IN THE HIGH COURT OF JHARKHAND AT RANCHI

B.A. No. 8321 of 2024

Amit Kumar Agarwal, aged about 53 years, son of Sri Vijay Kumar Agarwal, resident of HB-165, Salt Lake, Sector-3, P.O. Vidhan Nagar, P.S. Vidhan Nagar South, District-24 Pargana North (West Bengal).

… … Petitioner

Versus

Directorate of Enforcement, Government of India, Pee Pee Compound, Kaushalya Chambers-II, Ranchi Sub Zonal Office, P.O.-G.P.O., P.S.-Hindpidhi, District-Ranchi.

… … Opposite Party

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Ms. Meenakshi Arora, Sr. Advocate
Mr. Jatin Sahgal, Advocate
Mr. Rohit Ranjan Sinha, Advocate
Ms. Amrita Sinha, Advocate
Mr. Abhishek Agarwal, Advocate
Mr. Raymon Singh, Advocate
Mr. Kumar Baig, Advocate
Mr. Kumar Rahul, Advocate

For the Opp. Party : Mr. Amit Kumar Das, Advocate
Mr. Saurav Kumar, Advocate

C.A.V. on 28th March, 2025 **Pronounced on 25/04/2025**

1. The instant application has been filed under Section 439 and 440 of the Code of Criminal Procedure, 1973 praying for grant of bail in ECIR Case No.01 of 2023 [arising out of ECIR/RNZO/18/2022 dated 21.10.2022 arising out of Bariatu P.S. Case No.141 of 2022] for offences punishable under Section 3 read with Section 70 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002, hereinafter referred to as the Act, 2002.

Prosecution story and Factual Matrix

2. The prosecution story in brief as per the allegation made in the instant ECIR/complaint reads as under:

3. An ECIR bearing No. 18/2022 was recorded on the basis of the FIR bearing No. 141 of 2022 dated 04.06.2022, lodged at Bariyatu police station, Ranchi

Jharkhand under sections 420, 467 and 471 of IPC, 1860, against Pradeep Bagchi on the basis of complaint of one Sri Dilip Sharma, Tax Collector, Ranchi Municipal Corporation for submission of forged papers i.e. Aadhar Card, Electricity Bill and Possession letter for obtaining holding number 0210004194000A1 and 0210004031000A5. Investigation revealed that by submitting the forged documents, a holding number was obtained in name of Pradeep Bagchi for property at Morabadi Mouza, Ward No. 21/19, Ranchi having an area of the plot measuring 455.00 decimals approx.

4. Investigation further revealed that the above property belonged to Late B.M. Laxman Rao which was given to the Army and had been in the possession of the Defence, in occupation of the Army since independence. Investigation reveals that by way of creating a fake owner (Pradeep Bagchi) of the above said property, it was sold to one company M/s Jagatbandhu Tea Estate Pvt. Ltd for which the consideration amount was shown Rs. 7 crores which was highly under value and out of this amount Rs. 7 crores payment amounting to Rs. 25 lakhs only were made into the account of said Pradeep Bagchi and rest of the money was falsely shown to be paid through cheques in the sale deed being deed no.- 6888 of 2021.

5. It has come during investigation that records available at the Circle Officer Bargain, Ranchi along with the office of Registrar of Assurances, Kolkata have been altered and records have been modified. The survey of Circle Office Bargain as well as Registrar of Assurances, Kolkata transpires that documents have been tempered to create fictitious owner of the above properties.

6. The Enforcement Directorate upon completion of investigation filed the prosecution complaint under section 45 read with 44 of PML Act being ECIR Case no. 01/2023 against the present petitioner and consequently. the trial court vide order dated 19.06.2023 has taken the cognizance of the aforesaid offence.

7. The present petitioner was arrested on 07.06.2023 under section 19 of PML, Act 2002 accordingly the petitioner had preferred the Misc. Cri. Application No. 1915 of 2023 for grant of his bail which was dismissed vide order dated 07.07.2023 by the learned AJC-I-Cum Special Judge, CBI-Cum-Special Judge under PMLA at Ranchi, against which he moved before this Court by filing bail application being B.A. No. 7343 of 2023, which was also dismissed vide order dated 01.03.2024.

8. After dismissal of the bail application, the petitioner moved against the order dated 01.03.2024 before the Hon'ble Supreme Court by filing SLP (Cr.) No. 6584 of 2024, which was also dismissed as withdrawn.

9. However, after his prayer for bail having been rejected, he moved before this Court by filing the writ petition being W.P.(Cr) No. 793 of 2024 wherein he initially challenged his arrest dated 07.06.2023 as also the remand order dated 09.06.2023 but in course of argument the prayer has been confined only with respect to remand order dated 09.06.2023 passed by learned Special Judge, PMLA, Ranchi in ECIR 01/2023.

10. The Division Bench of this Court while dismissing the said writ petition has observed that the petitioner has not been able to make out a case for showing interference in remand order dated 09.06.2023.

11. It needs to refer herein that the petitioner has renewed his prayer for bail by filing Misc. Cri. Application No.2409 of 2024 before the Special Judge for grant of his bail which was dismissed vide order dated 04.09.2024 passed by the learned AJC-I-Cum Special Judge, PMLA at Ranchi.

12. Hence the present application has been preferred for the grant of bail.

Argument on behalf of the learned counsel for the petitioner:

13. Ms. Meenakshi Arora, learned senior counsel for the petitioner has argued *inter alia* on the following grounds:

(i) If the entire ECIR will be taken into consideration, there is no reason to believe which is the primary requirement for making arrest of a person said to be involved in commission of offence under the Act, 2002 as per the provision of Section 19(1) of the Act, 2002.

(ii) Further, at the time of arrest the condition stipulated under Section 19(1) of the PML Act, 2002 has not been followed and the ground of arrest has not been provided, in writing, as required to be provided under the provision of Section 19(1) of the PML Act, 2002 coupled with the judgment rendered by Hon'ble Apex Court in the case of ***Pankaj Bansal vs. Union of India and Ors., [2023 SCC OnLine SC 1244 : (2024) 7 SCC 576]; V. Senthil Balaji Vs. State Represented by Deputy Director & Ors. [(2024) 3 SCC 51; Prabir Purkayastha Vs. State (NCT of Delhi) [2024 SCC OnLine 934; Arvind Kejriwal Vs. Directorate of Enforcement [2024 SCC OnLine SC 1703]*** and in addition thereto the judgment rendered in the case of ***Vihaan Kumar v. State of Haryana, 2025 SCC OnLine SC 269.***

(iii) Further, submission has been made that the condition precedent for arrest under the PML Act, 2002 is that at the time of arrest the reason for arrest is to be communicated to the concerned but herein no such reason has been communicated and hence the very arrest of the petitioner is *per se* illegal and in that view of the matter the order of arrest is fit to be quashed and set aside and in consequence thereof, appellant may be directed to be released from judicial custody.

(iv) Further, it has been incorrectly stated at paragraph no.8.9 in the Prosecution Complaint that the co-accused Dilip Kumar Ghosh in his statement dated 27.2.2023 recorded under Section 50 PMLA (***RUD No.77***) stated that Jagatbandhu Tea Estate Pvt. Ltd. is his company and Amit Kumar Agarwal. It is humbly submitted that this statement in the Prosecution Complaint is not a true one as the co-accused Dilip Kumar Ghosh never made such a statement to ED.

(v) There is neither any material to connect M/s. Jagatbadhu Tea Estate Pvt. Ltd. and M/s. Rajesh Auto Merchandise Pvt. Ltd. as related entities nor is there any material to show the accused petitioner as the beneficial owner of M/s. Jagatbandhu Tea Estate Pvt. Ltd.

(vi) Further, M/s. Rajesh Auto Merchandise Private Limited was incorporated on 21.3.2005 with the Registrar of Companies, Kolkata (West Bengal). This company belongs to Agarwal Family. After the resignation of the petitioner from the directorship of this company, at present, the brothers of the petitioner namely Mr. Amar Agarwal and Mr. Rajesh Agarwal are the directors of the said company. Though the accused Dilip Kumar Ghosh being close friend of the petitioner, was

director of this company from 26.03.2019 to 08.09.2021, he had/has no stake in the Company and the Company exclusively belongs to the Agarwal Family.

(vii) Admittedly, the accused petitioner is a stakeholder in M/s. Rajesh Auto Merchandise Pvt. Ltd. and M/s. Aurora Studio Pvt. Ltd. but he had/has no stake of whatsoever nature in M/s. Jagatbandhu Tea Estate Pvt. Ltd. except long friendship of about 30 years with Mr. Dilip Ghosh who is a director of M/s. Jagatbandhu Tea Estate Pvt.

(viii) Since, the accused petitioner has no connection whatsoever with the said Property and does not have any stake in M/s. Jagatbandhu Tea Estate Pvt. Ltd., no presumption can be drawn for acquisition of the said Property by the accused petitioner in the name of M/s. Jagatbandhu Tea Estate Pvt. Ltd. being beneficial owner of the said company.

(ix) There is no document/material available on record to implicate the petitioner for forging and manipulating the title deeds being Deed of Sale No. 4369 dated 11.10.1932 of the property in question in the office of Registrar of Assurances at Kolkata.

(x) There is nothing on record to suggest, even remotely, that any conversation and/or communication and/or correspondence was ever exchanged between the petitioner on the one hand and accused Pradeep Bagchi and other accused persons on the other hand, who were involved in forging the title deeds of the said Property to project title of the said Property as that of accused Pradeep Bagchi. Nor is there any allegation and/or material on record to suggest that there was any

monetary transaction between the petitioner and the other accused persons.

(xi) Further, there is no material on record to show that the petitioner was involved in obtaining holding numbers by accused Pradeep Bagchi by submitting the forged documents. Furthermore, there is no material available on record to show, even remotely that any proceeds of crime have been generated by the petitioner.

(xii) Even, if all the allegations levelled against the petitioner in the prosecution complaint are accepted at its face value and in its entirety and appreciated in their proper perspective, in accordance with law settled by Hon'ble Apex Court, the same does not make out any case as defined under Section 3 punishable under Section 4 of the PML Act.

(xiii) Learned counsel for the petitioner based upon the aforesaid ground has submitted that the learned court while considering the prayer for bail ought to have taken into consideration all these aspects of the matter both legal and factual but having not done so, serious error has been committed.

(xiv) Learned senior counsel for the petitioner has also raised the ground of custody and submitted that the petitioner is in custody since 07.06.2023 i.e., for about 22 months.

14. Further submission has been made in the aforesaid view of the matter as per the ground agitated, it is a fit case where the petitioner is to be given the privilege of bail.

Argument on behalf of the learned counsel for the respondent:

15. While on the other hand, Mr. Amit Kumar Das, learned counsel for the respondent-Enforcement Directorate has vehemently opposed the prayer for grant of regular bail by taking the following grounds:

(i) It is incorrect on the part of the petitioner to take the ground that the reason for arrest has not been communicated rather the reason for arrest has been communicated along with the exhaustive grounds, the day when the petitioner was arrested, which would be evident from Annexure appended with the counter affidavit, wherein the entire details has been furnished regarding the culpability said to be the reason to believe for arrest of the present petitioner.

(ii) It has been submitted that in the said communication the petitioner had put his signature in each page with date and on the last page, he has noted that '*read and understand' 'I have read my ground of arrest completely and also communicated to Mr. Dilip Ghosh*." and below therein has put his signature with date i.e., 07.06.2023.

In view thereof, submission has been made that the petitioner has been communicated with the reason of arrest, the day when he was taken into custody i.e., on 07.06.2023. Hence, the provision of Section 19(1) of the PML Act, 2002 has fully been complied with. Further, when the petitioner was produced before the Special Judge, PMLA on 08.06.2023, he did not complain regarding non-supply of grounds of arrest or about any ill-treatment against the arrest.

(iii) The learned Special Judge has specifically recorded in order dated 08.06.2023 that the information of arrest has been given to their family members and at the time of passing of order learned counsel for the

petitioner, namely, Bidhyut Chourasia and Abhishek Agarwal were also present.

(iv) The arrest of the petitioner, therefore, is in consonance with the interpretation made by Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra); Pankaj Bansal vs. Union of India and Ors. (supra); V. Senthil Balaji Vs. State Represented by Deputy Director & Ors. (supra); Prabir Purkayastha Vs. State (NCT of Delhi) [2024 SCC OnLine SC 934]*** or in the case of ***Arvind Kejriwal Vs. Directorate of Enforcement (supra),*** so far as the stipulation made under Section 19(1) of the PML Act, 2002 pertaining to communication of reason for ground of arrest is concerned.

(v) Further submission has been made has the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)*** has laid down that the arrest will be said to be illegal if the reason for arrest will not be communicated. Further, in the case of ***Pankaj Bansal vs. Union of India and Ors. (supra)*** it has been laid down that written communication is required to be served to the concerned but that has been held to be applicable from the date of judgment since the word '*henceforth'* has been used therein. Here, the judgment in the case of ***Pankaj Bansal vs. Union of India and Ors. (supra)*** has come on 03.10.2023 but the arrest of the present petitioner was made on 07.06.2023, which is much prior to the pronouncement of the judgment rendered in the case of ***Pankaj Bansal vs. Union of India and Ors. (supra)*** but even ignoring the same the facts and circumstances of the case, the reason for arrest since has already been

served the day when the petitioner was arrested i.e., on 07.06.2023, hence, it is incorrect on the part of the petitioner to take the ground that the mandate of the Hon'ble Apex Court clarifying the mandate of Section 19(1) of the PML Act, 2002 has not been followed.

(vi) If the entire ECIR will be taken into consideration there is ample allegation of commission of predicate offence, hence, it is incorrect on the part of the petitioner to take the ground that there is no reason to believe of commission of offence under the Act, 2002.

(vii) Investigation under PMLA reveals that several accused persons including the petitioner hatched the conspiracy to acquire the property by making fake deed no. 4369/1932 and obtaining a preconceived report with the assistance of the then Deputy-Commissioner who sent his subordinate staff to verify the forged sale deed planted in the records of Registrar of Assurances, Kolkata. This property was in possession of the Defence for which the accused persons entered into conspiracy including the present Petitioner.

(viii) The holding number was issued to show that the possession of the said land is in the name of Pradeep Bagchi and based upon which, title of the said land was cleared with the connivance of then DC Mr. Chhavi Ranjan(co-accused) by relying upon the report which is based upon a forged deed planted in Registrar of Assurance Office, Kolkata and the same was done under the instruction of the Petitioner. Petitioner acquired the property in the name of one of the companies i.e. M/s Jagatbandhu Tea Estate Pvt. Ltd. and acquired the land being aware about the conspiracy to acquire the property by making fake deed no.

4369/1932 and obtaining a preconceived report to verify the forged sale deed planted in the records of the Registrar of Assurances, Kolkata.

(ix) Further, the proceeds of crime are generated wherein a forged deed is relied upon and the transaction was entered into a minuscule rate wherein no actual payment of amount was done. The said act of the petitioner makes his intention and knowledge evidently clear as the Petitioner made the company a front to acquire the said property and evidence shows that the Petitioner and Dilip Ghosh have close associations.

(x) So far as the non-fulfilment of the condition as stipulated under Section 45 of the Act, 2002 is concerned, the same is also not having substance in view of the fact that the twin conditions, i.e., the Public Prosecutor has been given an opportunity to oppose the application for such release; and where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail, is well been found to be fulfilled if the entire ECIR along with the conduct of the petitioner will be taken into consideration.

(xi) So far as the period of custody as agitated by learned senior counsel for the petitioner is concerned, it has been submitted that as per settled proposition of law which has been settled by the Hon’ble Apex Court that the long incarceration (herein about 22 month) or delay in trial alone cannot be ground to release the petitioner on bail, rather in case of scheduled offences/special offences the seriousness of the matter

should have been taken in to consideration by the Court concerned while enlarging the petitioner on bail.

16. The learned counsel for the ED on the basis of the aforesaid score has submitted that since the issue of prayer for bail of the petitioner has already been adjudicated by this Court on merit in B.A.No.7343 of 2023 and there is no fresh ground available and further the petitioner by way of filing the writ petition being W.P.(Cr) No. 793 of 2024 had challenged his arrest dated 07.06.203 as also the remand order dated 09.06.2023 but in course of argument the prayer has been confined only with respect to remand order dated 09.06.2023 but the same was dismissed by the Division Bench of this Court, therefore it is not required to again adjudicate the prayer for bail of the petitioner a fresh, as such instant application may be dismissed.

Analysis:

17. This Court has heard learned counsel for the parties, considered the argument advanced on behalf of parties and the pleadings available on record as also the documents appended therewith and the judgments relied upon by the parties and other materials available on record.

18. This Court before appreciating the argument advanced on behalf of the parties, deems it fit and proper to discuss herein the admitted factual aspects of the instant case.

19. An ECIR bearing No. 18/2022 was recorded on the basis of the FIR bearing No. 141 of 2022 dated 04.06.2022, lodged at Bariyatu police station, Ranchi Jharkhand under sections 420, 467 and 471 of IPC, 1860, against Pradeep Bagchi for submission of forged papers in order to obtain holding number 0210004194000A1 and 0210004031000A5. Further, Investigation revealed

that by submitting the forged documents, a holding number was obtained in name of Pradeep Bagchi for property at Morabadi Mouza, Ward No. 21/19, Ranchi having an area of the plot measuring 455.00 decimals approx.

20. Investigation further revealed that by way of creating a fake owner (Pradeep Bagchi) of the above said property, it was sold to one company M/s Jagatbandhu Tea Estate Pvt. Ltd for which the consideration amount was shown Rs. 7 crores which was highly under value and out of this amount Rs. 7 crores payment amounting to Rs. 25 lakhs only were made into the account of said Pradeep Bagchi and rest of the money was falsely shown to be paid through cheques.

21. It has come during investigation that records available at the Circle Officer Bargain, Ranchi along with the office of Registrar of Assurances, Kolkata have been altered and records have been modified to create fictitious owner of the above properties.

22. The Enforcement Directorate upon completion of investigation filed the prosecution complaint under section 45 read with 44 of PML Act being ECIR Case no. 01/2023 against the present petitioner by showing his alleged involvement in the said offence and consequently the present petitioner was arrested on 07.06.2023. Accordingly, the trial court vide order dated 19.06.2023 has taken the cognizance of the aforesaid offence.

23. Thereafter, petitioner had preferred the Misc. Cri. Application No. 1915 of 2023 for grant of his bail which was dismissed vide order dated 07.07.2023 by the learned AJC-I-Cum Special Judge, CBI-Cum- Special Judge under PMLA at Ranchi, against which he moved before this Court by filing bail

application being B.A. No. 7343 of 2023, which was also dismissed vide order dated 01.03.2024.

24. After dismissal of the bail application, the petitioner moved against the order dated 01.03.2024 before the Hon'ble Supreme Court by filing SLP (Cr.) No. 6584 of 2024, which was also dismissed as withdrawn.

25. However, after his prayer for bail having been rejected, he moved before this Court by filing the writ petition being W.P.(Cr) No.793 of 2024 wherein he challenged his order of arrest dated 07.06.2023 as also the remand order dated 09.06.2023 but in course of argument prayer has been confined with respect to remand order dated 09.06.2023. The said writ petition was dismissed vide order dated 19.03.2025 and while dismissing the said writ petition the Court has observed that the petitioner has not been able to make out a case for showing interference in remand order dated 09.06.2023.

26. Further, the petitioner has renewed his prayer for bail by filing Misc. Cri. Application No.2409 of 2024 before special Judge for grant of his bail which was dismissed vide order dated 04.09.2024 passed by the learned AJC-I-Cum Special Judge, PMLA at Ranchi. Hence the present application has been preferred for the grant of bail.

27. Thus, from the aforesaid factual aspect it is evident that earlier present petitioner had moved before this Court by filing bail application being B.A. No. 7343 of 2023, which was dismissed by this court on merit vide order dated 01.03.2024 and after dismissal of the bail application, the petitioner moved against the order dated 01.03.2024 before the Hon'ble Supreme Court by filing SLP (Cr.) No. 6584 of 2024, which was also dismissed as withdrawn.

28. At the outset, it needs to refer herein that the learned counsel for the respondent ED has contended that since the prayer for bail has already been adjudicated by this Court and all the issues which have been raised herein by the learned counsel for the petitioner, has already been considered by this court while dismissing the said bail application, further no new ground is available herein, therefore it is not required to consider the prayer for bail of the petitioner a fresh. The learned counsel for the respondent ED has further contended that SLP being SLP (Cr.) No. 6584 of 2024, which has preferred against the said order has also been dismissed as withdrawn.

29. In the aforesaid context this Court thinks fit that for proper appreciation of the present application it would be better to refer relevant paragraphs of the order dated 01.03.2024 passed in B.A. No. 7343 of 2023 by which the bail of the present petitioner had been rejected. The relevant paragraph of aforesaid order is being quoted as under:

> *"36. Now coming to the ground as has been raised on behalf of the petitioner, i.e.,*
> *i. The condition as stipulated under Section 19(1) of the Act, 2002 has not been complied with.*
> *ii. If the entire ECIR will be taken into consideration, there is no reason to believe which is the primary requirement for making arrest of a person said to be involved in commission of offence under the Act, 2002 as per the provision of Section 19(1) of the Act, 2002.*
> *iii. The condition as stipulated under Section 45 of the Act, 2002 is not available.*
> *37. This Court, in order to appreciate the aforesaid argument, is of the view that so far as the condition stipulated under Section 19(1) of the Act, 2002 is concerned, it is not the ground of the petitioner that before arrest in view of the provision of Section 19(1) of the Act, 2002 there was no communication of reason of arrest.*
> *The Section 19(1) provides that the power to arrest is there under Section 19(1) of the Act, 2002 which is to be exercised by communicating the order in writing after arrest as soon as possible.*

> *38. The aforesaid provision has been clarified so far as the condition that what is the meaning of 'as soon as' by the Hon'ble Apex Court in the case of Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra) wherein at paragraph 458 it has been observed by the Hon'ble Supreme Court that after arrest, as soon as may be, the person should be informed about the grounds for such arrest and so long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for those purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering.*
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> *39. Further the Hon'ble Apex Court in Pankaj Bansal vs. Union of India and Ors., 2023 SCC OnLine SC 1244 has been pleased to hold that the written communication is to be given prior to arrest which is to be made under Section 19(1) of the Act, 2002 by using the word that henceforth the written communication is to be given to the appellant who is to be arrested under Section 19(1) of the Act, 2002.*
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> *40. This Court is making reference of these judgments even though the petitioner has not argued and that is not the case of the petitioner, i.e., there is no communication of communicating the reason of arrest. It is corroborative from the fact that the petitioner, after arrest under Section 19(1) has been remanded but the said order of remanded has not been assailed before any forum which suggest that the petitioner is having no grievance so far as the alleged non-compliance of the provision of Section 19(1) of the Act, 2002 is concerned"*

30. It is thus evident from the perusal of the aforesaid paragraphs that this Court while referring the ratio of the judgment rendered by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) and ***Pankaj Bansal vs. Union of India and Ors*** has observed that even though the petitioner has not argued and that is not the case of the petitioner, i.e., there is no communication of communicating the reason of arrest. It is corroborative from the fact that the petitioner, after arrest under Section 19(1) has been remanded but the said order of remand has not been

assailed before any forum which suggest that the petitioner is having no grievance so far as the alleged non-compliance of the provision of Section 19(1) of the Act, 2002 is concerned. Further, this Court while taking into consideration the various paragraph of the prosecution complaint has observed that reason to believe as provided under Section 19(1) or the twin condition as available under Section 45 of the Act is followed therein.

31. Thus, as would be evident from paragraphs 36 to 40, wherein this Court has made as observation that the order of remand has not been challenged ever prior to filing of the bail application which itself is suggestive of the fact the petitioner was having no grievance with respect to the non-compliance of provision of Section 19(1) of the PML Act, 2002.

32. It is further admitted fact that the petitioner has moved to the Hon'ble Apex Court by filing SLP (Cr.) No. 6584 of 2024, making the prayer for bail by invoking the jurisdiction conferred under Article 132 of the Constitution of India, but the same was dismissed as withdrawn. For ready reference, the relevant part of the order is quoted as under:

> *"UPON hearing the counsel the Court made the following*
>
> *O R D E R*
>
> *1.The learned counsel for the petitioner, at the outset, seeks permission to withdraw the present Special Leave Petition.*
>
> *2. Permission as sought for is granted.*
>
> *3. The Special Leave Petition is, accordingly, dismissed as withdrawn".*

33. It is further evident that when prayer for bail of the present petitioner having been rejected, he moved before this Court by filing the writ petition being W.P.(Cr) No. 793 of 2024 wherein he challenged his order of arrest dated 07.06.2023 as also the remand order dated 09.06.2023 but in course of

argument prayer has been confined with respect to remand order dated 09.06.2023. The Division Bench during hearing of the aforesaid matter has taken into consideration all the aspects of the matter and had dismissed the said writ petition.

34. The contention of the learned counsel for the respondent ED is that since the prayer for bail of the present petitioner has already been decided and further the petitioner in W.P.(Cr) No. 793 of 2024 has confined his prayer only with respect to remand order dated 09.06.2023 and the same has also been adjudicated by the Division Bench, therefore it is not required to rehear the issue of legality of arrest dated 07.06.2023 due to the reason that the prayer with respect to the issue of arrest has consciously been not agitated by confining the prayer made in the said petition restricting the petition only to the issue of legality and propriety of remand. However, since it is a case for consideration of issue of bail wherein this point has again been agitated, hence, in the ends of justice, the same is being considered herein.

35. Before adverting into the merit of the case this Court thinks fit to discuss the provision of law particularly Section 19 as contained under the Act, 2002 with its object and intent as also the legal proposition as settled by the Hon'ble Apex Court in various judgments.

36. The Act 2002 was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and

also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

37. It is evident that the Act 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

38. It needs to refer herein the definition of "proceeds of crime" as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

> *"**2(u)** "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[or abroad];*
>
> *[Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]"*

39. It is evident from the aforesaid provision by which the "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

40. In the explanation it has been referred that for the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly

or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

41. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

42. The "property" has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

43. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The "scheduled offence" has been defined under Section 2(1)(y) which reads as under:

> *"**2(y)** "scheduled offence" means—*
>
> *(i) the offences specified under Part A of the Schedule; or*
>
> *(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or*
>
> *(iii) the offences specified under Part C of the Schedule."*

44. It is evident that the "scheduled offence" means the offences specified under Part A of the Schedule; or the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

45. The offence of money laundering has been defined under Section 3 of the Act, 2002 which reads as under:

> ***"3. Offence of money-laundering.—****Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*
>
> *[Explanation.— For the removal of doubts, it is hereby clarified that,—*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—*
>
> *(a) concealment; or*
> *(b) possession; or*
> *(c) acquisition; or*
> *(d) use; or*
> *(e) projecting as untainted property; or*
> *(f) claiming as untainted property,*
> *in any manner whatsoever;*
>
> *(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"*

46. It is evident from the aforesaid provision that "offence of money-laundering" means whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment,

possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

47. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

48. The punishment for money laundering has been provided under Section 4 of the Act, 2002.

49. Section 50 of the Act, 2002 confers power upon the authorities regarding summons, production of documents and to give evidence.

50. The various provisions of the Act, 2002 along with interpretation of the definition of "proceeds of crime" has been dealt with by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929*** wherein the Bench comprising of three Hon'ble Judges of the Hon'ble Supreme Court have decided the issue by taking into consideration the object and intent of the Act, 2002. The definition of "proceeds of crime" as under paragraph-251.

51. The interpretation of the condition which is to be fulfilled while arresting the person involved in the predicate offence has been made as would appear from paragraph-265. For ready reference, relevant paragraphs are being referred as under:

> ***"265.*** *To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity*

connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein. This Court in Pratap Singh *v. State of Jharkhand, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India."*

52. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the "proceeds of crime" as contained under Section 2(1)(u), whereby and whereunder, it has been clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words *"any property which may directly or indirectly be derived or obtained as a result of*

any criminal activity relatable to the scheduled offence" will come under the fold of the proceeds of crime.

53. So far as the purport of Section 45(1)(i)(ii) is concerned, the aforesaid provision starts from the non-obstante clause that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act shall be released on bail or on his own bond unless –

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail

Sub-section (2) thereof puts limitation on granting bail specific in sub-section (1) in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.

The explanation is also there as under sub-section (2) thereof which is for the purpose of removal of doubts, a clarification has been inserted that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973, and accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under section 19 and subject to the conditions enshrined under this section.

54. The fact about the implication of Section 45 has been interpreted by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) at paragraphs-. For ready reference, the said paragraphs are being referred as under:

> *"**387**……..The provision post the 2018 Amendment, is in the nature of no bail in relation to the offence of money laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of the 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money laundering and combating menace of money laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money laundering.*
>
> *412. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the constitutional court, the underlying principles and rigours of Section 45 of the 2002 Act must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money laundering."*

55. Subsequently, the Hon'ble Apex Court in the case of ***Tarun Kumar vs. Assistant Director Directorate of Enforcement, (2023) SCC OnLine SC 1486*** by taking into consideration the law laid down by the Larger Bench of the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra), it has been laid down that since the conditions specified under Section 45 are mandatory, they need to be complied with. The Court is required to be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and he is not likely to commit any offence while on bail.

56. It has further been observed that as per the statutory presumption permitted under Section 24 of the Act, the Court or the Authority is entitled to presume unless the contrary is proved, that in any proceedings relating to proceeds of crime under the Act, in the case of a person charged with the offence of money laundering under Section 3, such proceeds of crime are involved in money laundering. Such conditions enumerated in Section 45 of PML Act will have to be complied with even in respect of an application for bail made under Section 439 Cr. P.C. in view of the overriding effect given to the PML Act over the other law for the time being in force, under Section 71 of the PML Act.

57. The Hon'ble Apex Court in the said judgment has further laid down that the twin conditions as to fulfil the requirement of Section 45 of the Act, 2002 before granting the benefit of bail is to be adhered to which has been dealt with by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.***(supra) wherein it has been observed that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

58. In the judgment rendered by the Hon'ble Apex Court in ***Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors.*** (supra) as under paragraph-284, it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

59. The Hon'ble Apex Court in the case of ***Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India through Manoj Kumar, Assistant Director, Eastern Region, (2015) 16 SCC 1*** has been pleased to hold at paragraph -30 that the conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act.

60. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under

Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant. For ready reference, paragraph-30 of the said judgment reads as under:

> *"**30.** The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."*

61. Further, the Hon'ble Apex Court in ***Satender Kumar Antil vs. CBI and Anr., (2022) 10 SCC 51*** has passed the order that if the investigation has been completed and if there is full cooperation of the accused persons, there may not be any arrest. The Hon'ble Apex Court categorised the offences in different group for purpose of bail. The reference may be taken from Paragraph -2 of the aforesaid judgment which reads as under:

> ***"2.** After allowing the application for intervention, an appropriate order was passed on 7-10-2021 [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153] . The same is reproduced as under : (Satender Kumar Antil case [Satender Kumar Antil v. CBI, (2021) 10 SCC 773 : (2022) 1 SCC (Cri) 153] , SCC pp. 774-76, paras 2-11)*
>
> *"2. We have been provided assistance both by Mr S.V. Raju, learned Additional Solicitor General and Mr Sidharth Luthra, learned Senior*

Counsel and there is broad unanimity in terms of the suggestions made by the learned ASG. In terms of the suggestions, the offences have been categorised and guidelines are sought to be laid down for grant of bail, without fettering the discretion of the courts concerned and keeping in mind the statutory provisions.

3. We are inclined to accept the guidelines and make them a part of the order of the Court for the benefit of the courts below. The guidelines are as under:

'Categories/Types of Offences

(A) Offences punishable with imprisonment of 7 years or less not falling in Categories B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43-D(5)], Companies Act, [Section 212(6)], etc.

(D) Economic offences not covered by Special Acts.

REQUISITE CONDITIONS

(1) Not arrested during investigation.

(2) Cooperated throughout in the investigation including appearing before investigating officer whenever called.

(No need to forward such an accused along with the charge-sheet (Siddharth v. State of U.P. [Siddharth v. State of U.P., (2022) 1 SCC 676 : (2022) 1 SCC (Cri) 423])

CATEGORY A

After filing of charge-sheet/complaint taking of cognizance

(a) Ordinary summons at the 1st instance/including permitting appearance through lawyer.

(b) If such an accused does not appear despite service of summons, then bailable warrant for physical appearance may be issued.

(c) NBW on failure to appear despite issuance of bailable warrant.

(d) NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of the accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

(e) Bail applications of such accused on appearance may be decided without the accused being taken in physical custody or by granting interim bail till the bail application is decided.

CATEGORIES B/D

On appearance of the accused in court pursuant to process issued bail application to be decided on merits.

CATEGORY C

Same as Categories B and D with the additional condition of compliance of the provisions of Bail under NDPS (Section 37), Section 45 of the PMLA, Section 212(6) of the Companies Act, Section 43-D(5) of the UAPA, POSCO, etc.

... "

62. However, the Hon'ble Apex Court recently in the case of ***Gurwinder Singh vs. State of Punjab and Anr., 2024 SCC OnLine SC 109***, in the matter of UAP Act 1967 has observed that the conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act and the 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. For ready reference, relevant paragraph of the said judgment is being referred as under:

> ***"28.*** *The conventional idea in bail jurisprudence vis-à-vis ordinary penal offences that the discretion of Courts must tilt in favour of the oft-quoted phrase - 'bail is the rule, jail is the exception' - unless circumstances justify otherwise - does not find any place while dealing with bail applications under UAP Act. The 'exercise' of the general power to grant bail under the UAP Act is severely restrictive in scope. The form of the words used in proviso to Section 43D (5)- 'shall not be released' in contrast with the form of the words as found in Section 437(1) CrPC -* ***'may be released' - suggests the intention of the Legislature to make bail, the exception and jail, the rule."***

63. The reason for making reference of this judgment is that in the ***Satender Kumar Antil vs. CBI and Anr*** (supra)'s judgment, the UAPA has also been

brought under the purview of category ‘c’ wherein while laying observing that in the UAPA Act, it comes under the category ‘c’ which also includes money laundering offences wherein the bail has been directed to be granted if the investigation is complete but the Hon'ble Apex Court in ***Gurwinder Singh vs. State of Punjab and Anr.*** (supra) has taken the view by making note that the penal offences as enshrined under the provision of UAPA are also under category ‘c’ making reference that jail is the rule and bail is the exception.

64. In the backdrop of the aforesaid legal provisions and settled law this court is now adverting to merit of the case.

Issue of legality of Arrest

65. Now coming to the ground as has been raised on behalf of the petitioner that at the time of arrest the condition stipulated under Section 19(1) of the PML Act, 2002 has not been followed and the ground of arrest has not been provided, in writing, as required to be provided under the provision of Section 19(1) of the PML Act, 2002and hence the very arrest of the petitioner is per se illegal and in that view of the matter the order of arrest is fit to be quashed and set aside and in consequence thereof, appellant may be directed to be released from judicial custody.

66. *Per contra*, the learned counsel for the ED respondent has submitted that it is incorrect on the part of the petitioner to take the ground that the reason for arrest has not been communicated rather the reason for arrest has been communicated along with the exhaustive grounds, the day when the petitioner was arrested, which would be evident from Annexure R-3 appended with the counter affidavit, wherein the entire details has been furnished regarding the culpability said to be the reason to believe for arrest of the present petitioner.

67. In the aforesaid context it needs to refer herein the core of the Section 19 the Act 2002, for ready reference the same is being quoted as under:

> ***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 [78][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 [79][special court or] magistrate's court.*

68. It is evident from perusal of the Section 19 of PMLA which gives the power to arrest if the officer concerned has "reason to believe" on the basis of material in his possession, that the person is guilty. As per Section 19 the arrest has to be on the basis of material in possession with the ED, there is reason to believe that the accused is guilty of the offence, with the reason recorded in writing and the grounds for arrest should be communicated with the accused.

69. As discussed herein above the entire PML Act, 2002 fell for consideration before the three-Judge Bench of the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.*** (supra) wherein the

provision of Section 19(1) has also been taken into consideration, which would be evident from paragraphs, which reads as under:

> ***371.*** *The next issue is : Whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the authority and recording satisfaction of reason to believe that the person is guilty of money laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money laundering. In any case, upon filing of the complaint before the statutory period provided in the 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the authority under Section 44(1)(b) of the 2002 Act before the Special Court.*
>
> ***372.*** *Viewed thus, supply of ECIR in every case to the person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of the 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right.*

> *Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution.*

70. It is evident from the aforesaid consideration as referred in the aforesaid judgment that once the person is informed of the grounds of arrest, that would be sufficient compliance with the mandate of Article 22(1) of the Constitution and it is not necessary that a copy of the ECIR be supplied in every case to the person concerned, as such, a condition is not mandatory and it is enough if ED discloses the grounds of arrest to the person concerned at the time of arrest.

71. It needs to refer herein the judgment which has come in the case of ***V. Senthil Balaji Vs. State Represented by Deputy Director & Ors. (supra)*** which was passed on 07.08.2023 wherein consideration has been given with respect to the issue of Section 19(1) holding therein that that after forming a reason to believe that the person has been guilty of an offence punishable under PMLA, the officer concerned is at liberty to arrest him, while performing his mandatory duty of recording the reasons, and that the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest.

72. Subsequent thereto, the matter has again come before the Hon'ble Apex Court in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra),*** wherein the factual aspect pertaining to the said case was that no written communication was made and only on the basis of oral communication of reason of arrest, the said Pankaj Bansal has taken into custody, which would be evident from discussion of the factual aspect, which would be evident from following paragraphs of the judgment, which reads as under:

"2. *The genesis of these appeals is traceable to FIR No. 0006 dated 17-4-2023 registered by the Anti-Corruption Bureau, Panchkula, Haryana, under Sections 7, 8, 11 and 13 of the Prevention of Corruption Act, 1988, read with Section 120-BIPC for the offences of corruption and bribery along with criminal conspiracy. The names of the accused in this FIR are:*

"(i) Mr Sudhir Parmar (the then Special Judge, CBI and ED, Panchkula);

(ii) Mr Ajay Parmar [nephew of Mr Sudhir Parmar and Deputy Manager (Legal) in M3M Group];

(iii) Mr Roop Bansal (promotor of M3M Group); and

(iv) other unknown persons."

3. *Significantly, prior to this FIR, between the years 2018 and 2020, 13 FIRs were gotten registered by allottees of two residential projects of the IREO Group, alleging illegalities on the part of its management. On the strength of these FIRs, ED recorded Enforcement Case Information Report No. GNZO/10/2021 dated 15-6-2021 (hereinafter "the first ECIR") in connection with the money laundering offences allegedly committed by the IREO Group and Lalit Goyal, its Vice-Chairman and Managing Director. Neither in the FIRs nor in the first ECIR were M3M Group or the appellants herein arrayed as the accused. Further, no allegations were levelled against them therein. On 14-1-2022, ED filed Prosecution Complaint No. 01/2022, titled "Enforcement Directorate v. Lalit Goyal and others", against seven named accused, under Section 200CrPC read with Sections 44 and 45 PMLA. Notably, M3M Group and the appellants did not figure amongst those named accused. The number of FIRs had also increased from 13 to 30, as per this complaint. This case was numbered as COMA/01/2022, titled "Enforcement Directorate v. Lalit Goyal and others", and was pending in the Court of Sudhir Parmar, Special Judge. At that stage, the Anti-Corruption Bureau, Panchkula, received information that Sudhir Parmar was showing favouritism to Lalit Goyal, the owner of IREO Group, and also to Roop Bansal and his brother, Basant Bansal, the owners of M3M Group. This led to the registration of FIR No. 0006 dated 17-4-2023. On 12-5-2023, ED issued summons to M3M India Pvt. Ltd., calling upon it to provide information and documents pertaining to transactions with certain companies. Thereafter, on 1-6-2023, ED raided the properties of*

M3M Group and effected seizures of assets and bank accounts. Roop Bansal was arrested by ED on 8-6-2023 apropos the first ECIR.

4. *Apprehending that action would be taken against them also in the context of the first ECIR, Pankaj Bansal and Basant Bansal secured [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] , [Pankaj Bansal v. State (NCT of Delhi), 2023 SCC OnLine Del 3590] interim protection from the Delhi High Court in Bail Applications Nos. 2030 and 2031 of 2023. By separate orders dated 9-6-2023 [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] passed therein, the Delhi High Court noted that Pankaj Bansal and Basant Bansal had not been named in the first ECIR and that ED had not yet been able to implicate them in any of the scheduled offences under the 2002 Act. Further, the High Court noted that Pankaj Bansal had not even been summoned by ED in that case. The High Court accordingly granted them interim protection by way of anticipatory bail, subject to conditions, till the next date of hearing i.e. 5-7-2023. Special Leave Petitions (Crl.) Nos. 7384 and 7396 of 2023 were filed by ED assailing the orders dated 9-6-2023 [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] , [Pankaj Bansal v. State (NCT of Delhi), 2023 SCC OnLine Del 3590] , [Basant Bansal v. State (NCT of Delhi), (2023) 2 HCC (Del) 700] before this Court and the same are stated to be pending.*

5. *In the meanwhile, on the basis of FIR No. 0006 dated 17-4-2023, ED recorded another ECIR viz. ECIR/GNZO/17/2023, on 13-6-2023 (hereinafter "the second ECIR") against:*

(i) Mr Sudhir Parmar;

(ii) Mr Ajay Parmar;

(iii) Mr Roop Bansal; and

(iv) others who are named in the FIR/unknown persons.

6. *However, summons were issued by ED to Pankaj Bansal and Basant Bansal on 13-6-2023 at 6.15 p.m. in relation to the first ECIR, requiring them to appear before ED on 14-6-2023 at 11.00 a.m. Though the copy of the summons placed before this Court pertains to Pankaj Bansal alone, the email dated 13-6-2023 of the Assistant Director of ED, bearing the time 6.15 p.m., was addressed to both Pankaj Bansal and Basant Bansal and required their compliance with the summons on 14-6-2023 at 11 a.m. While Pankaj Bansal and Basant Bansal were at the office of ED at Rajokri, New Delhi, in compliance with these summons, Pankaj Bansal was served with fresh summons at 4.52 p.m. on 14-6-2023, requiring him*

to be present before another investigating officer at 5.00 p.m. on the same day. This summons was in connection with the second ECIR. There is lack of clarity as to when summons in relation to the second ECIR were served on Basant Bansal. According to ED, he was served the summons on 13-6-2023 itself and refused to receive the same. However, it is an admitted fact that Basant Bansal was also present at ED's office at Rajokri, New Delhi, on 14-6-2023 at 11.00 a.m. It is also not in dispute that, while he was there, Basant Bansal was arrested at 6.00 p.m. on 14-6-2023 and Pankaj Bansal was arrested at 10.30 p.m. on the same day. These arrests, made in connection with the second ECIR, were in exercise of power under Section 19(1) PMLA. The arrested persons were then taken to Panchkula, Haryana, and produced before the learned Vacation Judge/Additional Sessions Judge, Panchkula. There, they were served with the remand application filed by ED.

10. *It was the specific case of the father and son in their writ petitions before the High Court that their arrest under the provisions of PMLA was a wanton abuse of power/authority and an abuse of process by ED, apart from being blatantly illegal and unconstitutional. They also asserted that ED acted in violation of the safeguards provided in Section 19 PMLA. In this milieu, they made the following prayers:*

"In view of the facts and circumstances mentioned above, it is, therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to issue appropriate writ(s), order(s) and/or direction(s) to:

A. Read down and/or read into as well as expound, deliberate upon and delineate the ambit, sweep and scope of Section 19(1) PMLA in consonance with the principles, inter alia, enunciated by the Hon'ble Supreme Court in Vijay Madanlal Choudhary v. Union of India [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929 : (2022) 10 Scale 577] and hold that:

(i) The expression "material in possession" occurring therein must be confined, circumscribed and limited to legally admissible evidence of sterling quality and unimpeachable character on the basis whereof "reasons to believe" could be recorded in writing that the arrestee is "guilty" of the offence under Section 4 PMLA;

(ii) The word "guilt" occurring therein would qualify a higher yardstick than a mere suspicion and the learned Court at the stage of remand is required to apply its judicial mind to the grounds as well as necessity for arrest as, inter alia, held in Arnesh Kumar v. State of Bihar [Arnesh

Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449] and as accorded imprimatur in Satender Kumar Antil v. CBI [Satender Kumar Antil v. CBI, (2022) 10 SCC 51 : (2023) 1 SCC (Cri) 1] ;

(iii) The expression "communicate" occurring therein would definitely entail physical communication and furnishing the grounds of arrest to the arrestee in the context of the obligation for "reason for such belief to be recorded in writing" read with Rules 2(1)(g) and 2(1)(h) of the PMLA Rules, 2005 (the Arrest Rules) which postulates the meaning of the word "order" to include the grounds of such arrest."

73. The Hon'ble Apex Court in the aforesaid pretext has laid down the proposition to communicate the reasons for arrest in writing by making reference of word '*henceforth'*. For ready reference, the relevant paragraph is quoted as under:

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

45. *On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) PMLA of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi [Moin Akhtar Qureshi v. Union of India, 2017 SCC OnLine Del*

> *12108] and the Bombay High Court in Chhagan Chandrakant Bhujbal [Chhagan Chandrakant Bhujbal v. Union of India, 2016 SCC OnLine Bom 9938 : (2017) 1 AIR Bom R (Cri) 929] , which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that ED's investigating officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) PMLA, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) PMLA. Further, as already noted supra, the clandestine conduct of ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of ED and, thereafter, to judicial custody, cannot be sustained.*

74. However, in the said case, the arrest of the said Bansal duo has been held to be invalid.

75. The argument has been advanced by Mr. Das, learned counsel appearing for the respondent-ED that the reason for invalidating the arrest of the Pankaj Bansal in the said judgment is that there was no communication of reason to arrest although it was said that orally it was communicated and while coming to the conclusion that henceforth the written communication is to be there the arrest of the said Pankaj Bansal has been held to be invalid.

76. Subsequent to the said judgment, the judgment has come in the case of ***Ram Kishor Arora Vs. Directorate of Enforcement [2023 SCC OnLine SC 1682].*** The Hon'ble Apex Court while taking in to consideration the judgment passed by ***Vijay Madanlal Choudhary*** **v.** ***Union of India*** (supra) has observed that the law laid down by the three-Judge Bench in ***Vijay Madanlal Choudhary*** that Section 19(1) PMLA has a reasonable nexus

with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliant with the mandate of Article 22(1) of the Constitution of India, any observation made or any finding recorded by the Division Bench of lesser number of Judges contrary to the said ratio laid down in ***Vijay Madanlal Choudhary*** would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches. For ready reference the relevant paragraph is being quoted as under :

> ***16.*** *In view of the aforestated proposition of law propounded by the Constitution Benches, there remains no shadow of doubt that the law laid down by the three-Judge Bench in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] that Section 19(1) PMLA has a reasonable nexus with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliant with the mandate of Article 22(1) of the Constitution of India, any observation made or any finding recorded by the Division Bench of lesser number of Judges contrary to the said ratio laid down in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches in cases referred above. The three-Judge Bench in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] having already examined in detail the constitutional validity of Section 19 PMLA on the touchstone of Article 22(1) and upheld the same, it holds the field as on the date.*

77. Further, The Hon'ble Apex Court in the aforesaid judgment while taking in to consideration the judgment passed in the case of ***Pankaj Bansal Vs. Union of India & Ors*** (supra), come out with a view that Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the

reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest. However, the Hon'ble Apex Court refused to invalidate the arrest of said Ram Kishor Arora. For ready reference, the relevant paragraph of the judgment is quoted as under:

> ***21.*** *In view of the above, the expression "as soon as may be" contained in Section 19 PMLA is required to be construed as — "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time. Since by way of safeguard a duty is cast upon the officer concerned to forward a copy of the order along with the material in his possession to the adjudicating authority immediately after the arrest of the person, and to take the person arrested to the court concerned within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.*
>
> ***22.*** *In Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] , it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance with mandate of Article 22(1) of the Constitution. It is also observed that the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money-laundering. Therefore, in our opinion the person arrested, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e. as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 PMLA but also of Article 22(1) of the Constitution of India.*
>
> ***23.*** *As discernible from the judgment in Pankaj Bansal case [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 PMLA, directed to furnish the grounds of arrest in*

> *writing as a matter of course, "henceforth", meaning thereby from the date of the pronouncement of the judgment. The very use of the word "henceforth" implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not mandatory or obligatory till the date of the said judgment. The submission of the learned Senior Counsel Mr Singhvi for the appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary "henceforth" that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. Hence, non-furnishing of grounds of arrest in writing till the date of pronouncement of judgment in Pankaj Bansal case [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] could neither be held to be illegal nor the action of the officer concerned in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 PMLA as also Article 22(1) of the Constitution of India, as held in Vijay Madanlal [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : 2022 SCC OnLine SC 929] .*

78. Thereafter, the Hon'ble Apex Court has considered the issue of Section 19(1) in the case of ***Prabir Purkayastha Vs. State (NCT of Delhi) (supra)*** wherein the Hon'ble Apex Court has passed the order of release of said Prabir Purkayastha, the appellant in the said case, on the ground that no reason said to be in writing was communicated even though the law has been laid down in the case of ***Pankaj Bansal Vs. Union of India & Ors (supra)*** as referred in paragraphs 29 and 30 which is being referred as under:

> ***29.*** *Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.*

> ***30.*** *Furthermore, the provisions of Article 22(1) have already been interpreted by this Court in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576] laying down beyond the pale of doubt that the grounds of arrest must be communicated in writing to the person arrested of an offence at the earliest. Hence, the fervent plea of the learned ASG that there was no requirement under law to communicate the grounds of arrest in writing to the appellant-accused is noted to be rejected.*

79. Again, in the case of ***Arvind Kejriwal Vs. Directorate of Enforcement (supra)*** the view has been taken for communication of reason of arrest and it has been observed by the Hon'ble Apex Court that the written "grounds of arrest", though a must, does not in itself satisfy the compliance requirement. The authorized officer's genuine belief and reasoning based on the evidence that establishes the arrestee's guilt is also the legal necessity. As the "reasons to believe" are accorded by the authorised officer, the onus to establish satisfaction of the said condition will be on the DoE and not on the arrestee. The Hon'ble Apex Court while taking in to consideration the judgment rendered by the Hon'ble Apex Court in Vijay ***Madanlal Choudhary*** (supra) is a decision rendered by a three Judge Bench, hence after formulating the questions of law has referred the matter for consideration by a larger Bench. For ready reference the relevant paragraphs are being quoted as under:

> ***11.*** *Arrest under Section 19(1) of the PML Act may occur prior to the filing of the prosecution complaint and before the Special Judge takes cognizance.[11] Till the prosecution complaint is filed, there is no requirement to provide the accused with a copy of the ECIR.[12] The ECIR is not a public document. Thus, to introduce checks and balances, Section 19(1) imposes safeguards to protect the rights and liberty of the arrestee. This is in compliance with the mandate of Article 22(1) of the Constitution of India.*
>
> ***12.*** *V. Senthil Balaji v. State[13] similarly states that the designated officer can only arrest once they record "reasons to believe" in writing, that the person being arrested is guilty of the offence punishable under the PML*

Act. It is mandatory to record the "reasons to believe" to arrive at the opinion that the arrestee is guilty of the offence, and to furnish the reasons to the arrestee. This ensures an element of fairness and accountability.

16. *Recently, in Prabir Purkayastha v. State (NCT of Delhi),[15] this Court reiterated the aforesaid principles expounded in Pankaj Bansal (supra). The said principles were applied to the pari materia provisions[16] of the Unlawful Activities (Prevention) Act, 1967. The Court explained that Section 19(1) of the PML Act is meant to serve a higher purpose, and also to enforce the mandate of Article 22(1) of the Constitution. The right to life and personal liberty is sacrosanct, a fundamental right guaranteed under Article 21 and protected by Articles 20 and 22 of the Constitution. Reference was made to the observations of this Court in Roy V.D. v. State of Kerala[17] that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution and any infringement of this fundamental right vitiates the process of arrest and remand. The fact that the chargesheet has been filed in the matter would not validate the otherwise illegality and unconstitutionality committed at the time of arrest and grant of remand custody of the accused. Reference is also made to the principle behind Article 22(5) of the Constitution. Thus, this Court held that not complying with the constitutional mandate under Article 22(1) and the statutory mandate of the UAPA, on the requirement to communicate grounds of arrest or grounds of detention, would lead to the custody or detention being rendered illegal.*

28. *Providing the written "grounds of arrest", though a must, does not in itself satisfy the compliance requirement. The authorized officer's genuine belief and reasoning based on the evidence that establishes the arrestee's guilt is also the legal necessity. As the "reasons to believe" are accorded by the authorised officer, the onus to establish satisfaction of the said condition will be on the DoE and not on the arrestee.*

80. It is, thus, evident from the cumulative consideration of the judgment rendered by Hon'ble Apex Court, as referred above, that the law under statutory provision as contained under Section 19(1) of the PML Act, 2002 is that the reason is to be communicated to the person concerned then only the arrest would be said to be valid.

81. We are conscious that in any nature of arrest the mandatory requirement is to be fulfilled. Herein, the mandatory requirement as per Article 19(1) of the PML Act, 2002 coupled with the judgment as referred hereinabove by laying down the ratio to communicate the reason for arrest in writing and as such we have to consider as to whether the said statutory command in the facts and circumstances of the present case has been followed or not, if yes, then the arrest cannot be held to be invalid and if no, then certainly the arrest would be held to be invalid.

82. Now, adverting to the factual aspect of the present case and on consideration of the submissions advanced on behalf of petitioner that no written communication has been furnished to the petitioner at the time of arrest, we have gone through communication dated 07.06.2023 wherefrom it is evident that detail/exhaustive reason has been given. The petitioner has put his signature on each and every page and even in the last page he has given a remark that 'read and understand' "'I have read my ground of arrest completely and also communicated to Mr. Dilip Ghosh."

83. Thereafter, on 08.06.2023 the Petitioner was produced before Learned Special Court (PMLA), Ranchi. The opposite party produced the remand application along with grounds of arrest, order of arrest, arrest memo, medical report and search memo under section 51 of Cr.P.C. before the Learned Special Court (PMLA), Ranchi which is also evident from its order dated 08.06.2023. The Learned court, after examining the remand application and all the material produced before it, remanded the accused person in the Judicial Custody.

84. It is further evident that based upon the said communication when the petitioner was placed before the competent court of learned Special Judge for the purpose of seeking remand, an order was passed on 09.06.2023 wherein it has been referred that the petitioner has no complaint whatsoever and even the communication has been made regarding reason for arrest has been provided to the family also.

85. It needs to refer herein that the legality of arrest is questioned herein when a competent court has passed an order of remand after passing a detailed order of remand by going through the materials produced before it relating to the arrest of the petitioner. Further the order of remand has been challenged after lapse of one and a half years that too when prayer for bail application has already been rejected by this Court by passing an order against which SLP although was filed but it was withdrawn.

86. The question is that when remand itself was not challenged at the threshold then why the petitioner has chosen to prefer bail and once the petitioner has chosen to prefer application seeking bail, which implies that he has accepted the order of remand and it appears from the endorsement made by the petitioner that he was even knowing the entire reason of his arrest. As such, there is nothing to suggest that the arrest of the accused person was affected in violation of the of provision of Section 19 of the PMLA or that the same was otherwise illegal as the I.O. had not only recorded the reasons of his belief before the arrest but the said grounds were also informed to the Accused/Petitioner.

87. On the basis of discussion made herein above it is evident from the record that the Petitioner was informed about the ground of arrest immediately by

the Enforcement Directorate with his acknowledgement. Further, it is also an admitted position that within 24 hours of the arrest, the arrestee was supplied with the remand application which virtually contains all the grounds of arrest and therefore the legal requirement of informing the grounds of arrested "as soon as may be" also stood fulfilled both as per the statutory requirement under S. 19(1) of the PMLA as well as the constitutional mandate under Article 22(1) of the Constitution of India. The Hon'ble Supreme Court in the case of ***Pankaj Bansal*** (supra) had made the requirement of furnishing grounds of arrest in writing, only prospective, by using the word "*henceforth*". The same has also been clarified by the Hon'ble Supreme Court in ***Ram Kishor Arora*** (supra) at Para 23. Hence, the law as it prevailed on the date of arrest was complied with.

88. We are conscious with the fact that the moment a person is being arrested that infringes the fundamental right of personal liberty as provided under Article 21 of the Constitution of India and as such without any valid reason the personal liberty of the person cannot be infringed.

89. This Court, in view of the discussions made hereinabove and taking into consideration the endorsement given by the petitioner in the order communicating the reason of arrest, is of the view that the mandatory provision as contained under Section 19(1) of the PML Act, 2002, and the ratio laid down in the case of ***Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors. (supra),*** and other judgments of the Hon'ble Apex Court which has been referred herein in preceding paragraphs, has been followed by the respondent.

90. Thus, on the basis of discussion made hereinabove it is evident that the remand application was provided to the petitioner's counsel and there is no objection raised during the time of remand. Further, the law as it prevailed on the date of arrest was complied with by the Respondent. However, it is also an admitted position that within 24 hours of the arrest, the arrestee was supplied with the remand application which virtually contains all the grounds of arrest.

91. Therefore, this Court is of the view that the argument which has been advanced on behalf of the learned counsel for the petitioner is not tenable based upon the discussion made hereinabove.

Issue of culpability of the present petitioner:

92. While disposing the bail application being B.A. No. 7343 of 2023, this Court has already gone through the culpability of the present petitioner but since herein the learned counsel for the petitioner by way of filing 3rd supplementary affidavit has contended that at paragraph no.8.9 in the Prosecution Complaint the co-accused Dilip Kumar Ghosh in his statement dated 27.2.2023 recorded under Section 50 PMLA (***RUD No.77***) stated that Jagatbandhu Tea Estate Pvt. Ltd. is his company and Amit Kumar Agarwal but this statement in the Prosecution Complaint is not a true one as the co-accused Dilip Kumar Ghosh never made such a statement to ED.

93. In the aforesaid context this Court adverting to the various paragraph of the prosecution complaint particularly paragraph 8.9, and supplementary affidavit and supplementary counter affidavit which have been appended with the present petition.

94. It is evident that the statement of Dilip Kumar Ghosh (co-accused) which was recorded under Section 50 of PMLA Act is mentioned at paragraph-8.9 of the complaint submitted by the Enforcement Directorate. For ready reference, the same is being reproduced as under:

> ***8.9 Dilip Kumar Ghosh (Accused no.2- Director of M/s Jagatbandhu Tea Estate Pvt. Ltd.)***
>
> - *In his statement dated 27.02.2023* ***(RUD No. 77)*** *recorded under section 50 of PMLA, 2002, the accused Dilip Kumar Ghosh stated that Jagatbandhu Tea Estate Pvt. Ltd. is his company and Amit Kumar Agarwal. He stated that tea leaves are plucked from the tea plants of the company which is spread over 120 acres. He further stated that the tea estate has nearly 155 labours to whom the wages are paid in cash. On being asked the reasons of frequent huge cash deposit in the account of IDFC First Bank of the company Jagatbandhu Tea Estate Pvt. Ltd., he stated that the same are the sale proceeds of the raw tea leaves sold by the company at its tea garden. He further provided misleading answers on being asked why the cash is deposited at salt lake, Kolkata while the tea is sold at the company's garden at Jalpaiguri. The accused Dilip Kumar Ghosh stated that since, the company has no bank account at Jalpaiguri and due to covid, the cash was not deposited in the bank, he used to go to Jalpaiguri and transported the cash which was deposited in the bank in Kolkata. He further stated that the cash was deposited in cash through Bikash Jana and Deepak Sah who are the employees of Amit Kumar Agarwal.*
> - *In his statement dated 07.06.2023 (RUD No. 79) recorded under section 50 of PMLA, 2002 he stated that work of his companies is done by the employees of Amit Kumar Agarwal and the salaries, P. F and E.SI of those employees are also paid by Amit Kumar Agarwal. He had no employees at his Salt Lake office where he sits with Amit Kumar Agarwal.*
> - *In his statement dated 09.06.2023 (RUD No. 80) recorded in Judicial Custody, under section 50 of PMLA, 2002 it reveals that he had been directors of several companies of Amit Kumar Agarwal and he had obtained the directorship of those companies on the directions of Amit Kumar Agarwal. He further stated that Amit Kumar Agarwal used to take the decisions regarding those companies. He further stated that he only knows that Rajesh Auto Merchandise is company of Amit Kumar*

Agarwal and he does not remember whether he was director of this company or not. He also did not remember about his directorship in other companies of Amit Kumar Agarwal.

From the above statement it reveals that he is one of the associates working under Amit Kumar Agarwal and follows his instructions without even applying his mind and as such he is not aware of the companies of Amit Kumar Agarwal in which he has remained one of the directors.

- *In his statement dated 10.06.2023 (RUD No. 81) he was confronted with the records showing his directorship in companies of Amit Kumar Agarwal and he accepted the same. Further he was also confronted with the mismatch of banking transactions, cash deposited in his accounts which he stated to be the sale proceeds of tea business and corresponding turnover of the company declared by him in the balance sheet, he could not provide any answer to the same.*
- *In his statement dated 11.06.2023 (RUD No. 82), he was confronted with the production and sale of tea leaves as per the stock register maintained at the tea garden of Jagatbandhu Tea Estates Pvt. Ltd. which was obtained during survey under section 16 of PMLA on 15.05.2023 and corresponding transactions appearing in bank accounts and balance sheet of the company. He gave unsatisfactory and misleading answers.*

95. It is evident from the preceding paragraph that in his statement dated 27.02.2023 **(**RUD No. 77**)** recorded under section 50 of PMLA, 2002, the accused Dilip Kumar Ghosh stated that Jagatbandhu Tea Estate Pvt. Ltd. is his company and Amit Kumar Agarwal. He had further stated that the cash was deposited in cash through Bikash Jana and Deepak Sah who are the employees of Amit Kumar Agarwal.

96. But the aforesaid fact has been disputed by the learned counsel for the petitioner by contending that Dilip Kumar Ghosh has never stated the fact that Jagatbandhu Tea Estate Pvt. Ltd. is his company and Amit Kumar Agarwal. The learned counsel further contended that M/s. Jagatbandhu Tea Estate Private Limited was incorporated on 10.05.1994 with the Registrar of Companies, Kolkata (West Bengal). Accused Dilip Kumar Ghosh and his wife, Mrs. Sutapa Ghosh were the directors and neither the present petitioner

nor any of his family members have any stake in the M/s. Jagatbandhu Tea Estate Pvt. Ltd. Company and this company solely belongs to accused Dilip Kumar Ghosh. It is further submitted that the accused petitioner has been projected as the beneficial owner of M/s. Jagatbandhu Tea Estate Pvt. Ltd. which is absolutely false.

97. In the aforesaid context this Court thinks it fit to refer herein the relevant paragraph of RUD No.77 which has been translated into English and appended to the present application by way of filing supplementary affidavit as annexure 17. The relevant paragraph of translated RUD No.77 is being quoted as under:

> *Ques.8: What is your relation with Rajesh auto Marchendise ? Give details.*
>
> *Ans.8: Rajesh auto Marchendise is the company of my friend Amit kumar Agarwal*
>
> *Ques.9: What is your relation with Mihijam Banaspati ? Give details.*
>
> *Ans.9: Mihijam Banaspati is the company of my friend Amit kumar Agarwal.*
>
> *Ques.10: Give details of the bank account of the Jagatbandhu Tea estate.*
>
> *Ans. 10. IDFC and Bandhan Bank.*
>
> *Ques.11: Give reason of frequent cash deposits in the IDFC First bank account of the Jagatbandhu Tea Estate.*
>
> *Ques. 11: The raw tea leaves of Jagatbandhu Tea Estate are sold for cash at Jalpaiguri and this cash is deposited at IDFC First bank. Raw tea leaves are weighed at garden and sold for cash through brokers at garden. Because raw tea leaves cannot be left for long time. If raw leaves are left for long, they got spoiled. So, through various brokers raw tea leaves are sold on the basis of rate of that day.*
>
> *Ques.12: Why the money of selling of tea leaves of Jagatbandhu Tea estate is deposited in the bank at Kolkata instead of the bank at Jalpaiguri?*
>
> *Ans. 12: Jagatbandhu Tea Estate has no bank account at Jalpaiguri and due to Covid situation cash was not deposited in the bank and I myself*

used to go to Jalpaiguri and transport the cash. Then all the cash is deposited in the bank at Kolkata

Ques.13: By whom the cash of Jagatbandhu Tea estate is deposited in the bank? Give details.

Ans. 13: I send cash to deposit in the bank through Bikash Jana and Deepak Kumar sau,

Ques.14: Give details of Bikash Jana and Deepak Kumar Sau and how much salaries do they get and who gives their salaries?

Ans. 14: These two people are workers of the company of Amit Kumar Agarwal Group and they get their salaries from there.

Ques.15: From which office the official work of Jagatbandhu Tea Estate is done?

Ans. 15. Without paying any rent I use the office of Jagatbandhu Tea Estate at the 7/7 office space of the Amit Kumar Agarwal Group.

Ans.17: How many directors of Jagatbandhu Tea Estate are there and what are their salaries?

Ans. 17: There are 2 directors of the Jagatbandhu Tea Estate: Dilip Kumar Ghosh - salary 50,000-1,00,000 monthly Sutapa Ghosh - salary 50,000 monthly.

Ques.18: The office of your Jagatbandhu Tea Estate is your own or on rent?

Ans. 18: Without paying any rent I use a 7/7 office space of the Amit Kumar Agarwal Group

Ques. 19: Who fills up the cash deposit form to deposit the cash of the Jagatbandhu Tea Estate?

Ans. 19: I used to give the money to Bikash Jana and Deepak Sau and then they used to fill up the deposit form at the office. Who used to fill up the form at the office I cannot tell that.

Ques. 20: How much money is deposited for I.T.R of Jagatbandhu Tea Estate?

Ans.20: At this moment I do not remember LT.R. The auditor of my company is LIHALA & CO.

Ques.21: Except Jagatbandhu Tea Estate, of which company you are the director?

Ans.21: I do not remember at this moment. I Will inform later.

Ques.22: Provide details of your movable and immovable properties.

Ans.22: 1. Jagatbandhu Tea Estate, Private Limited. 2. one flat and one office space. 3. Car - Wagonar.

Ques.23: Bikash Jana and Deepak Kumar Sau are employyes of the company of Amit Kumar Agarwal Group. Then why they use to deposit Jagatbandhu Tea Estate's money in bank?

Ans. 23: The people who look after the accounts of the company of Amit Agarwal Group are the same people who look after accounts of the Jagatbandhu Tea Estate. Amit Singhania is the Senior Accountant. He looks after all the accounts whose mobile number - 9304885292.

Ques.24: How much salary do you pay Amit Singhania from the Jagatbandhu Tea Estate?

Ans.24: From the Jagatbandhu Tea Estate no salary is paid to Amit Singhania. His salary is paid from the company of Amit Agarwal Group.

Ques.26: How much Loans from Rajesh Auto Merchandise and Mihijam Banaspati were taken and when and through which method these loans were taken?

Ans. 26: I do not remember at this moment. This will be informed later within 10 days.

Ques.27: Why you do not know the answer of the Ques.26 in spite of being the director of the Jagatbandhu Tea Estate?

Ans. 27: I cannot remember at this moment.

Ques.28: The deposit receipts of the cash deposits made from 2020 to 2022 in the IDFC bank account number-10060532975 of Jagatbandhu Tea Estate are being shown to you. Please see the Xerox copies of these deposit receipts and put your dated signature on these and tell that who deposited these deposit receipts?

Ans.28: I have seen the deposit receipts of the cash deposits made from 2020 to 2022 in the IDFC bank account number- 10060532975 of Jagatbandhu Tea Estate and on each receipt I am putting my dated signature. By seeing the depositor's signature I have understood that cash has been deposited in the IDFC bank account number 10060532973 of Jagatbandhu Tea Estate by the employees of Amit Kumar Agarwal.

Ques.29: It is seen that in the account opening form of the IDFC bank account of Jagatbandhu Tea Estate that in the place of registered email

id Rajeshauto@gmail.com is registered, in the place of signatory 2 Sutapa Ghosh is written and with director mobile number 9433004062 and email id Rajeshauto@gmail.com is written. Please tell who the owner of this mobile number is and why the email id of Rajesh Auto Merchandise is registered ?

Answer: The owner of Rajesh Auto Merchandise Pvt. Ltd. is Amit Agarwal and Prasenjit Pal Choudhary is his employee, who works in the Rajesh Auto Merchandise Pvt. Ltd.. The mobile number 9433004062, registered in the account opening form is of Prasenjit Pal Choudhary and the email id Rajeshauto@gmail.com is in the name of Rajesh Auto Merchandise Pvt. Ltd.. As most of the time I stay outside Kolkata, the official work is look after by the employees of Rajesh Auto Merchandise Pvt. Ltd.. So, there email id and mobile number are provided.

Ques.30: From the above question-answer it is understood that the owner of Rajesh Auto Merchandise Pvt. Ltd. Mr. Amit Agarwal can see and control the accounts of the IDFC bank account of Jagatbandhu Tea Estate through the mobile number and the email id. Please tell its reason?

Ans. 30: The internet banking of the IDFC bank account of Jagatbandhu Tea Estate is accessed by the chief accountant Amit Singhania and he works for Amit Agarwal. So, the email id of Rajesh Auto Marchendise and the mobile number of Prasenjit Pal Choudhary are registered. It is noted that the montly salary of Amit Singhania is paid from Amit Agarwal's Company.

98. Thus, from perusal of translated copy of RUD -77 it is evident that the co-accused Dilip Kumar Ghosh has nowhere stated that the present petitioner is owner of Jagatbandhu Tea Estate ltd. but from the aforementioned statement it is apparent that present petitioner has close linkup with the said company. It has come in the said statement of the Dilip Kumar Ghosh that work of his companies is done by the employees of petitioner Amit Kumar Agarwal and the salaries, P.F. and E.SI of those employees are also paid by Amit Kumar Agarwal. Further it has been stated that the Director of M/s Jagatbandhu Tea Estates namely Dilip Kumar Ghosh is using the office space of the group

companies of Amit Kumar Agarwal and the address where books of accounts of the company are maintained is the corporate office is mentioned at FMI House, F3, Block GP, Sector - V, P.S Bidhannagar, Kolkata, West Bengal - 700091.

99. It has come in the statement as well as in the investigation that huge cash is deposited into IDFC bank accounts bearing no. 10060532973 of M/s Jagatbandhu Tea Estates and the cash depositors are Bikash Jana and Deepak Sah who are employees of Petitioner i.e., Amit Kumar Agarwal. Hence, *prima facie* it appears that the Jagatbandhu Tea Estates is only made to show it as different legal entities although the control of the same is in the hands of the present Petitioner.

100. At this juncture this Court thinks fit to refer the pargraph 9.5.1 and 9.5.2 of the prosecution complaint wherein the nexus of petitioner has been shown with the Jagatbandhu Tea Estates Pvt. Ltd. The aforesaid paragraph is being quoted as under:

> *9.5.1 It has been shown above that Jagatbandhu Tea Estates Pvt. Ltd is only a front company of Agarwal group and is only an instrument for acquiring and laundering his proceeds of crime by the directors of Agarwal group of companies including Amit Kumar Agarwal. It is also evident from the above table and summary diagram that out of nearly Rs 4.69 crores cash deposited in bank account of M/s Jagatbandhu Tea Estates Pvt. Ltd, Rs 4.13 crores was immediately transferred into the bank account of M/s Rajesh Aute Merchandise Fvt. Ltd. The directors of this company are Rajesh Agarwal and Amar Kumar Agarwal, brothers of Amit Kumar Agarwal (RUD Nc. 76). The accused person Amit Kumar Agarwal held the directorship of this company for the period 21.03.2005 to 07.07.2022 The other accused and Director of Mi's Jagatbandhu Tea Estates namely Dilip Kumar Ghosh was also the director of Rajesh Autc Merchandise Pvt. Ltd during the period 26.03.2019 to 08.09.2021. Some of the cash deposited into account of M/s Jagatbandhu Tea Estates was also transferred to one company Aurora Studio Pvt. Ltd whose present directors are Amit Kumar Agarwal and*

Abanti Agarwal. The accused and the director of M/s Jagatbandhu Tea Estates, Dilip Kumar Ghosh has been director of the following companies of Agarwal group.------

9.5.2 The accused Dilip Kumar Gnosh ceased as the director of the above Companies of Agarwal group during the period 02.09.2021 to 14.09.2021. Immediately after his cessation, i.e., on 01.10.2021, the defence property got registered in the name of Jagatbandhu Tea Estates Pvt. Ltd. It is thus evident that his cessation from the directorship from the above companies of Agarwal group was deliberate and thoughtful move driven by the conspiracy between Amit Kumar Agarwal and Dilip Kumar Ghosh to project him (Dilip Kumar Ghosh) a separate and detached entity from Agarwal group of companies and acquire the property in possession of defence indirectly through Jagatbandhu Tea Estates Pvt. Ltd. The email ID of the directors in the KYC i.e., Dilip Kumar Ghosh is sanyuktvanijya@email.com and that of Mrs. Sutapa Ghosh is rajeshauto@gmail.com (RUD No. 81). Thus, it can be seen that the email ids of Rajesh Auto Merchandise Pvt. Ltd. (a company which is owned by Rajesh Kumar Agarwal and Amar Kumar Agarwal, brothers of Arnit Kurnar Agarwal) and Sanayukt Vanijya Pvt. Ltd. has been used in the KYC of M/s Jagatbandhu Tea Estate Pvt. Ltd. which leads to the conclusion that M/s Jagatbandhu Tea Estate Pvt. Ltd. is a company which is solely under the control of Amit Kumar Agarwal.

101. Thus, from the aforesaid paragraph it is evident that nearly Rs 4.69 crores cash was deposited in bank account of M/s Jagatbandhu Tea Estates Pvt. Ltd, and Rs 4.13 crores was immediately transferred into the bank account of M/s Rajesh Aute Merchandise Fvt. Ltd. The directors of this company are Rajesh Agarwal and Amar Kumar Agarwal, brothers of Amit Kumar Agarwal (RUD Nc. 76). The accused person Amit Kumar Agarwal held the directorship of this company for the period 21.03.2005 to 07.07.2022 The other accused and Director of Mi's Jagatbandhu Tea Estates namely Dilip Kumar Ghosh was also the director of Rajesh Autc Merchandise Pvt. Ltd during the period 26.03.2019 to 08.09.2021. Some of the cash deposited into account of M/s Jagatbandhu Tea Estates was also transferred to one

company Aurora Studio Pvt. Ltd whose present directors are Amit Kumar Agarwal and Abanti Agarwal.

102. Thus, it is evident that for the period from 16.10.2020 to 25.07.2022, nearly Rs 4.69 crores of cash was deposited in the bank account of M/s Jagatbandhu Tea Estates Pvt. Ltd, and Rs 4.13 crores was immediately transferred into the bank account of M/s Rajesh Auto Merchandise Pvt. Ltd. a company managed and controlled by Amit Kumar Agarwal and his family. Thus, it is evident that Dilip Kumar Ghosh is merely one of the trusted employees of Amit Kumar Agarwal.

103. On the basis of the discussion made hereinabove, it is manifestly apparent from the aforesaid fact that present petitioner has close linkup with the said company i.e. M/s Jagatbandhu Tea Estates Pvt. Ltd. However, the present petitioner is the director of the said company or not, is the matter of trial wherein both the parties are free to lead evidence in this regard.

104. This Court is conscious with the fact that while granting or refusing bail the Court has to see only the prima-facie case and there is no need to go deep in appreciation of the evidence. It needs to refer herein that in the case of ***Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46***, the Hon'ble Supreme Court observed that the provisions of Section 24 of the PMLA provide that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money laundering and the burden to prove that the proceeds of crime are not involved, lies on the petitioner. Similarly, in the case of ***Union of India v. Hassan Ali Khan (2011) 10 SCC 235***, it was held that allegations may not ultimately be established, but having been made, the burden of proof that the money was

not the proceeds of crime shifted on the accused person under Section 24 of the PMLA.

105. Further, it is pertinent to mention here that the presumption under Section 24(b) of PMLA can be resorted to even at the stage of consideration of bail as held by the Hon'ble Apex Court in ***Vijay Madanlal Chaudhary***, (Supra). Thus, on the basis of discussion made hereinabove it can safely be inferred that the present petitioner has closely related with the affairs of the said company i.e M/s Jagatbandhu Tea Estates Pvt. Ltd. However, the said company is owned by the present petitioner can only be adjudicated in course of trial because at this stage this Court has only to see the *prima facie* case.

106. Thus, on the basis of the aforesaid discussion in the backdrop of settled legal position it is evident that the address where books of accounts of the company M/s Jagatbandhu Tea Estate Pvt. Ltd. are maintained is the corporate office of various companies of Amit Kumar Agarwal and his brothers namely Amar Kumar Agarwal and Rajesh Agarwal (herein referred as Agarwal group of companies). Further, during the search conducted at FKI House, F3, Block GP. Sector Kolkata, West Bengal V. F.S Bidhannagar, 700091, which is the address where the books of accounts of the company M/s Jagatbandhu Tea Estate Pvt. Ltd. are maintained, various documents of M/s Rajesh Auto Merchandise Pvt. Ltd. were seized.

107. The seizure of these documents *prima facie* indicates that M/s Jagathbandhu Tea Estate Pvt. Ltd. and M/s Rajesh Auto Merchandise Pvt. Ltd. are unified entities and collectively overseen and operated by the Agarwal group of Companies. Dilip Kumar Ghosh used to be the directors of several

companies of the said Agarwal group and he ceased from the director of the above companies of Agarwal group during the period 02.09.2021 to 14.09.2021. Immediately after his cessation, i.e. on 01.10.2021, the defence property was registered in the name of Jagatbandhu Tea Estates Pvt. Ltd.

108. Thus, *prima facie* it appears that the removal of Dilip Kumar Ghosh from the directorship from the companies of the Agarwal group was thoughtful move in order to project Dilip Kumar Ghosh as a separate and detached entity from the Agarwal group of companies and acquire the property in possession of defence Indirectly through Jagatbandhu Tea Estates Pvt. Ltd.

109. Further, email ids of Rajesh Auto Merchandise Pvt. Ltd. (a company which is owned by Rajesh Kumar Agarwal and Amar Kumar Agarwal, (brothers of Amit Kumar Agarwal) and Sanayukt Vanijya Pvt. Ltd has been used in the KYC of M/s Jagatbandhu Tea Estate Pvt. Ltd. which leads to the conclusion that M/s Jagatbandhu Tea Estate Pvt. Itd. is a company which is linked to Amit Kumar Agarwal.

110. Further, after going through the various paragraphs of prosecution complaint as well as statement of Dilip Kumar Ghosh which have been referred hereinabove various questions were made to Dilip Kumar Ghosh pertaining to the working of Jagthbandhu Tea Estate, details of directors in the company and the financial relationship between the companies of Amit Kumar Agarwal. Further, during the statement the following points emerged which are as follows-

(i) In respect of the cash deposits made by two persons i.e. Bikash Jana and Deepak Saw in the accounts of the accused company Jagthbandhu Tea Estate (in whose name the property was acquired), as well as

about one Amit Singhania, who looks after the accounts of Jagthbandhu Tea Estate, it was stated by Dilip Ghosh that Bikash Jana, Deepak Saw as well as Amit Singhania are employees of Amit Kumar Agarwal and they get their salaries from companies of Amit Kumar/Agarwal group.

(ii) Further, it was also stated that the office of the accused company M/s Jagthbandhu Tea Estate is running from the premises of the group companies of Amit Kumar Agarwal and the said premise is used without paying any rent.

(iii) Also, in respect of huge cash deposits made between 2020 to 2022 in IDFC bank account number 10060532975 of Jagtbandhu Tea Estate, it was stated that the said cash is deposited by the employees of Amit Kumar Agarwal. The cash which is deposited into account of M/s Jagatbandhu Tea Estate Pvt. Ltd. was further transferred to the account of M/s Rajesh Auto Merchandise Pvt. Ltd., a company managed and controlled by the petitioner Amit Kumar Agarwal with his brothers Rajesh Kumar Agarwal and Amar Kumar Agarwal.

(iv) Further, in the account opening form of M/s Jagatbandhu Tea Estates Pvt. Ltd, bearing account no. 10060532975 maintained with IDFC Bank, the email ID mentioned is rajeshauto@gmail.com (which belong to the companies of the petitioner Amit Agarwal namely M/s Rajesh Auto Merchandise Pvt. Ltd.) and the mobile number mentioned is 9433004062 (which belong to Prasanjit Pal Choudhary, an employee of Amit Kumar Agarwal who works in Rajesh Auto Merchandise Pvt. Ltd, company of the petitioner).

(v) The statement of Dilip Kumar Ghosh clearly indicates the company is running from the premises of Amit Agarwal, the employees of Amit Agarwal is depositing money in the account of the company and bank account of the company has also been opened mentioning the email id relating to the Petitioner. It is thus evident that all operations of the estate are under his control and managed through the employees of petitioner.

(vi) Despite not holding the position of a director, the Petitioner is a key decision-maker in the day-to-day management of Jagatbandhu Tea Estate, exercising authority through his employees. Furthermore, various other pieces of evidence linking the Petitioner to the accused company, M/s Jagatbandhu Tea Estates Pvt. Ltd., are detailed in paragraphs of the prosecution complaint dated 12.06.2023.

111. Thus, from the aforesaid discussion it is evident that so far as the case of the present petitioner is concerned, the twin condition as provided under Section 45(1) of the Act, 2002 is not being fulfilled so as to grant the privilege of bail to the present petitioner.

112. It needs to refer herein that prayer for bail of other co-accused persons namely, Faiyaz Khan, Tahla Khan and Chhavi Ranjan who were also involved in alleged offence, has been rejected by this Court vide orders dated 11.04.2025,12.04.2024 and 22.03.2024 passed in B.A. No. 3421 of 2024, B.A. No. 10296 of 2023 and B.A. No. 9247 of 2023 respectively.

113. Further the co-accused person, namely, Tahla Khan and Chhavi Ranjan had preferred Special Leave to Appeal (Crl.) No(s).7674 of 2024 and Special Leave Petition (Criminal) Diary No(s). 38676/2024 before the Hon’ble

Supreme Court but vide orders dated 25.06.2024 and 27.09.2024 respectively the said SLPs have also been dismissed by the Hon'ble Apex Court.

114. The ground of custody of 22 months of the petitioner has been taken. There is no dispute that the question of personal liberty is to be taken care of in order to follow the mandate of Article 21 of the Constitution of India but equally it is not in dispute that in a case of like nature, in which the petitioner has been involved, as per the allegation, balance is to be maintained in order to have the message to the society that the thing which has been done by the petitioner, as has been alleged, cannot be considered merely on the ground of long custody rather the nature of allegation is required to be seen.

115. Further, the Hon'ble Apex Court while dealing with the offences under UAP Act 1967, in the case of ***Gurwinder Singh v. State of Punjab***, ***2024 SCC OnLine SC 109*** and taking into consideration the ratio of judgment of ***Union of India vs. K.A. Najeeb 2021) 3 SCC 713*** has observed that mere delay in trial pertaining to grave offences as one involved in the instant case cannot be used as a ground to grant bail, for ready reference the relevant paragraph is being quoted as under:

> *46. As already discussed, the material available on record indicates the involvement of the appellant in furtherance of terrorist activities backed by members of banned terrorist organisation involving exchange of large quantum of money through different channels which needs to be deciphered and therefore in such a scenario if the appellant is released on bail there is every likelihood that he will influence the key witnesses of the case which might hamper the process of justice.* ***Therefore, mere delay in trial pertaining to grave offences as one involved in the instant***

case cannot be used as a ground to grant bail. Hence, the aforesaid argument on behalf of the appellant cannot be accepted..

116. This Court has considered the aforesaid aspect of the matter and relying upon the judgment rendered by the Hon'ble Apex Court in the case of ***Gurwinder Singh v. State of Punjab*** (supra) as also the case of the other co-accused having been rejected and even in some of the cases, the Hon'ble Apex Court has refused to enlarge them on bail, hence, this Court, in view of the aforesaid fact and discussion made hereinabove, is of the view that it is a case where the present application is fit to be dismissed.

117. Accordingly, the instant application stands dismissed.

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

119. It is made clear that views expressed in this order are prima facie for consideration of matter of bail only.

(Sujit Narayan Prasad, J.)

Saurabh/-
A.F.R.