo-moto file ECIR for the offence of money laundering. An FIR or Complaint by a competent authority in a predicate offence is a sine qua non for ED officials to initiate a proceeding under the PMLA.

8.9) Chapter IV of PMLA, 2002 obligates the Banking Companies, Financial Institutions and intermediaries that are normally touted as the routes to integrate laundered money back into the system to provide information to the Enforcement Directorate officials in the format so desired

and keep records. It is a sweeping power that can help identify the trails of the proceeds of crime and the trails of the laundered money to confiscate property that are proceeds of crime so also to complete substantial meaningful investigations. It was observed by the Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary & Ors vs UOI & ors*** the proceeding under PMLA, 2002 is more in the nature of inquiry proceedings and not investigations. The collection of evidences to track the POC and money laundering trail are predominantly documentary in nature. Therefore, it appears that the Parliament in its wisdom did not see the need for custodial interrogation for proceedings under PMLA, 2002 beyond the first 24 hours of arrest.

8.10) It will be wrong to assume that the means of fair investigation will be frustrated if police custody contemplated under Sec 167 CrPC is not awarded to ED officers to bolster the investigations into the offence of money laundering. Parliament has vide Sec 53 of PMLA, 2002 invested the Union Government with blanket powers to confer the powers under PMLA to any officer of the Central Government or State Government seemingly

sufficient to find, track seize and confiscate Proceeds of Crime and its trails.

8.11) It is an admitted and settled position that no custody of any kind is permissible under the constitutional and statutory scheme except through the procedure established by law. So, in our view, unless the ED Officers are conferred with the powers of the Officer in Charge of a Police Station under PMLA, 2002 within the meaning of Sec 167 and 2 (o) of CrPC, police custody to ED under PMLA is impermissible.

8.12) In result, under the present scheme, the officers empowered to arrest under Sec 19 of PMLA, 2002, are required to produce the accused to the competent court within 24 hours of arrest and seek only Judicial remand and the same may be ordered by the judicial magistrate under the extant provisions of the Act. In effect, ED cannot hold custody of any person beyond the first 24 hrs of arrest.

9) Maintenance of Habeas Corpus Petition:-

9.1) Learned senior counsel for the petitioner would aver that Writ of Habeas Corpus is maintainable when the arrest is illegal and the subsequent order of remand is passed in a mechanical manner. Reliance was placed on

the decision of **Gautam Navlakha Vs NIA 2021 SCC Online SC 382** and **Madhu Limaye, In re, (1969) 1 SCC 292.** It was argued that non communication of grounds of arrest amounts to infraction of Article 22 of the Constitution of India. They alleged a 8 hour delay in communicating the same via email. He has pointed out to the posterior date stamp in the grounds of arrest to argue that the remand order was passed without seeing the grounds of arrest. They contested the bonafides and the existence of the grounds of arrest at the time of arrest. They assail that the fact that the detenu is aware of the facts of the case is not an excuse to justify the non compliance of the provisions of Sec 9 of PMLA, 2002. It was also assailed that supply of remand application is no compliance under Sec 19 of PMLA 2002. In support of this claim they relied on the decision of a full bench of this court in **Selvanathan @ Raghavan reported in (1989) 1 MWN (Crl) 117.** It was urged that failure to issue notice under Sec 41 A CrPC makes the arrest illegal. It is an important procedural safe guard prescribed in terms of Article 21 of the Constitution of India. Reliance was placed in the case of **Arnesh Kumar vs State of Bihar (2014) 8 SCC 273** where inter-alia

directions were issued to the effect that no arrests can be made without issuance of 41 A Notice if the punishment for the offence is below 7 years. They further relied on **Satendar Kumar Antil vs CBI (2022) 10 SCC 51** wherein it was held that the consequences of non compliance of Sec 41 A certainly inure to the benefit of the person detained while considering the bail. It was averred that the argument of Ed that Sec 41 A CrPC is not applicable to PMLA cases is not correct and cited the extant provisions of CrPC. They relied on **Satendra Antil case** that directed that courts would have to satisfy themselves of the compliance of Sections 41 and 41 A of the code. Any non compliance would entitle the accused for grant of bail. They pointed out that reliance of the respondents on the judgment of **Vijay Madanlal Choudhary case** is incorrect as it has not laid down the proposition that 41 A notice would not apply to proceedings under PMLA, 2002.They assail that the Hon'ble Supreme Court did not consider or address the question of following or otherwise of Sec 41 A CrPC in cases under PMLA, 2002.

9.2) Per contra, the learned Solicitor General appearing for the respondents would submit that it is a settled position of law that Habeas Corpus Petition is not maintainable if a judicial order is passed remanding the accused to custody. Reliance is placed on **Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436, Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129** and **Saurabh Kumar v. Jailor, Koneila Jail, (2014) 13 SCC 436**. Habeas Corpus Petition is a test of the validity of the actions of the executive and more particularly a test of legality of detention by the executive. The law is clear that in habeas corpus proceedings a court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. Reliance is placed on **Serious Fraud Investigation Office vs. Rahul Modi (2019) 5 SCC 26, Sanjay Dutt v. State through CBI, Bombay (II), (1994) 5 SCC 410, Naranjan Singh Nathawan v. State of Punjab (1952) 1 SCC 118, Basanta Chandra Ghose v. King-Emperor 1945 SCC Online FC 3, Talib Hussain v. State of J&K, (1971) 3 SCC 118 at page 121, Ram Narayan Singh v. State of Delhi [AIR 1953 SC**

277: 1953 SCR 652. He averred that infirmity in the earlier detention will not invalidate a legal detention at a later stage. Reliance was placed on **Kanu Sanyal v. Distt. Magistrate, Darjeeling, (1974) 4 SCC 141: 1974 SCC Cri 280** and **Col. B. Ramachandra Rao (Dr) v. State of Orissa, (1972) 3 SCC 256**. He urged that habeas corpus petition can be held maintainable only to the extent if there is positive material for the petitioner to come out with clear and unimpeachable fact that alleged detenu is in illegal detention. Reliance was placed on **Bhagwan Singh v. State of Rajasthan, 2005 SCC Online Raj 861 : (2006) 1 RLW 790.** He urged that Habeas Corpus Petition is maintainable only when the detention is without authority of law. Reliance is placed in **State v. H.Nilofer Nisha, (2020) 14 SCC 161.** He would urge that as the detenu had moved bail that was rejected and therefore Writ of Habeas corpus will not lie. He contended that The order of remand can be challenged only in appropriate proceedings either under the revisional jurisdiction or appellate jurisdiction.

9.3) He contested that the case of **Gautam Navlakha** relied by the

petitioner does not lay down the law and is distinguishable from the case on hand. He averred that the judgment in **Madhu Limaye &Ors. (1969) 1 SCC 292**, being relied upon by the petitioner, is completely distinguishable for the reason that there were two major constitutional infirmities in that case namely, as evident from para 8 i.e. no FIR was registered on 06.11.1968 which mentioned the offence of section 143 of IPC which was also the date when Madhu Limaye was arrested. The FIR came to be recorded only on 19.11.1968 because the matter had been brought to Supreme Court by way of an Article 32 petition. The authorities in that case realized that arrest could not have been made for non-cognizable offences and it was under these circumstances that the Court found the arrest itself to be illegal. The second constitutional infirmity is that there was no averment or a positive assertion that Madhu Limaye and his companion were informed the grounds of arrest and therefore the court found a breach of article 22(1). It was under these egregious circumstances that the court held that an order of remand would not cure such glaring constitutional infirmities. The learned Solicitor General also contended that there is no fact situation for issue of writ of Habeas Corpus in the instant case and

relied on **N.M.T. Joy Immaculate v. State, 2002 SCC OnLine Mad 265.** He urged that remand order is a judicial order and therefore cannot be interfered with and relied on **Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129.**

9.4) According to the petitioner, this writ petition came to be filed with the available grounds on the day of arrest on the plea that the fundamental rights of the detenu is trampled owing to political adversity and the safeguards postulated in the statutes to prevent abuse was not followed by the officials of the Enforcement Directorate. From the time of arrest until the filing of this petition, the accused was in the detention of the respondents, taken to the hospital by the respondents for medical checkup before remand, and before hearing the petition, the accused was remanded in judicial custody. Instances of high-handedness, manhandling and infirmities in the documents and procedures indicating malice were alleged by the petitioner. The respondents on the other hand submitted that the actions taken by the directorate are lawful and due procedures were

followed and that the accused was not cooperative and threatening the officers owing to his influential position that necessitating his arrest. He also submitted that there were specific reasons for the presence of CRPF at the search premises and there was no malice and argued that presumption of detention for the mere presence of CRPF is incorrect.

9.5) The petitioners would contend that the arrest is illegal, the remand is without application of mind and therefore custody is illegal and writ is warranted. On the other hand, the respondents would urge that they had followed the due procedures of law, the remand was after apprising the grounds of arrest, proper application of mind and after satisfying the laws. It was urged that Habeas Corpus Petition is not maintainable once the remand order is legal even if there is infirmities in the procedures preceding the remand and submitted many case laws.

9.6) On the face of the case laws submitted by the parties, it would appear that once a legal remand order which is judicial in nature is passed then there is no way Habeas Corpus Petition will lie and the only remedy

available to the detenu is to contest and set aside the remand order. But as you delve deeper, it would indicate that the case laws relied extensively by both the petitioner and the respondents governed two kinds of detention. Preventive detention before commission of crime and detention after commission of crimes. In the case of preventive detentions, the contention that the existence of a valid judicial remands order will render the procedural violations at the hands of the executive of no consequence. In detention against offence cases, where the object of arrest and detention is very different from that of preventive detention, a failure to follow the procedural safeguards at the time of arrest will vitiate the proceedings and a writ of habeas corpus would lie. In other words, in preventive detentions where cause of action is continuous, it is only the legality of the remand order on the date of hearing is relevant. In other cases, failure to follow the procedural safeguards violating Article 22 will vitiate the arrest proceedings and render the remand order, if mechanically passed, also illegal. In any event, for the purposes of deciding the case on hand in harmony, it can be safely derived from the case laws cited by the parties that the test of the legality of a remand order shall be on the date of hearing, to entertain the

Habeas Corpus Petition.

9.7) Perusal of the case records indicates that the detenu was remanded to judicial custody on 14.06.2023. After the commencement of hearing this Habeas Corpus Petition, the learned PSJ had on 16.06.2023 had remanded the detenu in Police Custody (Custody of ED) for a period of 8 days with some conditions. It is now part of the records that the ED after having consulted the doctors, in its wisdom decided effective interrogation would not be possible in the circumstances and therefore informed the learned PSJ accordingly.

9.8) On 15.06.2023, this court had in para 21 of the order had specifically ordered that the detenu shall continue in Judicial custody. While so, the ED in a hearing before the learned PSJ on 16.06.2023 has pressed for police custody and the learned PSJ proceeded to award custody to the ED for a period of 8 days. Whether this omission/commission happened by oversight or was conscious pales into insignificance as judicial discipline demands that the order awarding Police custody to the ED ought not to have been passed.

9.9) For the reasons discussed in detail in para 8.11and 8.12 of the order ibid, ED is not entitled to custodial interrogation of the accused under the PMLA, 2002. Therefore the order of custody dated 16.06,2023 passed by the learned PSJ is without jurisdiction and without authority of law and therefore is illegal. The order fails the test of legality both of law and omission to follow judicial discipline and we have no hesitation to hold that the detention at the time of hearing the Habeas Corpus Petition is illegal.

9.10) Accordingly, we hold that Habeas Corpus Petition is maintainable in the facts and circumstances of this case.

9.11) In view of the above discussions and conclusions arrived in the case, the necessity to examine the important question whether Sec 41 A CrPC is applicable to arrest proceedings under PMLA, 2002 and whether non compliance of the said provision in cases attracting punishment of less than 7 years would vitiate the arrest proceedings under PMLA and subsequent remand, is of no consequence to the outcome of the present case and has

become redundant for the purposes of disposing this Habeas Corpus Petition. Therefore the contestations on that count advanced by the parties are left open.

10) On Exclusion of Time:-

10.1) It is now a settled law as laid down in various decisions of the Hon'ble Supreme Court pointed out by the petitioners that the period of police custody cannot be extended beyond 15 days from the date of the initial remand in terms of Article 22 and the relevant provisions of the Criminal Procedure Code, 1973. And it is also pointed out by the learned Solicitor General of India that the Hon'ble Supreme Court in the case of **CBI vs Vikas Mishra 2023 SCC online Raj 861** had deviated from a stricter view. It was an extraordinary situation where the accused by unscrupulous methods schemed to frustrate investigation by abusing the constitutional safeguard prompting the Hon'ble Supreme Court to invoke it's discretionary powers to allow custodial interrogation beyond 15 days on well founded grounds. Such circumstances does not seem to exist in the present case as the ailment of the detenu appears genuine and the detenu has

undergone a by-pass surgery and ED officials themselves have after expert medical opinions thought it not fit to take custody of the detenu awarded to him. His condition was examined by the Government Doctors, the ESIC doctors deputed by the Enforcement Directorate and the doctors of the private hospital who treated him.

10.2) As, under the PMLA, 2002, the ED is not entitled for custodial interrogation as discussed in para 8.11and 8.12 of this Order, the question of exclusion of time ceased to arise. Accordingly, the miscellaneous petition seeking exclusion of time is liable to be dismissed.

11) In the result, the Habeas Corpus Petition is Allowed in the following terms:-

1. The Writ of Habeas Corpus Petition is maintainable;

2. Enforcement Directorate is not entrusted with the powers to seek police custody under the Prevention of Money Laundering Act, 2002;

3. Miscellaneous petition filed by Respondent 1 seeking exclusion of the period is dismissed; and

4. The detenu is ordered to be set at liberty forthwith.

04.07.2023

D.BHARATHA CHAKRAVARTHY, J.

I have had the benefit of going through the Opinion of Respected Sister. I am unable to agree with the reasonings or the conclusion reached by Her Ladyship and I had already circulated my Opinion to her and my opinion stands and it is as follows :

A. The Petition :

This Writ of Habeas Corpus is filed by one *Megala*, complaining about the illegal detention of her husband, namely, one *V.Senthil Balaji*, son of *Velusamy*, aged about 48 years, with a prayer directing the respondents herein, namely, Deputy Director, Directorate of Enforcement, Chennai, to produce him before this Court and to set him at liberty.

B. The case of the petitioner :

2. It is the case of the petitioner that there are three criminal cases pending against the detenu in C.C.Nos.19, 24 and 25 of 2021, for alleged offenses under Sections 406, 409, 420 and 506(I) read with Section 34 of

the *Indian Penal Code* (hereinafter referred to as '*I.P.C*') are pending on the file of the learned Additional Special Court for Trial of Cases against MPs / MLAs at Chennai (hereinafter referred to as *Predicate offences*). The occurrences are of the year 2014. It is alleged that the detenu had obtained money from third parties promising jobs in the Transport Department and thereafter cheated them. On the basis of the predicate offences, a case is registered for an offence under Section 4 of the *Prevention of Money-Laundering Act, 2002* (hereinafter referred to as '*P.M.L.A*').

3. Pursuant thereto, on 13.06.2023, the respondent officials suddenly came to their house at Greenways Road, Chennai, in the morning at about 7.30 A.M and interrogated the detenu continuously for about 16 hours and searched his office and residence. He was denied permission to meet his relatives and advocate and was arrested at about 1.30 A.M the next day. The offence is punishable maximum 7 years and therefore without following Section 41-A of the Code of Criminal Procedure (hereinafter referred to as '*Cr.P.C.*,') and other provisions of *Cr.P.C.*, the arrest is made. The mandate of informing the grounds of arrest under Article 22 of the

Constitution of India is also not followed and the relatives were not informed.

4. After the arrest and due to manhandling, he became seriously ill and was taken to the Omandurar Government General Hospital, Chennai for obtaining medical fitness about 2 A.M wherein after examining the condition of the detenu, he is admitted in the Cardiac I.C.U. In that extraordinary situation, the petitioner made a representation dated 14.06.2023 to the authorities. Thereafter, having no other option and reserving her right to file additional affidavit, the present petition is filed.

C. The case of the respondents :

5. The predicate offences are Schedule Offences under *P.M.L.A* and allegations relate to receipt of monies from the complainants. The very allegations *per se* will lead to ingredients of the offence under Section 3 punishable under Section 4 of *P.M.L.A.* Therefore, on 29.07.2021 an E.C.I.R was recorded, in which, the detenu is the main accused. Summonses were issued for personal appearance of the detenu on

04.08.2021 and 19.08.2021. But, the detenu did not appear and sought for adjournment. On the third occasion, on 07.10.2021, the detenu appeared, but, did not provide most of the details requested. Again, summons for his appearance were sent, but, the detenu did not appear and requested for adjournment on 17.03.2022 and 01.04.2022. On further summons, on 29.04.2022, he submitted a letter quoting that this Court granted stay in W.P.No.12159 of 2022. Thereafter, on 16.05.2023, the Hon'ble Supreme Court of India set aside the order passed by this Court on 01.09.2022 which refrained the respondents for further investigation and permitted them to proceed with the investigation.

6. Therefore, on 13.06.2023, at about 11.00 A.M, they started search action at the premises of the detenu. The search was concluded and panchanama was drawn at about 11.00 P.M. Immediately thereupon, the summons under Section 50 of the *P.M.L.A* were issued, but, the detenu refused to accept inspite of the efforts between 11.00 P.M to 12.00 A.M in the midnight. Again, between 0.00 hours to 0.13 hours, on 14.06.2023, the Investigating Officer personally attempted to serve the summons and record

the statement of detenu. However, at about 0.30 hours, the detenu started behaving in an intimidating manner and threatened the Investigating Officer. Under the circumstances, the Investigating Officer started recording the statement under Section 50 of the *P.M.L.A* in the presence of two independent witnesses. At about 1.30 A.M, on account of the non-cooperation of the detenu, they concluded the summons proceedings and the detenu was arrested under Section 19 of the *P.M.L.A*, since the respondents had reasons to believe that he had committed an offence under Section 3 punishable by 4 of the *P.M.L.A*. At about 1.39 A.M, the grounds of arrest, which was reduced into writing, was attempted to be served on the detenu, but, he refused to accept the same. Therefore, the arrest memo was executed in the presence of two independent witnesses. At about 1.41 A.M, intimation of arrested was tried to be conveyed to one *Ashok Kumar*, brother of the detenu and one *Nirmala*, sister-in-law of the detenu through phone calls. However, since they did not pick up the phone calls, intimation of arrest was conveyed to *Ashok Kumar* through text message at 1.44 A.M. Since the detenu complained about chest pain, he was taken and admitted at Omandurar Government Hospital at 02.10 A.M. Once again, at about 8.12

A.M, intimation of arrest was conveyed to the petitioner herein namely, *Megala*, wife of the detenu, to *Ashok Kumar*, brother of the detenu and to one *Sathish Kumar*, Chartered Accountant of the detenu through e-mail also. At about, 12.00 P.M, a petition for remanding the detenu was filed before the learned Principal Sessions Judge, Chennai. The grounds of arrest were also produced for perusal of the learned Principal Sessions Judge, Chennai. Thereafter, at about 3.30 P.M, the learned Judge visited Omandurar Government Hospital and enquired the detenu in the presence of Doctors and passed an order remanding the detenu to judicial custody for a period of 15 days till 28.06.2023 at about 3.45 P.M. Subsequently, on the same day, at about 5.00 P.M, after coming back to the Court, on behalf of the detenu, a petition, filed for bail on behalf of the detenu and other petitions, were heard. Simultaneously, at about 5.00 P.M, the respondents also filed a petition for custody of the detenu. At about 6.00 P.M, the learned Judge dismissed the petition to reject the remand while posting the custody petition for hearing on 15.06.2023. Therefore, since the detenu is in the judicial custody, the petition for Habeas Corpus is liable to be dismissed.

D. Proceedings before this Court and subsequent developments :

7. On 15.06.2023, the present Habeas Corpus Petition came up before this Court and at the admission stage, the learned Senior Counsel for the petitioner was heard. On behalf of the respondents, the learned Additional Solicitor General of India took notice and made submissions to the limited extent he had instructions. Upon considering the same, this Court passed the order dated 15.06.2023 by framing two questions as to whether or not the complaints made on behalf of the petitioner were factually correct and even if so, whether still the same would amount to absolute illegality in passing the Remand Order so as to entertain and grant relief in the Habeas Corpus Petition. Yet another question as to whether or not the period spent by the detenu in the Hospital should be excluded from the first 15 days of judicial custody for the purposes of granting custody of the detenu to the respondents, was also framed as per the submissions made by the learned Additional Solicitor General of India. The matter was posted to 22.06.2023 for filing of counter and disposal of the Habeas Corpus Petition. By the same order, by considering the medical records and the medical bulletin

issued by the Omandurar Hospital, upon the request made on behalf of the petitioner, this Court found that the detenu needed emergency bypass surgery and treatment for blockages in arteries. Since on behalf of the detenu it was pleaded that their regular Physician is at Cauvery Hospital, Chennai, this Court directed shifting of the detenu from the Government Hospital to Cauvery Hospital, Chennai so as to undergo the treatment at the Hospital of the choice of the detenu at their own costs.

8. Thereafter, further developments are that the detenu was shifted to Cauvery Hospital and it is represented that he had undergone the said surgery and treatment and is presently continuing his treatment in the said Hospital. On 16.06.2023, the respondents pressed for custody of the detenu and an order has also been passed by the learned Principal Sessions Judge, Chennai granting the custody, but, however, on conditions not to remove him from the Hospital and to act as per the fitness directions of the treating Doctors.

9. Aggrieved by the order of this Court, dated 15.06.2023,

entertaining the Habeas Corpus Petition as well as granting interim relief of shifting of the detenu to a Private Hospital and also the conditions imposed by the learned Principal Sessions Judge, Chennai in the order granting custody, two Special Leave Petitions were preferred by the respondents on the file of the Hon'ble Supreme Court of India and the same came up for hearing on 21.06.2023 and the Hon'ble Supreme Court of India had passed an order directing this Court to dispose off the Habeas Corpus Petition as the questions have been framed and the mater was posted for hearing on 22.06.2023 and adjourned Special Leave Petitions to 04.07.2023. Pursuant thereto, the parties have filed their additional pleadings in the form of additional affidavit, counter affidavit, rejoinder and additional counter affidavit and this Court took up the matter for hearing.

E. Submissions before this Court :

10. Heard *Mr.N.R.Elango* and *Mr.Mukul Rohatgi*, learned Counsel for the petitioner, *Mr.Tushar* Mehta, learned Solicitor General of India, *Mr.A.R.L.Sunderasan*, learned Additional Solicitor General of India for the respondents.

11. *Mr.N.R.Elango,* learned Senior Counsel for the petitioner made following submissions :

(a) The petition for Habeas Corpus Petition is maintainable even after an order of judicial remand if it is established that the order of remand, authorising the judicial custody, is illegal and without application of mind;

(b) The order of remand is illegal and without application of mind because__

(i) Inspite of bringing it to the notice of the learned Special Judge at the time of remand that the provisions of the *Cr.P.C.,* namely, Sections 41 and 41-A of *Cr.P.C.,* and the other provisions were not complied with by the respondents, still mechanically, judicial custody was unauthorised.

(ii) The fundamental rights of the detenu under Article 22 of the Constitution of India was violated as at the time of the arrest, the grounds of arrest were not informed to the detenu. His relatives were also not informed of his arrest.

(iii) When these infirmities were brought to the notice of the learned Principal Sessions Judge by filing an application to reject the remand, the

learned Judge, without even considering the objections, remanded the detenu and thereafter simply disposed off the petition by recording that already she had remanded the detenu and therefore, the order of remand is absolutely mechanical and without application of mind.

(iv) such subsequent Order will not wipe out the constitutional violation of Article 22 of the Constitution of India and would only render the Remand illegal and still this Court would issue rule of Habeas Corpus enlarging the detenu within the custody.

(v) Even after passing of the interim order, the Enforcement Directorate, inspite of objections on behalf of the petitioner that this Court is in seizin of the matter, pressed for Police custody, by virtually overruling the order of this Court, the learned Principal Sessions Judge has also grant an order on 16.06.2022 entrusting the detenu to Police custody, thus virtually sitting on appeal over the order of this Court.

(vi) The Enforcement Directorate is not vested with the powers of the Station House Officer and therefore, they cannot be termed as Police officers and what is contemplated under Section 167 of *Cr.P.C.,* is only

Police custody and therefore, the other Investigating Agency, not being a Police officer, is not entitled to pray for custody of the detenu at all. The *P.M.L.A* does not expressly grant the powers to act as a Station House Officer as is granted in other enactments and thus, no police custody can be claimed by them;

(vii) In any event, the Police custody can be granted as pr Section 167 of *Cr.P.C.*, only in the first 15 days of judicial custody and the said period of first 15 days is an inviolable rule enuring the benefit of the detenu and therefore, there is no question of any exclusion of the period of treatment in the Hospital for the purposes of granting the Police custody.

(viii) From the grounds of arrest, it can be seen that there is an interpolation and material alteration of the document by writing about informing of the relatives about the arrest at the end of the grounds of arrest which is supposed to be ready at the time of arrest i.e., at 1.39 A.M itself while the facts mentioned therein namely, sending of e-mail happened only after 8.00 A.M in the morning. Therefore, these facts would demonstrate that the respondents authorities never cared to comply with Article 22 of the Constitution of India and even the grounds of arrest which is now sought to

be ready and not accepted by the detenu are all cooked up later.

(ix) The grounds of arrest bears the Court seal date as 16.06.2023 and therefore, it was not before the Court on 14.06.2023 at the time of remand. Therefore, after subjecting the detenu to grave torture by detaining from the early morning on 13.06.2023, the respondents officials are belatedly creating records to show compliances which should be forthwith rejected by this Court and the Habeas Corpus should be allowed.

12. In support of his submissions, the learned Senior Counsel relied upon the judgment of the Hon'ble Supreme Court of India in the matter of ***Madhu Limaye and Ors.***[1], more specifically upon the paragraph Nos.9, 10 and 12 of the said judgment for the proposition that the Habeas Corpus Petition is maintainable if the remand orders are patently illegal. The learned Senior Counsel also relied upon the judgment of this Court in ***R.Gurusamy Vs. State represented by the Deputy Superintendent of Police CB CID and Anr.***[2], more specifically relying upon the paragraph Nos.12 and 13 of the said judgment for the same proposition. The learned Senior

1 (1969) 1 SCC 292
2 2003 SCC OnLine Mad 1193

Counsel relied upon the judgment of the Hon'ble Supreme Court of India in ***Gautam Navlakha Vs. National Investigation Agency***[1], more specifically relying upon the paragraph Nos.66 to 71 of the said judgment to contend about the maintainability of the Habeas Corpus Petition and submit that maintainability and entertainability are two distinct questions and the Habeas Corpus Petition will always be maintainable. The learned Senior Counsel further relied upon the judgment of the Hon'ble Supreme Court of India in ***Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.***[2] to contend that Section 41-A of *Cr.P.C.,* compliance is mandatory even for the Enforcement Directorate and non-compliance thereof vitiates the entire arrest and the subsequent remand.

13. The learned Senior Counsel by taking this Court through judgment of the Hon'ble Supreme Court of India in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***[3] and more specifically paragraph Nos.9, 33, 142, 325, 326 and 449 of the said judgment, would

1 2021 SCC OnLine SC 382
2 (2022) 10 SCC 51
3 2022 SCC OnLine SC 929

contend that the Hon'ble Supreme Court of India did not specifically rule that the provisions under Sections 41 and 41-A of *Cr.P.C.*, do not apply to the *P.M.L.A.* The learned Senior Counsel drew the attention of this Court to the Sections 4(2), 5, 40, 41, 41-A, 50 and the other provisions relating to arrest in the *Code of Criminal Procedure*. The learned Senior Counsel relied upon the Sections 19, 65 and 71 of the *P.M.L.A.* After placing reliance on the aforesaid provisions, the learned Senior Counsel would draw the proposition that firstly, the importance of information of grounds of arrest and intimation to relatives can be known that notwithstanding it is there in the statute namely, the old *Code of Criminal Procedure* even before the drafting of the Constitution of India, the same were elevated as fundamental right only because the makers of the constitution thought that no provision should be made taking away these valuable rights.

14. He would submit that on a perusal of the structure of the *P.M.L.A*, it would be clear that even the powers to act as Station House Officer, which is present in many other central enactments, is conspicuously absent and is not given to the Enforcement Directorate when it comes for

enforcement of the provision of the *P.M.L.A.* The learned Senior Counsel would therefore submit that when Section 65 of the *P.M.L.A* specifically makes the provisions of the *Code of Criminal Procedure* relating to arrest applicable to the offence by their admission that Section 41-A of *Cr.P.C.*, need not be complied with, the case of the petitioner is liable to be allowed. Further, by drawing the attention of the Court to the *Tamil Nadu Police Standing Orders*, more specifically to PSO 637, that it is only the officers in charge of Police Stations will be personally responsible for the accused who are in Police custody, the learned Senior Counsel would submit that when there is no concept of functioning as the Station House Officer under *P.M.L.A*, there is no question of grant of any Police custody. He would submit that the Hon'ble Supreme Court of India has also expressly held in ***Tofan Singh Vs. State of Tamil Nadu***[1] that the respondents, Enforcement Directorate, are not Police officers within the meaning of the term. The learned Senior Counsel specifically relied upon the judgment of the Hon'ble Supreme Court of India in ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni***[2] for the

1 (2021) 4 SCC 1
2 (1992) 3 SCC 141

proposition that 15 days rule from the first date of judicial remand is inviolable even in circumstances similar to the present one and therefore, there is no question of any extension of the time for Police custody.

15. *Mr.Tushar Mehta*, learned Solicitor General of India for the respondents would make the following submissions :

(a) Habeas Corpus Petition is a remedy against the respondents in the petition who are invariably the Executive or such other private entities who have or who authorise the custody of the detenu, directing them to produce the detenu before the Court and set the detenu at liberty if such custody is illegal. In this case, there is no question of direction to the Enforcement Directorate since the detenu is no more in their custody and is in the judicial custody of the Court. Therefore, Habeas Corpus Petition is not maintainable at all once the Judicial Order of Remand is passed.

(b) The passing of the order of judicial remand need not precede the filing of the Habeas Corpus Petition and even as of the date of return of notice i.e., subsequently also, once the Order authorising the detenu to judicial custody comes into existence, the maintainability and

entertainability of the Habeas Corpus Petition ends at that moment and no further relief can be granted in the Habeas Corpus in respect of any allegations / violations prior to such remand.

(c) Even the illegalities alleged in respect of the remand order can only be canvassed by way of appropriate appeal / revision by specifically impugning the said Remand Order in the higher fora and the same cannot be gone into in a petition for Habeas Corpus and therefore, the very entertainment of the Hebeas Corpus petition is unwarranted and incorrect in law and the Habeas Corpus Petition is liable to be dismissed as not maintainable.

(d) In any event, there is no illegality or violation in the instant case. There was no violation or non-compliance of the Article 22 of the Constitution of India as the grounds of the arrest was duly reduced into writing at the time of arrest and was attempted to be served on the accused. He not only refused to accept the same, but, also, behaved in high handed manner, threatening the respondents officials stating that he is a Minister.

(e) There is no question of compliance of Section 41 or 41-A of *Cr.P.C.*, as *P.M.L.A* is a complete code and it contains specific provisions in

respect of arrest in the form of Section 19. Section 19 authorises the power of arrest only to higher officials with greater responsibility and also prescribes a specific procedure of intimating about the same to the adjudicating authority and thus, provides enhanced safeguards and a different procedure in respect of arrest and to the said extent, the provisions of arrest in the Code of Criminal Procedure is not applicable to *P.M.L.A.* This position has been specifically laid down by the Hon'ble Supreme Court of India in ***Vijay Madanlal Choudhary***'s case (cited *supra*).

(f) Further, on a perusal of the counter affidavit as well as the grounds of arrest, it would be clear that the averment therein even satisfies the mandate of Section 41 of *Cr.P.C.*, inasmuch as the arrest was not only made for the involvement of an offence under Section 4 of *P.M.L.A*, but is also made after recording the satisfaction that the detenu / accused was not co-operating with the Investigating Agency and was even threatening Investigating Agency and was not furnishing the details about the money trail and proceeds of crime and thus, hampering the investigation and there is likelihood of the money trail being lost which is very important in the case of money laundering. Therefore once the necessity is satisfied, the

arrest is in order.

(g) Ample proof of intimation of the grounds of arrest, at the time of arrest, is demonstrated by the memo of arrest, which was drawn up in the presence of independent witnesses and in any event, it can be seen that at the time of remand itself, the learned Principal Sessions Judge herself records that she had once again informed the grounds of arrest to the detenu.

(h) The language of Section 19 as well as the Article 22 of the Constitution of India is very clear that it is not exactly at the very moment of arrest, the compliance should be made, but, it should be as soon as possible. In this case, it is made at the very moment of arrest and also as soon as possible in every possible way.

(i) On a perusal of the order of remand, it would be clear that it is not mechanical and that there is due application of mind. Therefore, even assuming that Writ of Habeas Corpus is maintainable, none of the grounds projected are factually tenable and the remand order is not expressly impugned in the prayer.

(j) As far as the custody of the detenu is concerned, firstly, it is the

duty of the Enforcement Directorate to thoroughly investigate the serious offence of the nature and it is in public interest to bring out truth and unearth the money trail and therefore, custodial interrogation is extremely essential in this matter.

(k) The Enforcement Directorate did not in any manner act illegal in praying for the custody as the application was made at the time of remand itself before the appropriate Court. The Enforcement Directorate is duty bound to press for the relief because otherwise it will be accused of violating the 15 days time line. Inspite of the custody being granted, it was only with conditions and in any event, in view of the medical conditions of the accused, no interrogation whatsoever was factually possible in the instant case. The rule relating to 15 days from the first day of remand is not inviolable. In special circumstances, especially when the delay is not attributable to the Enforcement Directorate and attributable only to the detenu, if no custody could be taken in the first 15 days, as such period can be excluded from computing the 15 days.

(l) The provision relating to custody of the detenu is part of the provisions relating to the investigation, and thus the procedure in respect of

remand, custody etc., under Section 167 of *Cr.P.C.,* is specifically made applicable by virtue of Section 65 of *P.M.L.A* and therefore, even if the agency is not a Police officer, still the respondents are entitled for custody of the detenu.

16. In support of his submissions, the learned Additional Solicitor General of India placed strong reliance on the judgment of the Hon'ble Supreme Court of India in ***Serious Fraud Investigation Office Vs. Rahul Modi and Anr.***[1], more specifically on the paragraph Nos.18, 19, 21 and 26 to contend that the Habeas Corpus Petition is not maintainable. The learned Solicitor General of India also relied upon the judgment of the Hon'ble Supreme Court of India in ***Kanu Sanyal Vs. District Magistrate, Darjeeling and Ors.***[2], ***Col. Dr B.Ramachandra Rao Vs. State of Orissa and Ors.***[3] and more specifically on the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in ***Sanjay Dutt Vs. State through C.B.I., Bombay (II)***[4] to contend that the Habeas Corpus Petition is not maintainable.

1 (2019) 5 SCC 266
2 (1974) 4 SCC 141
3 (1972) 3 SCC 256
4 (1994) 5 SCC 410

Adverting to the facts of ***Gautam Navlakha***'s case (cited *supra*), he would submit that the question as to the maintainability of the Habeas Corpus Petition after passing of the Remand Order did not directly and materially arise and therefore, the observations made in paragraph No.71 of the said judgment can only be considered as *obiter*.

17. In support of his proposition that the period of hospitalisation to be excluded for grant of custody, the learned Solicitor General of India placed reliance on ***CBI Vs. Vikas Mishra***[1]. In support of his contention that the provisions relating to arrest contained in Sections 41 and 41-A of *Cr.P.C.*, are not applicable and the procedure under Section 19 only is to be followed, the learned Solicitor General of India placed reliance on ***Vijay Madanlal Choudhary*** (cited *supra*) more specifically relying upon the paragraph Nos.3, 9, 23, 142, 323, 324 and 456 of the said judgment.

18. The learned Solicitor General of India placed reliance on ***P.Chidambaram Vs. Directorate of Enforcement***[2], more specifically on

1 2023 SCC OnLine SC 377
2 (2019) 9 SCC 24

orders of Enforcement of Police custody of various accused by various Courts to contend that the respondents / Investigating Agency is entitled for Police custody.

19. In support of his contention that the Enforcement Directorate has power to take custody and the provisions of the *Code of Criminal Procedure* under Section 167 etc., to be applicable, the learned Solicitor General of India placed reliance on the judgment of the Hon'ble Supreme Court of India in ***Directorate of Enforcement Vs. Deepak Mahajan and Anr.***[1] more specifically relying upon the paragraph Nos.134 and 136. The Learned Solicitor General of India also circulated certain Orders of the High Courts, excluding the period in which accused could not be available for grant of custody in the first 15 days.

20. *Mr.Mukul Rohatgi,* learned Senior Counsel leading the petitioner in making the rejoinder arguments while reiterating the propositions as argued by the learned Senior Counsel *Mr.N.R.Elango*, would make the

1 (1994) 3 SCC 440

following submissions :

(a) Adverting to the plea for exclusion of time spent in the Hospital, he would specifically contend that the period of 15 days is an inviolable rule. He would further submit that the fact situation in ***Anupam J. Kulkarni***'s case (cited *supra*) is exactly same as of the instant case. The law laid down by the ***Anupam J. Kulkarni***'s case (cited *supra*) held the field for so long and as a matter of fact, reiterated in a three bench judgment of the Hon'ble Supreme Court of India ***Budh Singh Vs. State of Punjab***[1]. The inviolability of the provisions enuring to the benefit of the accused such as default bail etc., is considered by the judgment of the Hon'ble Supreme Court of India in ***S.Kasi Vs. State through Inspector of Police, Samaynallur Police Station, Madurai District***[2], whereunder, it is held that even for reasons like Covid-19 Pandemic cannot affect the outer time limit and the right of the accused with respect to default bail.

(b) Relying upon the judgment of the Hon'ble Supreme Court of India in ***Satyajt Ballubhai Desai and Ors. Vs. State of Gujarat***[3], the learned

1 (2000) 9 SCC 266
2 (2021) 12 SCC 1
3 (2014) 14 SCC 434

Senior Counsel would submit that the Police custody is only an exception and judicial custody is the normal rule. Therefore, the learned Senior Counsel would submit that the ratio laid down in all the above judgments if taken into account, the law which will hold the field as on date is that no exclusion of time can be granted. Adverting to the judgment of the Hon'ble Supreme Court of India relied by the learned Solicitor General of India in ***CBI Vs. Vikas Mishra***'s case (cited *supra*), the learned Senior Counsel would specifically plead to record his arguments that having noted about the earlier rulings of the Hon'ble Supreme Court of India and having doubted the proposition, the same could have only been referred to a larger bench and till the larger bench answers the issue only, the existing rule could have been followed by the Hon'ble Supreme Court of India. Alternatively, he would submit that when a larger bench consisting of three judges has taken a view in ***Budh Singh***'s case (cited *supra*), the High Court should only follow the larger bench and refuse the extension of time.

(c) Reiterating maintainability of the Habeas Corpus Petition, the learned Senior Counsel would once again submit that the reading of ***Madhu Limaye***'s case (cited *supra*) and ***Gautam Navlakha***'s case (cited *supra*) by

the learned Solicitor General of India is incorrect and they apply in all force to the instant case on hand.

(d) Again placing reliance on ***Arnesh Kumar Vs. State of Bihar and Anr.***[1] and ***Satender Kumar Antil***'s case (cited *supra*), the learned Senior Counsel would submit that essentially arrest is violative of Section 41-A of *Cr.P.C.,* and once it violates, even though the learned Solicitor General of India is right in contending that the Court has to consider the subsequent judicial remand as on date of return of notice, still the remand order is susceptible of challenge in the present proceedings and if the illegality is demonstrated, the Habeas Corpus Petition is liable to be allowed.

(e) He would place the strong reliance on date of the Court Stamp on the grounds of arrest as 16.06.2023 and submitted that in criminal cases, it is the Court's date seal/stamp which is crucial and speaks about the date on which the document which is submitted to the Court. Therefore, it could not have been on the file of the learned Principal Sessions Judge, Chennai at the time of remand on 14.06.2023 and therefore, would pray that the Habeas Corpus Petition be allowed.

1 (2014) 8 SCC 273

(f) The learned Senior Counsel would submit that in any event, considering such grave illegalities pointed out on behalf of the petitioner and the health condition of the detenu, this Court alternatively can consider grant of bail to the detenu in the Habeas Corpus Petition itself.

21. *Mr.A.R.L.Sunderasan*, learned Additional Solicitor General of India would make the following submissions :

(a) The grounds of arrest were, in fact, shown to the learned Principal Sessions Judge, Chennai by producing the file as on the date of remand itself. Without perusing the said grounds of arrest, there is no way the learned Presiding Officer could have recorded about the said fact in the Remand Order itself. He would submit that initials are there with the date as 14.06.2023 in the grounds of arrest. Merely because the date stamp was made subsequently on 16.06.2023 in the copy produced, it cannot be said that the document itself was not in existence as on 14.06.2023.

(b) The condition of the detenu was such that absolutely there was not even a single question which can be made nor he can be accessed in view of the nature of the treatment which is said to have been given to the accused.

(c) Placing reliance on the documents, including grounds of arrest, e-mail communication sent by the petitioner herself, e-mails which are sent to the relatives and the other documents etc., he would factually refute the allegations of non-compliance of Article 22.

22. On behalf of both the sides, apart from the above judgments which were elaborately dealt with, the other judgments which are on the points canvassed were also cited before us. Both the sides learned Senior Counsel not only made elaborate submissions, but, also circulated written submissions encapsulating their oral submissions.

F. Questions for consideration :

23. I have considered the rival submissions made on either side and perused the material records of the case. The following questions arise for consideration:-

(i) Whether or not a Writ of Habeas Corpus would be maintainable after passing of Judicial Order of Remand of the detenu and if so, on what premises?

(ii) Whether the petitioner herein had made out a case for exercise of powers under Article 226 of the Constitution of India to set the detenu free?

(iii) If the detenu is not be set free, then whether the period from the moment of his arrest on 14.06.2023, whereby, he is admitted in the Hospital till his discharge is to be excluded while computing the time of initial 15 days from the date of remand to judicial custody under Section 167 of *Cr.P.C.*, so as to entrust him for the custody of the respondents ?

(iv) What reliefs are to be granted in the present Habeas Corpus Petition?

G. Question No.i :

24. To answer this question, it is necessary to advert to the relevant decisions which are relied upon by the learned Senior Counsel on either side. In ***Madhu Limaye***'s case (cited *supra*), the Hon'ble Supreme Court of India held that the Orders of Remand would not cure grave constitutional infirmities. It is essential to extract paragraph No.12 which reads as hereunder :

> *" **12.** Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at*

the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do. The remand orders are patently routine and appear to have been made mechanically. All that Mr Chagla has said is that if the arrested persons wanted to challenge their legality the High Court should have been moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Article 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions. If their detention in custody could not continue after their arrest because of the violation of Article 22(1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities. This disposes of the third contention of Madhu Limaye."

(emphasis supplied)

25. The judgment of this Court in ***R.Gurusamy***'s case (cited *supra*) had in the paragraph Nos.12 and 18 laid down the importance of the Article 22 of the Constitution of India and the right of the arrestee to be informed of the full particulars of the offence, for which, he was arrested and holding

that Writ of Habeas Corpus would be maintainable and initial illegality, which is grave in nature, has to be looked into inspite of the remand.

26. The Hon'ble Supreme Court of India in ***Kanu Sanyal***'s case (cited *supra*) held that irrespective of the pointers of legality or otherwise with regard to the initial detention, when there is a subsequent order making the detention as legal, in the application for Habeas Corpus, the Court is not concerned with the same. It is essential to extract the paragraph No.4 of the said judgment :

> " ***4.*** *These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in* ***A.K. Gopalan v. Government of India: [AIR 1966 SC 816 : (1966) 2 SCR 427 : 1966 Cri LJ 602]***
>
> > *"It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the*

> *detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the hearing."*

In two early decisions of this Court, however, namely, ***Naranjan Singh v. State of Punjab [(1952) 1 SCC 118 : AIR 1952 SC 106 : 1952 SCR 395 : 1952 Cri LJ 656] and Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] a slightly different view was expressed and that view was reiterated by this Court in B.R. Rao v. State of Orissa [(1972) 3 SCC 256, 259 : 1972 SCC (Cri) 481****] where it was said (at p. 259, para 7):*

> *"in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings".*

and yet in another decision of this Court in ***Talib Hussain v. State of Jammu & Kashmir [(1971) 3 SCC 118, 121****] Mr Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at p. 121, para 6):*

> *"in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing."*

Of these three views taken by the Court at

different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and the Court is not, to quote the words of Mr Justice Dua in ***B.R. Rao v. State of Orissa****, "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail, Vizakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the*

petitioner in the Central Jail, Vizakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Vizakhapatnam. See para 7 of the judgment of this Court in ***B.R. Rao v. State of Orissa****. The legality of the detention of the petitioner in the Central Jail, Vizakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them.*"

(emphasis supplied)

27. The Hon'ble Supreme Court of India in ***Serious Fraud Investigation Office***'s case (cited *supra*), while considering the *ex post facto* extension granted by the Central Government, by which only, the Agency had jurisdiction to proceed further, considered the issue in detail and held that the Habeas Corpus Petition will no longer be maintainable once there is an Order authorising judicial custody as the custody is the pursuant to the custodial judicial function exercised by a competent Court. The final conclusion reached on the subject exhibits in paragraph No.26

which is extracted hereunder for ready reference :

> " ***26.*** *It is true that the decision in* ***Dashrath Rupsingh Rathod [Dashrath Rupsingh Rathod v. State of Maharashtra, (2014) 9 SCC 129 : (2014) 4 SCC (Civ) 676 : (2014) 3 SCC (Cri) 673****] was in the context of a criminal complaint under Section 138 of the Negotiable Instruments Act and not while dealing with an issue of maintainability of a writ petition under Article 226 of the Constitution. It cannot, therefore, be said that in the present case, the High Court completely lacked jurisdiction to entertain the petition. However, since the challenge was with respect to the detention pursuant to valid remand orders passed by the Judicial Magistrate and the Special Court, Gurugram, in our considered view, the High Court should not have entertained the challenge. If the act of directing remand is fundamentally a judicial function, correctness or validity of such orders could, if at all, be tested in properly instituted proceedings before the appellate or revisional forum. In the circumstances, even if the arrests were effected within the jurisdiction of the High Court, since the accused were produced before a competent court in pursuance of Sections 435, 436 of the 2013 Act, the High Court ought not to have entertained the writ petition. However, since the High Court considered the matter from the standpoint whether the initial order of arrest itself was valid or not and then found that such illegality*

could not be sanctified by subsequent order of remand, we may deal with that question now."
(emphasis supplied)

28. The Hon'ble Supreme Court of India considered the entire issue in great detail in ***Manubhai Ratilal Patel Vs. State of Gujarat***[1] and the relevant paragraphs are extracted hereunder :

> " ***20.*** *After so stating, the* ***Bench in Kanu Sanyal case [(1974) 4 SCC 141 : 1974 SCC (Cri) 280]*** *opined that for adjudication in the said case, it was immaterial which of the three views was accepted as correct but eventually referred to para 7 in* ***B. Ramachandra Rao [(1972) 3 SCC 256 : 1972 SCC (Cri) 481 : AIR 1971 SC 2197]*** *wherein the Court had expressed the view in the following manner: (SCC p. 259)*
>
> > *"7.... in habeas corpus proceedings the court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings."*
>
> *Eventually, the Bench ruled thus:* ***(Kanu Sanyal case [(1974) 4 SCC 141 : 1974 SCC (Cri) 280]*** *, SCC p. 148, para 5)*
>
> > *"5.... The production of the petitioner before the Special Judge, Visakhapatnam, could not, therefore, be said to be illegal and*

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> *his subsequent detention in the Central Jail, Visakhapatnam, pursuant to the orders made by the Special Judge, Visakhapatnam, pending trial must be held to be valid. This Court pointed out in* ***Col. B. Ramachandra Rao v.State of Orissa [(1972) 3 SCC 256 : 1972 SCC (Cri) 481 : AIR 1971 SC 2197]*** *(SCC p. 258, para 5) that a writ of habeas corpus cannot be granted*
>
> *'5....where a person is committed to jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal'."*

21.*The principle laid down in* ***Kanu Sanyal [(1974) 4 SCC 141 : 1974 SCC (Cri) 280]*** *, thus, is that any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits.*

22. *At this juncture, we may profitably refer to the Constitution Bench decision in* ***Sanjay Dutt v. State [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433]*** *wherein it has been opined thus: (SCC p. 442, para 48)*

> *"48. ... It is settled by Constitution Bench decisions that a petition seeking the writ of habeas corpus*

on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order."

23. *Keeping in view the aforesaid concepts with regard to the writ of habeas corpus, especially pertaining to an order passed by the learned Magistrate at the time of production of the accused, it is necessary to advert to the schematic postulates under the Code relating to remand. There are two provisions in the Code which provide for remand i.e. Sections 167 and 309. The Magistrate has the authority under Section 167(2) of the Code to direct for detention of the accused in such custody i.e. police or judicial, if he thinks that further detention is necessary.*

24. *The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24*

hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

…….

***31.** Coming to the case at hand, it is evincible that the arrest had taken place a day prior to the passing of the order of stay. It is also manifest that the order of remand was passed by the learned Magistrate after considering the allegations in the FIR but not in a routine or mechanical manner. It has to be borne in mind that the effect of the order **[Manubhai Ratilal Patel v. State of Gujarat, Criminal Misc. Application No. 10303 of 2012, order dated 17-7-2012 (Guj)]** of the High Court regarding stay of investigation could only have a bearing on the action of the investigating agency. The order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a*

logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order ***[Manubhai Ratilal Patel v. State of Gujarat, Special Criminal Application No. 2207 of 2012, decided on 7-8-2012 (Guj)]*** *of remand cannot be regarded as untenable in law. It is well-accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in* ***B. Ramachandra Rao [(1972) 3 SCC 256 : 1972 SCC (Cri) 481 : AIR 1971 SC 2197] and Kanu Sanyal [(1974) 4 SCC 141 : 1974 SCC (Cri) 280]****, the court is required to scrutinise the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order*

passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

(emphasis supplied)

29. The Hon'ble Supreme Court of India in ***Gautam Navlakha***'s case (cited *supra*) framed the following question at paragraph N.66 of the said judgment :

" *Whether a Writ of Habeas Corpus lies against an order of remand under Section (167) of Cr.P.C.*"

30. After considering all the earlier pronouncements, held in paragraph No.71 as follows :

" ***71.*** *Thus, we would hold as follows:*
If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, the person affected can seek the remedy of Habeas Corpus. Barring such situations, a Habeas Corpus petition will not lie.

31. Thus, the law relating to entertainment of a petition for Habeas Corpus is no longer *res integra* and can be summarised as follows :

(i) The petition for Habeas Corpus is only directed against the executive or parties who are or who authorised the custody of the detenu, to produce them before the Court and set the detenu at liberty, if such custody is illegal and not authorised by law;

(ii) The Order of Remand is a judicial function and therefore, on exercise of such judicial function, normally, the Habeas Corpus Petition is not maintainable;

(iii) Such authorisation of valid custody can even be subsequent to the alleged act of illegal detention or even be subsequent to the filing of the Habeas Corpus Petition, but, if on the date of return of notice / taking up the Habeas Corpus for considertion, if the detention is or becomes legal, then, other questions would no longer be the concern of the Court in the Habeas Corpus Petition;

(iv) The illegalities or the procedural violations etc., in respect of the said judicial Order of Remand can only be canvassed by way of appropriate

appeal or revision proceedings under the *Code of Criminal Procedure* and not in the Habeas Corpus Petition;

(v) However, absolute illegality, total non-application of mind or lack or jurisdiction and wholesale disregard to the fundamental rights in a given facts and circumstances of a case would be an exception where the Habeas Corpus Court can examine the illegality of arrest and detention (*Paragraph No.21 of* ***Madhu Limaye****'; Pargraph 31 of* ***Manubhai Ratilal Patel*** *and paragraph No.71 of* ***Gautam Navlakha***).

Thus, I answer the question holding that a petition for Habeas Corpus agitating to produce the detenu and set him at liberty normally would not be maintainable after the order of judicial remand, but, only under the exceptional circumstances of absolute illegality as state above.

H. Question No.ii :

32. Now, submissions are made on behalf of the petitioner, the present case comes within the exceptional circumstances and therefore, the Writ of Habeas Corpus should issue. First, we shall deal with each and every violation that is pleaded before deciding the question.

(i) Violation of Article 22(1) :

It is the case of the petitioner that the detenu was not informed about the grounds of arrest. In this case, I have to consider the said arguments from the factual background that the ECIR/MDSZO/21/2021 was recorded on 29.07.2021 and repeated summons have been sent and replies in the form of request have been on behalf of the detenu as early as in the year 2021. Thereafter, a Writ Petition was filed by one *Shanmugam* regarding the same and in his reply, dated 29.04.2022, the detenu had conveyed that this Court stayed the investigation and he need not to appear. Finally, the case was heard in detail by the Hon'ble Supreme Court of India and by its judgment, dated 16.05.2023, the order of this Court was set aside and the Enforcement Directorate was permitted to proceed further in the matter. Thus, the petitioner was in the absolute know of things. That is only preliminary. It was still the duty of the Enforcement Directorate to have informed the grounds of arrest. In this regard, a perusal of the grounds of arrest would clearly show that in detail what is the basis for registering of E.C.I.R and what was the grounds of arrest are categorically mentioned in the same.

33. It is the case of the respondents that the same was also orally informed and when it was attempted to be served, the detenu did not accept the same. From the very nature of the allegations in this case that there was non-cooperation and threat and allegation of manhandling leading to a drama at the time of arrest, it can be *prima facie* concluded that there is no ground to discard the veracity in the averment made on behalf of the respondent officials. This apart, the order of remand passed by the learned Principal Sessions Judge is extracted hereunder:

> "*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 concisous 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. Aslo*

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."

34. This apart, copies of e-mails sent to the relatives of the detenu including the petitioner herein and *SMS* messages sent through telephone numbers are also produced. Therefore, I am satisfied that there due compliance of the Article 22 of the Constitution of India and the provisions in the *Code of Criminal Procedure* relating to the same in this regard.

(ii) Non-following of Sections 41 and 41-A of *Cr.P.C.*, :

35. To consider the submissions, it is essential to extract Sections 4(2), 5, 41 and 41-A of *Cr.P.C.,* which read as follows :

" ***4. Trial of offences under the Indian Penal Code and other laws.****—(1) ...*

(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 of place of investigating, inquiring into, trying or otherwise dealing with such offences.

***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.*

***41. When police may arrest without warrant.**— (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—*

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) 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 punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely: —

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person

has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary—

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.;

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the

basis of that information that such person has committed the said offence;

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested

and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

***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.*

(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.

(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."

36. It is essential to extract the relevant provisions of *P.M.L.A* i.e., Sections 19, 62, 65 and 71 which read as hereunder :

> *" **19. Power to arrest.**—(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*
> *(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.*
> *(3) Every person arrested under sub-*

section (1) shall, within twenty-four hours, be taken to a 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.

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.*

65. Code of Criminal Procedure, 1973 to apply.*—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far 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.*

71. Act to have overriding effect.*—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*"

Thus, it can be seen that the provisions of both the statutes absolutely make it clear that if there is a special enactment and if there is any special provision contained in respect of any particular purpose, then that special provision will apply. Wherever the special enactment does not contain specific provisions, then the provisions of the *Code of Criminal Procedure* would apply. The *Code of Criminal Procedure* and *P.M.L.A* are thus clearly and categorically harmonious.

37. As far as the arrest is concerned, a specific provision and special procedure is made in Section 19 of *P.M.L.A*, whereby, the power of arrest is vested in Director, Deputy Director or any other officer authorised by the Central Government and it must be on the basis of the material in his possession and he must have reason to believe and such belief is to be recorded in writing that a person may be guilty of an offence punishable under the Act and he may arrest such a person by informing him on the grounds of the arrest. Additionally, such officer should also forward the copy of the order along with material in his possession to the adjudicating

authority in a sealed envelope and that the person so arrested shall be produced before the concerned Special Court or learned Magistrate, as the case may be, having jurisdiction within a period of 24 hours.

38. It is in this context, when the constitutional validity of the provisions of *P.M.L.A*, more specifically Section 19, was challenged before the Hon'ble Supreme Court of India in ***Vijay Madanlal Choudhary***'s case (cited *supra*) specifically in the context that Section 19 prescribes arrest on the belief of involvement in the offence itself, while Sections 41 and 41-A of *Cr.P.C.*, have greater protection inasmuch as in respect of the offence punishable up to 7 years, arrest should not be automatic in all cases merely on the involvement in the offence, but, either should be necessary on the ground mentioned in Section 41(1)(b) of *Cr.P.C.*, and in all other cases, notice under Section 41-A *Cr.P.C.*, only has to be issued. The contentions were considered by the Hon'ble Supreme Court of India in the paragraph No.322 onwards of the said judgment. After considering the necessity of Section 41 *Cr.P.C.*, in paragraph No.323, finally, the Hon'ble Supreme Court held as follows in the paragraph Nos.325 and 326 which are extracted

for ready reference :

> " ***325.*** *The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act. The safeguards to be adhered to by the jurisdictional police officer before effecting arrest as stipulated in the 1973 Code, are certainly not comparable. Suffice it to observe that this power has been given to the high-ranking officials with further conditions to ensure that there is objectivity and their own accountability in resorting to arrest of a person even before a formal complaint is filed under Section 44(1)(b) of the 2002 Act. Investing of power in the high-ranking officials in this regard has stood the test of reasonableness in* ***Premium Granites****, wherein the Court restated the position that requirement of giving reasons for exercise of power by itself excludes chances of*

*arbitrariness. Further, in **Sukhwinder Pal Bipan Kumar**, the Court restated the position that where the discretion to apply the provisions of a particular statute is left with the Government or one of the highest officers, it will be presumed that the discretion vested in such highest authority will not be abused. Additionally, the Central Government has framed Rules under Section 73 in 2005, regarding the forms and the manner of forwarding a copy of order of arrest of a person along with the material to the Adjudicating Authority and the period of its retention. In yet another decision in **Ahmed Noormohmed Bhatti**, this Court opined that 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**).*

***326.** Considering the above, we have no hesitation in upholding the validity of Section 19 of the 2002 Act. We reject the grounds pressed into service to declare Section 19 of the 2002 Act as unconstitutional. On the other hand, we hold that such a provision has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act of prevention of money-laundering and confiscation of proceeds of crime involved in money-laundering, including to prosecute persons involved in the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not*

dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof."

Therefore, it is clear that the issue is no longer *res integra* and the Hon'ble Supreme Court of India had considered that the special provision in the form of Section 19 adequately safeguards the interests of the accused and thus, the express application of Sections 41 and 41-A of *Cr.P.C.,* stood negated in respect of the offence under *P.M.L.A*.

39. But, at the same time, I find that subsequently, in ***Satender Kumar Antil***'s case (cited *supra*), the Hon'ble Supreme Court of India even though considered the offence under *P.M.L.A* under category (C), however, in paragraph No. 27, held that the requirements under Sections 41 and 41-A of *Cr.P.C.,* are facets of Article 21 of the Constitution of India. If that be so, a careful reading of the judgments of the Hon'ble Supreme Court of India in ***Vijay Madanlal Choudhary***'s case (cited *supra*) and ***Satender Kumar Antil***'s case (cited *supra*) would lead us to the conclusion that *per se*, it is only Section 19 of *P.M.L.A* that is the substantive provision enabling

the arrest and prescribes the special procedure and therefore Sections 41 and 41-A *Cr.P.C.,* are not expressly applicable. However, the principles underlying Sections 41 and 41-A of *Cr.P.C.*, are to be extrapolated and read into Section 19 of *P.M.L.A* also. That is in each and every case it is not mandatory to arrest the accused and the officers, exercising powers under Section 19, have to satisfy the ingredients as mentioned in Section 41(1)(b) of *Cr.P.C.,* and in all the other cases, the arrest procedure need not be resorted to as the investigation can be carried on by issuing summons directing them to provide details.

40. Keeping this legal position in mind, if I examine the present case, on a perusal of the counter affidavit filed by the Investigating Officer of the case, it would be clear that the accused behaved in a manner so as to intimidate the Investigating Officer and secondly, did not also furnish the particulars which were necessary to trace out the money trail relating to the offence and thirdly was hampering the investigation. Therefore, on more than one ground mentioned in Section 41(1)(b) of *Cr.P.C.*, the arrest was necessary and the same is clearly mentioned in the grounds of arrest and

thus, even in the absence of specific application, substantially the requirements under Section 41 and 41-A of *Cr.P.C.*, stood complied in the instant case. Therefore, I find that the petitioner has not made out a case in this regard.

(iii) Non-application of mind at the time of remand :

41. I have extracted the remand order *supra*. On a perusal thereof, It cannot be said that there is non-application of mind much less total non-application of mind. The contention of the learned Senior Counsel for the detenu is that when the objections are raised in the petition to reject the remand, the said petition ought to have been considered while making the order of remand and it was incumbent on the part of the learned Presiding Officer to apply his or her mind in respect of those objections and if those objections are found to be genuine or valid, then the remand should be refused and if the objections are liable to be rejected, then the remand should be authorised.

42. In the instant case, after making the order aforesaid in the remand,

the objections were rejected as follows :

"14.06.2023

> *Since the accused has already been remanded to judicial custody, this Petition for rejection of remand doesn't arise. Hence this Petition is dismissed as infructuous."*

43. To that extent, I agree on the point of law that the proper exercise of powers by the learned remanding Judge would be to first consider the objections and decide upon the objections which should be made immediately and then make the order of remand or otherwise simultaneously. In this case, the procedure otherwise is incorrect. But, the factual scenario on hand is that the learned Presiding Officer visited the Hospital after examining the conditions and after examining the grounds of arrest, reasons mentioned in her remand order is said to have authorised the judicial custody after hearing the arguments of the learned Senior Counsel on the objections as to the remand and she also answers the questions as to informing of grounds of arrest. Thereafter she decided the petition aforesaid. Even though a petition for objections has been taken up subsequently, all the substantive allegations of non-information of the

grounds, non-existence of *prima facie* case and other concerns were independently considered by her which reflects in the order of remand and therefore, the violation complained is only of procedure and becomes technical in nature, as there is substantive application of mind in the order of remand. Therefore, in this context, even though I agree with the submissions of the learned Senior Counsel that the procedure adopted by the learned Pricipal Sessions Judge could have been better, substantive compliance relating to the application of mind as to the compliance of the Article 22 of the Constitution of India, Section 19 of *P.M.L.A* for arrest and consideration of other apprehensions expressed by the detenu himself are made and therefore, there the exercise of power cannot be termed as “absolute mechanical manner” or 'total non application of mind'.

44. Additionally, I am unable to accept the submissions relating to the manipulation of the grounds of arrest. The very fact that an endorsement is made in hand writing in the last part of the document about the intimation through e-mails would itself make it clear that the grounds of arrest were ready at the time of arrest and the Investigating Officer had to write on hand

subsequently in the morning after sending the e-mails. The only irregularity is that such a writing should be an endorsement below the signature by duly entering the time of endorsement. Such inadvertent error cannot make the entire grounds of arrest as unbelievable and when the learned Presiding Officer makes a categorical statement that she has perused the grounds of arrest, the same cannot be said to be imaginary. Further, the initials in the grounds of arrest are also made and therefore, in these peculiar facts and circumstances, I are unable to accept the arguments that the date stamp, stating that the grounds are before the Court only on 16.06.2023, should be taken into consideration for the purpose of disbelieving the respondents officials that the grounds of arrest were informed to the detenu. Therefore, I hold that the petitioner has not made out any ground on this score also.

45. Therefore, on the conspectus of the above analysis, it can be seen that the petitioner is unable to make out any ground. Every ground raised is untenable or to say the least is arguable both in terms of law and on facts and therefore, this is not a case of patent illegality or absolute non-application of mind or case of lack of jurisdiction so as to grant any relief to

the petitioner.

I. Question No.iii :

46. Coming to the prayer of exclusion of time, it is the first contention of the learned Senior Counsel for the petitioner that the respondents are not Police officer to seek custody. In this regard, I have already extracted Section 65 of *P.M.L.A* and if Section 65 is read along with Section 4(2) and 5 of *Cr.P.C.,* it can be seen that in respect of the investigation of the offences under *P.M.L.A*, since no other contrary or separate procedure is contained in *P.M.L.A*, the provisions relating to investigation would be applicable to the offences relating to *P.M.L.A*. Already, this issue has been considered by the Hon'ble Supreme Court of India in ***Directorate of Enforcement***'s case (cited *supra*) in the context of FERA and it is relevant to extract the paragraph Nos.132 to 136 which read as follows :

> " ***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.

133. *Though much argument was advanced on the expression "otherwise dealt with", we think it is not necessary to go deep into the matter except saying that the said expression is very wide and all comprehensive. Vide* ***Bhim Singh v. State of U.P. [AIR 1955 SC 435 : (1955) 1 SCR 1444 : 1955 Cri LJ 1010] and Delhi Admn. v. Ram Singh [(1962) 2 SCR 694 : AIR 1962 SC 63 : (1962) 1 Cri LJ 106]*** .

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.

135. *We are in total agreement with the above view of the various High Courts for the discussion made already and conclusions arrived at thereto.*

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 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.*"

(emphasis supplied)

47. In this case, the learned Senior Counsel are not arguing that Section 167 *Cr.P.C.*, will not be applicable and the accused cannot be produced before the appropriate Court for authorising the proper custody being the judicial custody or Police custody. The only contention which is made is that when once the language used in section speaks of Police

custody and since it is the contention of the Enforcement Directorate that they are not Police officers, then they are not even entitled to seek Police custody. I am not able to accept these submissions because firstly, under Section 167(2) of *Cr.P.C.*, the phrase used is "authorise detention of the accused in such custody as the Magistrate thinks fit". Therefore, the word "Police" is not even specifically used at the first instance. In any event, when Section 65 of *P.M.L.A* expressly makes it clear that the provisions in the *Code of Criminal Procedure* relating to investigation will apply to *P.M.L.A*, then Section 167 *Cr.P.C.,* should be applicable to m*utatis mutandis* and therefore, the word "Police" has to be read as Investigating Agency or the Enforcement Directorate. Therefore, the first contention that the Enforcement Directorate cannot seek for Police custody is without any merits.

48. Further, the learned Solicitor General of India also relied upon ***P.Chidambaram Vs. Directorate of Enforcement***'s case (cited *supra*) and several other orders, whereby, the Hon'ble Supreme Court of India and the various other *fora* have, as a matter of fact, granted custody to the

Enforcement Directorate. Merely because the express provision to act as Station House Officer is absent, the same will not in any manner disentitle the Enforcement Directorate from asking for the custody. Therefore, there can be no doubt whatsoever that the respondents officers are entitled to ask for custody.

49. The further question which arises is that if in the first 15 days, it was not possible at all for the learned Magistrate to entrust the custody of the accused to the investigating agency, whether such period can be excluded and whether custody can be handed over in the subsequent period of judicial custody after extension of remand. The Hon'ble Supreme Court of India in ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni***'s case (cited *supra*), after considering the question, answered that after the expiry of the first period of 15 days, the further remand during the period of investigation can only be in judicial custody and there cannot be any Police custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise, committed by him in the same transaction comes to light at a

later stage. It is useful to extract the paragraph No.13, the relevant portion of which reads as follows :

> " ***13.*** *Whenever any person is arrested under Section 57 CrPC he should be produced before the nearest Magistrate within 24 hours as mentioned therein. Such Magistrate may or may not have jurisdiction to try the case. If Judicial Magistrate is not available, the police officer may transmit the arrested accused to the nearest Executive Magistrate on whom the judicial powers have been conferred. The Judicial Magistrate can in the first instance authorise the detention of the accused in such custody i.e. either police or judicial from time to time but the total period of detention cannot exceed fifteen days in the whole. Within this period of fifteen days there can be more than one order changing the nature of such custody either from police to judicial or vice-versa. If the arrested accused is produced before the Executive Magistrate he is empowered to authorise the detention in such custody either police or judicial only for a week, in the same manner namely by one or more orders but after one week he should transmit him to the nearest Judicial Magistrate along with the records. When the arrested accused is so transmitted the Judicial Magistrate, for the remaining period, that is to say excluding one week or the number of days of detention ordered by the Executive Magistrate, may authorise further detention within that period of first*

> *fifteen days to such custody either police or judicial. After the expiry of the first period of fifteen days the further remand during the period of investigation can only be in judicial custody. There cannot be any detention in the police custody after the expiry of first fifteen days even in a case where some more offences either serious or otherwise committed by him in the same transaction come to light at a later stage. But this bar does not apply if the same arrested accused is involved in a different case arising out of a different transaction.*"
>
> (emphasis supplied)

50. This position was further reiterated in the judgment in ***Budh Singh Vs. State of Punjab***'s case (cited *supra*) and the paragraph No.5 of the said judgment is extracted hereunder :

> "***5.*** *In the face of facts, as noticed above, the order of the learned Judicial Magistrate, dated 4-1-2000, in our opinion, did not require any interference. The mandate of Section 167 of the Criminal Procedure Code, 1973 postulates that there cannot be any detention in police custody, after the expiry of the first 15 days, so far as an accused is concerned. That period of 15 days had in this case admittedly expired on 4-1-2000. The impugned order of the High Court violates the statutory provisions contained in Section*

> *167 CrPC since it authorises police remand for a period of seven days after the expiry of the first fifteen days' period. In* ***CBI v. Anupam J. Kulkarni [(1992) 3 SCC 141 : 1992 SCC (Cri) 554****] this Court considered the ambit and scope of Section 167 CrPC and held that there cannot be any detention in police custody after the expiry of the first 15 days even in a case where some more offences, either serious or otherwise committed by an accused in the same transaction come to light at a later stage. The Bench, however, clarified that the bar did not apply if the same arrested accused was involved in some other or different case arising out of a different transaction, in which event the period of remand needs to be considered in respect to each of such cases. The impugned order of the High Court, under the circumstances, cannot be sustained. The direction to grant police remand for a period of seven days by the High Court is, accordingly, set aside. The appeal, therefore, succeeds and is allowed to the extent indicated above.*"
>
> (emphasis supplied)

51. Further, the judgment in ***S.Kasi***'s case (cited *supra*) is also pressed into service, whereunder, it was held that the rule relating to the default bail on expiry of 60 days or 90 days, as the case may be, prescribed under Section 167 of *Cr.P.C.*, was read to be inviolable even in the

backdrop of *Covid pandemic*. Be that as it may, the Hon'ble Supreme Court of India had recently considered the said issue in ***CBI Vs. Vikas Mishra***'s case (cited *supra*), wherein, the said legal position was taken note of in the paragraph No.12 which is extracted hereunder :

> " ***12.*** *Relying upon the decisions of this Court in* ***CBI v. Anupam J. Kulkarni [CBI v. Anupam J. Kulkarni****, (1992) 3 SCC 141 :* ***1992 SCC (Cri) 554****] and the subsequent decision in Budh Singh v. State of Punjab* ***[Budh Singh v. State of Punjab, (2000) 9 SCC 266****] , it is vehemently submitted by Shri Neeraj Kishan Kaul, learned Senior Counsel appearing on behalf of the accused that as such no police custody can be granted/allowed beyond the first 15 days from the date of arrest. It is submitted that therefore now the police custody which shall be beyond the period of 15 days from the date of arrest is not permissible.*"

52. Thereafter, in the paragraph No.21 ultimately, it is held as follows :

> " ***21.****...Thus, the respondent-accused has successfully avoided the full operation of the order of police custody granted by the learned Special Judge. No accused can be permitted to play with the investigation and/or the court's process. No accused can be permitted*

to frustrate the judicial process by his conduct. It cannot be disputed that the right of custodial interrogation/investigation is also a very important right in favour of the investigating agency to unearth the truth, which the accused has purposely and successfully tried to frustrate. Therefore, by not permitting CBI to have the police custody interrogation for the remainder period of seven days, it will be giving a premium to an accused who has been successful in frustrating the judicial process."

53. It is argued before this Court that even though this Court that this Court should look into the strength of the bench and since ***Budh Singh Vs. State of Punjab***'s case (cited *supra*) is a three Member Bench and when two views are available, this Court should follow ***Budh Singh Vs. State of Punjab***'s case (cited *supra*), being the larger bench. That may be true in a situation where two views are taken in two different Judgments. But, in this case, when specifically the said judgment has been referred by the Hon'ble Supreme Court of India and view has been taken that under exceptional circumstance, the rule of first 15 days is dispensable then, as on date, this Court has to take the legal position as such. Therefore, in view of the aforesaid decision in ***CBI Vs. Vikas Mishra***'s case (cited *supra*), it can no

more be said that rule relating to 15 days is inviolable.

54. In this case, after the arrest and before the production before the learned Principal Sessions Judge and after the remand, not even a minute, for which, the detenu / accused was available to the respondents for custodial interrogation. In the offences like *P.M.L.A*, especially in the current scenario, when money trail is difficult to be unearthed on account of huge advancement of technology wire transfers, off-shore investments and transfers, it is extremely essential to unearth the truth and the custodial interrogation assumes significance.

55. The accused, in this case, was unwell and it was due to his Coronary Artery Disease. The reason is attributable not to the Enforcement Directorate. Similarly, not permitting him in the custody for interrogation, is only taking into consideration of his own health and his health condition so that he will not be put to undue stress when he is ailing from a serious disease and post operative care. In such circumstances, when the first 15 days goes in the Hospital for his own benefit, then the benefit of custodial

interrogation cannot be denied in its entirety to the respondents Enforcement Directorate.

56. A careful observation of the provisions of the *Code of Criminal Procedure* and various rulings of the Hon'ble Apex Court, one can understand that our criminal justice system operates on the principles of Truth (*sathya*), Justice (*neethi*), Compassion (*karuna*) and Peace *(shanthi)*. Upto the stage of investigation and trial, it is the unearthing of the truth and truth alone is the primary objective. At the conclusion of the trial and rendering judgment, the primary objective is to render justice. If the person is found guilty and is sentenced to prison, Compassion is showered on him. As a matter of fact, the rights guaranteed by our Constitution to the prisoners can be better explained by the concepts of 'Supreme Compassion' as advocated by Vallalar (Thaniperumkarunai) and highest order of forgiving by doing good to the offender as enunciated in Thirukkural (Nannayam Seithu vidal). And compassion leads to *Shanthi* in the society. Now, keeping that in the mind, provision relating to investigation has to be approached and interpreted with the primary aim of unearthing the truth.

Therefore, in that view of the matter, I am of the view that the time spent by the detenu / accused in the Hospital, only such time till he is not in a position to be fit to be interrogated has to be excluded from the initial 15 days time for grant of custody to the respondents and accordingly, I answer the question.

57. Having answered the above question, I place on record one disturbing fact. By the interim order dated 15.06.2003, this Court, based on the medical reports of the detenu, had agreed that the detenu needs emergency medical treatment and ordered shifting to Cauvery Hospital for treatment. As a matter of fact, the respondents Enforcement Directorate had every right to feel aggrieved by our interim order and also to approach the Hon'ble Supreme Court for redressal and has been rightly done so in this case. But, at the same time, the custody was also pressed on the next day. Had the learned Principal Sessions Judge, Chennai had granted the prayer, then virtually, it would amount to overruling the order that there is necessity for emergent treatment. Therefore I leave the respondents with the question as to whether it was fair and proper? As a matter of fact, an

order has also been passed, against which, as submitted by the learned Solicitor General and Special Leave Petition is pending and therefore, judicial discipline commands and I refrain myself.

J. Question No.iv :

58. By our interim order, we had directed shifting of the detenu / accused to the Cauvery Hospital, Chennai to undergo treatment for his ailment. It is also submitted before us that already, the surgery is performed and he is out of the Intensive Care Unit and at present, continuing his treatment in the Hospital. Considering the fact that he has undergone surgery and he can continue to undergo the treatment at the Cauvery Hosiptal for a period of another 10 days from today or until discharge whichever is earlier. If he needs treatment even after the 10th day, the same shall be continued at the Prison Hospital and his physician / surgeon can also visit him there and continue the treatment/follow up.

K. The Result :

59. In the result,

(i) The Habeas Corpus Petition in H.C.P.No.1021 of 2023 shall stand

dismissed;

(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*;

(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;

(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.

04.07.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

sts/nvsri/grs

To

1. The Deputy Director,
   Directorate of Enforcement,
   Chennai.

2. The Assistant Director,
   Directorate of Enforcement,
   Chennai.

J.NISHA BANU, J.
AND
D.BHARATHA CHAKRAVARTHY, J.

grs/sts/nvsri

Order in
H.C.P.No.1021 of 2023

Dated:
04.07.2023