

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT: HYDERABAD**

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CRIMINAL PETITION NOS. 9825, 9846 AND 10021 OF 2021

% Delivered on: 15.02.2022

Crl.P.No.9825 OF 2021

Between:

# Directorate of Enforcement Represented by its Assistant Director Hyderabad Zonal Unit	And	.. Petitioner
\$ Kamma Srinivasa Rao		Respondent

Crl.P.No.9846 OF 2021

Directorate of Enforcement Represented by its Assistant Director Hyderabad Zonal Unit	And	.. Petitioner
\$ Kancharla Srihari Babu		Respondent

Crl.P.No.10021 OF 2021

# Kancharla Srihari Babu	And	...Petitioner
\$ Directorate of Enforcement Represented by its Assistant Director Hyderabad Zonal Unit		..respondent

! For Directorate of Enforcement Represented by its Assistant Director, Hyderabad Zonal Unit	: Sri Sri T.Suryakaran Reddy, learned Additional Solicitor General of India representing Sri Gadi Praveen Kumar, learned Standing Counsel
^ For Respondent in Crl.P.No.9825 of 2021	: Sri T.Niranjan Reddy, learned Lr.Senior Counsel representing Sri Sujith Jaiswal, Lr.Counsel
^ For Respondent in Crl.P.No.9846 of 2021	: Sri B.Adinarayana Rao, Lr. Senior Counsel Rep.Sri G.Prem Kumar Reddy, Lr.Counsel

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> Head Note

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? Cases Referred

:

1 (2014) 8 SCC 273

2 (1997) 1 SCC 416

3 (2000) 2 SCC 504

4 (2015) 16 SCC 1

5 2017 SCC OnLine Del.12810

6 2021 SCC OnLine AP 3121

7 2019 SCC OnLine TS 3332

8 2020 SCC OnLine SC 683

9 (2018) 16 SCC 158.

10. (2019) 9 SCC 24.

11 (1987) 2 SCC 364.

12 (1994) 3 SCC 440.

13 (2015) 15 SCC 1.

14 (1966) 3 SCR 698.

15 AIR 1970 SC 1065.

16 (2013) 1 SCC 314

17 (1980) 2 SCC 565

18 (2002) 2 SCC 210.

¹9 2009 SCC OnLine Gau 17520 Criminal Appeal No.21 OF 2022 (Arising from the SLP(Crl.)
No.8441 of 2021).

21 Criminal Application (BA) No.1149 of 2021.

22 (2013) 7 SCC 439

23 (2011) 1 SCC 694

THE HON'BLE SRI JUSTICE K.LAKSHMAN**CRIMINAL PETITION NOs.9825, 9846 AND 10021 OF 2021**

The *lis* involved in all the three criminal petitions is the same, therefore, the same were heard together and are disposed of by the following

COMMON ORDER:

2. The Crl.P.No.9825 of 2021 is filed by the Directorate of Enforcement (DOE) under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in SR.No.8729 of 2021, dated 18.12.2021 on the file of the learned Metropolitan Sessions Judge at Nampally, Hyderabad.

3. The Crl.P.No.9846 of 2021 is filed by the DOE under Section 482 of the Cr.P.C. to quash the proceedings in SR.No.8731 of 2021, dated 18.12.2021 on the file of the learned Metropolitan Sessions Judge at Nampally, Hyderabad.

4. The Crl.P.No.10021 of 2021 is filed under Section 438 of the Cr.P.C. to enlarge the petitioner herein/Accused No.7 and respondent in Crl.P.No.9846 of 2021 on bail in the event of his arrest in Enforcement Cases Information Report (ECIR) i.e.,ECIR/HYZO/22/2019 dated 23.12.2019 lodged by the DOE.

5. Vide note dated 31.12.2021, the Hon'ble Chief Justice directed the registry to list Crl.P.No.10021 of 2021 along with the Crl.P.No.9846 of 2021 before the Court having roster to deal with Criminal Petitions (quash) from 2018 onwards. Therefore, the Crl.P.No.10021 of 2021 was heard along with the Crl.P.No.9846 of 2021 and disposed of by this order.

6. Heard Sri T.Suryakaran Reddy, learned Additional Solicitor General of India representing Sri Gadi Praveen Kumar, learned Standing Counsel for the petitioner in Crl.P.Nos.9825 of 2021 and 9846 of 2021 and learned counsel appearing for the respondent in Crl.P.No.10021 of 2021 and Sri B. Adinarayana Rao, learned Senior Counsel representing Sri G.Prem Kumar Reddy, learned counsel appearing for the respondent in Crl.P.No.9846 of 2021 and learned counsel appearing for the petitioner in Crl.P.No.10021 of 2021 and Sri T.Niranjan Reddy, learned senior counsel representing Sri Sujith Jaiswal, learned counsel for the respondent in Crl.P.No.9825 of 2021.

7. Facts of the case in Crl.P.No.9825 OF 2021

i). Pursuant to the order dated 25.07.2018 of Jharkhand High Court in PIL No.3503 of 2014 and 2470 of 2015, the CBI and ACB, Ranchi, had registered a case in FIR No.RC.2(A)/2018-R against M/s Ranchi Expressway Limited (M/s. REL), its Director and others to investigate the execution of a project of 4-laning of NH-33 from Ranchi to Jamshedpur and advances that were given by the lending banks in execution of the project which involved Rs.1655 Crores.

ii) The above said crime was registered for the offences under Sections 120-B, 420, 468, 471 and 477-A of the IPC and Section 13(2) r/w Section 13(1)(a) of Prevention of Corruption Act, 1988 (for short, 'the PC Act') against the respondent and others. Since the above said offences are scheduled offences under the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA'), the DOE has initiated investigation under PMLA

against the respondent and other accused by registering ECIR/HYZO/18/2020.

iii). The respondent/accused is the Managing Director and authorized signatory of M/s. REL. He is also a key managerial person in Madhucon Group of Companies and M/s. REL. Allegedly, the respondent/accused has fraudulently induced the banks to release loans using false documents and has generated proceeds of crime in the present case.

iv) The petitioner alleges that despite issuance of summons to appear and record his statement under Section 50 of the PMLA, the respondent had not appeared and is not cooperating with the investigation. Therefore on 17.12.2021, the DOE exercising its power under Section 19 of the PMLA, after recording the reasons to believe and informing the grounds, arrested the respondent. He was produced before the learned Metropolitan Sessions Judge and his judicial custody was sought by filing an application vide SR.No.8729 of 2021 under Section 167 of Cr.P.C. On 18.12.2021.

v) The said application was returned by the learned Sessions Judge on the ground that no notice under Section 41-A of Cr.P.C. was issued by DOE to the respondent.

vi). Challenging the said order, the DOE filed the present petition seeking to quash the said order dated 18.12.2021.

8. Facts of the case in Crl.P.No.9846 of 2021.

i). ACB, Telangana registered 8 FIRs against the officials of the Insurance Medical Services (IMS), Telangana and other private persons in connection with the note orders of Principal Secretary of Labour, Training and Insurance & Medical Services, Telangana on account of

misappropriation in allocation of purchase orders for procurement of medicines and other medical equipment intended to be used in various ESI dispensaries in Telangana.

ii) On the basis of the said FIRs, since the offences alleged against the respondent and other accused are predicate/scheduled offences, investigation was initiated under the PMLA by the DOE. The total proceeds of crime are valued at Rs.144,42,67,813/- among three IMS officials, two suppliers and their family members including the present respondent/accused out of the total amount of Rs.211 Crore (preliminarily arrived by DOE).

iii) Summons were issued to the respondent for the purpose of recording his statement under Section 50 of the PMLA. According to the DOE, though the depositions were recorded under Section 50 of the PMLA, the respondent did not divulge the total proceeds of crime derived by him.

iv) Allegedly, despite multiple opportunities, the respondent did not cooperate and avoid disclosing the names of other officials of IMS, senior bureaucrats and politicians to whom he had paid huge amounts of bribes to obtain purchase orders. According to the DOE, the respondent failed to discuss/furnish the details and material which are in his possession and knowledge. It is also alleged that under the guise of supply of medicines and medical equipment to IMS, he is directly involved in large scale money laundering by exerting pressure through influential persons to get purchase orders and has, thus, cheated the State and caused huge loss to the State exchequer.

v). On 18.12.2021, under Section 19 of the PMLA, after recording the grounds of arrest and informing such grounds, the DOE arrested the respondent. He was produced before the Metropolitan Sessions Judge, Hyderabad which is a Designated Court under the PMLA and his judicial custody was sought vide SR. No. 8731 of 2021 under Section 167 of the Cr.P.C.

vi) The Metropolitan Sessions Judge returned the said remand application on the ground that no reasons were recorded by the DOE as per Section 41-A (3) of the Cr.P.C. stating that the arrest of the respondent was necessary, except that he is non-cooperative which is not sufficient to arrest under Section 41 of the Cr.P.C.

vii) Challenging the said order dated 18.12.2021, the DOE has filed the present petition under Section 482 of the Cr.P.C. to quash the said order.

9. Sri K.Srihari Babu has filed Crl.P.No.10021 of 2021 to grant anticipatory bail in ECIR/HYZO/22/2019.

10. Contentions of Sri T.Surya Karan Reddy, learned Additional Solicitor General of India, representing Sri Gadi Praveen Kumar, learned Standing Counsel for the petitioner in Crl.P.No.9825 and 9846 of 2021.

i) Referring to various provisions, he would submit that PMLA is a complete code in itself. There is no need to comply with Section 41 and 41-A of the Cr.P.C.

ii) There is a specific provision and procedure to arrest any person who has been guilty of an offence under the PMLA under Section 19 and under Prevention of Money Laundering (forms and manner of arrest of the person along with the material to the adjudicating authority and its period of

registration) Rules 2005. The DOE has followed the said procedure under the said Rules and arrested the respondent.

iii) The grounds of arrest were informed to the respondent and there are reasons to believe that the respondent has been guilty of the offences punishable under the PMLA.

iv) There is material in DOE's possession to the said effect. Therefore, there is no illegality in arresting the respondent.

v) The Designated Court, without considering the said fact, erroneously, returned the remand application filed by DOE on the ground that the DOE has not complied with the procedure laid down under Section 41-A of the Cr.P.C.

vi) Referring to Sections 65 & 71 of the PMLA, he would submit that PMLA being a special statute will prevail over the provisions of the Cr.P.C. which is a general statute. Therefore, there is no need to comply with Section 41-A of the Cr.P.C.

vii) The Designated Court, instead of passing a judicial order on the remand application filed by the DOE, returned the same. The Designated Court cannot return the application even if Section 41-A was not complied with or even if the arrest is illegal. It has to pass a reasoned judicial order. Therefore, the order dated 18.12.2021 in SR No.8731 of 2021, is illegal and contrary to the procedure laid down under Section 167 of Cr.P.C.

viii) The petition filed by respondent seeking anticipatory bail is not maintainable. The DOE has complied with the twin conditions of Section 45 of the PMLA. The respondent is not cooperating with the Investigating

Officer to complete investigation. Therefore, his custody is required for the purpose of effective investigation.

ix) There is every possibility of tampering of evidence and hampering record in collusion with the other accused by the respondent/ accused. He is an influential person. He is part of committed organized crime and has committed a serious economic offence.

x) Therefore, with the said contentions, he sought to dismiss the application filed for grant of anticipatory bail by the respondent/accused.

11. Contentions of Sri T.Niranjan Reddy, learned Senior Counsel, representing Sri Sujit Jaiswal, learned counsel appearing for the respondent in Crl.P.No.9825 of 2021

i) He would submit that the DOE has to mandatorily comply with the procedure laid down under Section 41-A of the Cr.P.C.

ii) Since the punishment prescribed for the offences alleged against the respondent is below 7 years, Section 41-A is to be complied with in light of **Arnesh Kumar v. State of Bihar**¹.

iii) Since the DOE has not complied with the procedure laid down under Section 41-A of Cr.P.C. The Designated Court has rightly returned the remand report vide order dated 18.12.2021. There is no error in it. With the said submissions, learned senior counsel sought to dismiss the present petition.

iv) Further, while arresting the respondent, the DOE did not follow the guidelines issued by the Apex Court in **D.K. Basu v. State of West Bengal**².

¹ (2014) 8 SCC 273

² (1997) 1 SCC 416

12. Contentions of Sri B.Adinarayana Rao, learned Senior Counsel representing Sri G. Prem Kumar Reddy, learned counsel for the respondent in CrI.P.No.9846 of 2021

i) The respondent has cooperated with the Investigating Officer by appearing before him eleven times. The respondent has a right to remain silent which is a fundamental right under Article 20(3) of the Constitution of India.

ii) His statements were recorded ten times under section 50 of the PMLA.

iii) Punishment prescribed for the offences alleged against the respondent/accused is below 7 years. Therefore, the DOE has to mandatorily follow Section 41 A of the Cr.P.C.

iv) Referring to Sections 41-A, 41 B, 41C and 41 D of the Cr.P.C. and also the guidelines issued in **D.K.Basu** and **Arnesh Kumar** (supra) it was contended that the DOE has not followed the said guidelines. Further, there was a delay of two years in arresting the respondent.

v) The DOE has not complied with the conditions for arrest prescribed under Section 19 of the PMLA. They have not placed the relevant material except the copies of FIRs registered by the ACB, Telangana in the ECIR registered by them; arrest memo and grounds of arrest narrating the reasons to believe; copies of medical certificate of the respondent; copies of Covid-19 test report before the Designated Court to satisfy the Court with regard to compliance of twin conditions of Section 19 of the PMLA.

vi) The application filed by the DOE under Section 167 of the Cr.P.C. was returned by the Designated Court as the procedure provided

under Section 41-A of the Cr.P.C. was not followed and no valid reasons were assigned and no reasons for arrest were recorded, except that the respondent was non-cooperative. Therefore, the Designated Court has rightly returned the remand report vide order dated 18.12.2021. There is no error in it.

vii) It was contended by the learned Senior Counsel that the respondent (petitioner in Crl.P. No. 10021 of 2021) that the respondent has cooperated with the Investigating Officer of the DOE and his statements were recorded 10 times under Section 50 of the PMLA. It was only after the lapse of two years that the respondent was arrested by the DOE.

viii) Since the Designated Court has returned the remand report submitted by the DOE, his arrest was not accepted. Therefore, Crl.P. No. 10021 of 2021 was filed by the respondent to grant anticipatory bail and the same is maintainable.

ix) With the said submissions the Crl.P. No. 9846 of 2021 was sought to be dismissed and Crl.P. No. 10021 of 2021 for grant anticipatory bail was sought to be allowed.

13. In view of the rival submissions, the issues that fall for consideration before this Court are:

1. Whether the authorized authorities have to comply with Section 41-A of the Cr.P.C. before arresting a person under Section 19 of the PMLA?
2. Whether the Designated Court can return a remand application?
3. Whether the petitioner in Crl.P. No. 10021 of 2021 is entitled for anticipatory bail?

Issue No.1:

14. In both Crl.P. Nos. 9825 and 9846 of 2021, the DOE had filed an application seeking judicial remand of the accused therein under Section 167 of the Cr.P.C. Both the applications were returned vide separate orders dated 18.12.2021 on the ground that Section 41-A was not complied with by the DOE before arresting the accused. It was contended on behalf of the accused, in light of **Arnesh Kumar** (supra) that since the offences under PMLA are cognizable and the maximum punishment does not extend beyond seven years, Section 41-A is applicable to arrests made under the PMLA. Therefore, the question before this Court is whether Section 41-A of the Cr.P.C. is to be complied with before arresting a person under Section 19 of the PMLA.

15. Before deciding the issue at hand, it is pertinent to discuss the applicability of Cr.P.C. to the proceedings initiated under the PMLA. Therefore, it is apposite to discuss the relevant provisions which provide the scope of Cr.P.C.'s application to PMLA proceedings.

Section 4 of the Code of Criminal Procedure

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

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 5 of the Code of Criminal Procedure

5. Saving. — Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

Section 65 of the PMLA

65. Code of Criminal Procedure, 1973 to apply. — The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act.

Section 71 of the PMLA

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

16. Section 4 of the Cr.P.C provides that the procedure under the Cr.P.C. is applicable to all the offences under the Indian Penal Code or any other statute. However, Section 5 of the Cr.P.C provides that procedure provided under a special statute will prevail over the procedure provided under the Cr.P.C.

17. The scope of Sections 4 & 5 was explained by the Supreme Court in **Gangula Ashok v. State of A.P.**³ wherein after referring various judgments held that ‘if another enactment contains any provision which is contrary to the provisions of the Code, such other functions would apply in place of the particular provision of the Code. If there is no such contrary

³(2000) 2 SCC 504

provision in other laws, then provisions of the Code would apply to the matters covered thereby.’

18. Sections 65 & 71 of the PMLA are similar to Sections 4 & 5 of the Cr.P.C. According to Section 71, PMLA will have an overriding affect in case of any inconsistency with any other law. Section 65 provides that provisions of Cr.P.C. will apply to PMLA proceedings as long as they are not inconsistent with the provisions of PMLA. In other words, if any inconsistency exists between PMLA and Cr.P.C., the former shall prevail over the latter.

19. Explaining the scope of Section 65 & 71, the Apex Court in **Gautam Kundu v. Directorate of Enforcement**⁴ held as follows:

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.

⁴ (2015) 16 SCC 1

20. From the above discussion, it is clear that the provisions of the Cr.P.C. will be applicable to PMLA proceedings as long as there is no inconsistency between both the statutes. In case of any inconsistency or where separate provisions exist in both the statutes governing the same subject matter, the PMLA will override Cr.P.C.

21. To decide whether compliance of Section 41-A under the Cr.P.C. is mandatory before arresting a person under Section 19 of the PMLA, this Court has to determine whether any inconsistency exists between Section 19 of the PMLA and Section 41-A of the Cr.P.C. Further, the Court has to see whether any protection similar to the one provided under Section 41-A of the Cr.P.C. is provided under the PMLA. Therefore, it is apposite to discuss the scope, ambit and object of Sections 41 & 41-A of the Cr.P.C and the provisions of PMLA. The relevant provisions are extracted below:

Section 41. When police may arrest without warrant. —

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

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

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—

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

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

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

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

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

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

and the police officer shall record while making such arrest, his reasons in writing.

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

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

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

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

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

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

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he

is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

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

(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

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

Section 41-A. Notice of appearance before police officer. —

(1) The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

Further, explaining the importance of Section 41-A of the Cr.P.C., the following guidelines were issued by the Supreme Court in **Arnesh Kumar** (supra):

13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41-A of Code of Criminal Procedure be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

14. We hasten to add that the directions aforesaid shall not only apply to the cases Under Section 498-A of the Indian Penal Code or Section 4 of the Dowry Prohibition Act, the case in hand, but also

such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine.

Section 4 of the PMLA

4. Punishment for money-laundering. — Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.

Section 19 of the PMLA

19. Power to arrest. — (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate’s Court.

Section 45 of the PMLA

45. Offences to be cognizable and non-bailable. — (1) Notwithstanding anything contained in the Code of Criminal

Procedure, 1973 (2 of 1974), 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 a 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:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by— (i) the Director; or (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Explanation.—For the removal of doubts, it is clarified 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 (2 of 1974), and accordingly the officers authorized under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.

Section 50 of the PMLA

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

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

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—
(a) impound any records without recording his reasons for so doing;
or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.

Section 62 of the PMLA

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

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

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

Section 63 of the PMLA

63. Punishment for false information or failure to give information, etc.—(1) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.

(2) If any person,—

(a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time, he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure.

(3) No order under this section shall be passed by an authority referred to in sub-section (2) unless the person on whom the penalty

is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

(4) Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code (45 of 1860).

22. Section 19 of the PMLA, specifically, provides for the manner and procedure for arrest of a person who is accused of committing an offence of money laundering. Section 19 of the PMLA is a special provision governing arrest of persons accused of committing an offence of money laundering. The general power and procedure of arrest provided under Sections 41 & 41-A of the Cr.P.C. are not applicable to a special statute which envisages a different procedure.

23. In other words, what is sought to be provided under Section 41-A of the Cr.P.C. is provided under Section 19 of the PMLA. Further, as stated above, under Section 65 r/w Section 71 of the PMLA, Cr.P.C. will only apply where there is no inconsistency between both the statutes. In the present case, there is an inconsistency between the procedure of arrest as provided under Section 19 of the PMLA and Section 41 & 41-A of the Cr.P.C. Therefore, PMLA being a special statute will prevail over the Cr.P.C.

24. Section 41 of the Cr.P.C. provides that police officers have the power to arrest a person, *inter alia*, on the grounds of reasonable complaint or reasonable suspicion. Section 41-A of the Cr.P.C. states that, in cases of cognizable offences, where the arrest of person is not required under Section 41(1) of the Cr.P.C., the police officer shall issue a notice directing the

person to appear before him and cooperate with the investigation. If the person fails to comply the notice requirements, he may be arrested. Even if the person complies with the notice, if the police officer is of the opinion that the person's arrest is required, he may arrest the person by recording the reasons for such arrest. However, the procedure for arrest under PMLA is different. Under Section 19 of the PMLA, the Director, Deputy Director, Assistant Director or any other authorised officer can make an arrest. The officer making an arrest should satisfy the following conditions:

- a. The officer should have a reason to believe that the person has been guilty of an offence under PMLA.
- b. The reason to believe should be based on material which should be in the officer's possession.
- c. The reason(s) to believe should be recorded in writing.
- d. The grounds should be informed to the arrested person.

25. Section 19 of the PMLA also mandates that the officer making an arrest shall immediately forward the copy of the arrest order and the material in his possession based on which the arrest was made to the Adjudicating Authority (constituted under Section 6 of PMLA) in a sealed envelope. The arrested person shall be produced before the Special Court or other Court as the case may be within twenty-four hours.

26. The Prevention of Money Laundering (the forms, and manner of forwarding a copy of order of arrest of a person along with the material to the adjudicating authority and its period of retention) Rules, 2005 (hereinafter 'Rules, 2005') also provide for the procedure to be followed while forwarding the arrest order and material. The relevant Rules are extracted below:

3. Manner of forwarding a copy of the order of arrest and the material to the Adjudicating Authority —

- (1) The Arresting Officer shall prepare an index of the copy of the order and the material in possession and sign each page of such index of the copy of the order and the material and shall also write a letter while forwarding such index, order and the material to the Adjudicating Authority in a sealed envelope.
- (2) The Arresting Officer shall place an acknowledgement slip in Form I appended to these rules inside the envelope before sealing it.
- (3) The Arresting Officer shall indicate a reference number and date of despatch on the sealed envelope.
- (4) The sealed envelope shall be marked “Confidential” and “To be opened by the addressee only”, the complete address of the Adjudicating Authority including his name shall be mentioned on the sealed envelope with the official seal.
- (5) The Arresting Officer shall place the sealed envelope inside an outer envelope, along with an acknowledgement slip in Form II appended to these rules.
- (6) The outer envelope shall be sealed and complete address of the Adjudicating Authority shall be mentioned on the sealed outer envelope.
- (7) The Arresting Officer shall maintain registers and other records such as acknowledgement slip register, dak register for the purposes of this rule and shall ensure that necessary entries are made in the register immediately as soon the copy of the order and the material are forwarded to the Adjudicating Authority.

Therefore, a completely different procedure of arrest is provided under the PMLA, which will override Section 41-A of the Cr.P.C.

27. The legislature having incorporated a separate procedure under Section 19 of the PMLA and Rules, 2005 did not intend to apply Section 41-A of the Cr.P.C. This can be inferred from the 2019 Amendment to the PMLA which added an explanation to Section 45. The same is extracted below:

Explanation.—For the removal of doubts, it is clarified 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 (2 of 1974), and **accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section.**

28. It is clear from the above amendment that arrest of a person under PMLA is only subject to Section 19 and Section 45. It is relevant to note that the said amendment was brought in after the decision of the Division Bench of the Delhi High Court in **Vakamulla Chandrasekhar Vs. Enforcement Directorate**⁵ which was decided on 08.05.2017. In **Vakamulla** (supra), it was held that Section 41-A of the Cr.P.C. should be complied with before arresting a person under Section 19 of the PMLA. Therefore, the legislature excluded the applicability of Section 41-A by making arrests subject to only Sections 19 and 45 of the PMLA.

29. Another argument advanced on behalf of the accused was that the protection under Section 41-A is applicable to special statutes like PMLA. Reliance was placed on **K.Ranjit v.State of A.P.**⁶, **P.V.Ramana Reddy v. Union of India**⁷, **Union of India v. Ashok Kumar Sharma**⁸, **Ashok Munilal Jain v. Assistant Director ED**⁹ and **Vakamulla** (supra). As stated above, Court does not accept the contention that protection under Section 41-A should be applicable to proceedings under PMLA. The

⁵ 2017 SCC Online Del.12810

⁶ 2021 SCC Online AP 3121

⁷ 2019 SCC Online TS 3332

⁸ 2020 SCC OnLine SC 683

⁹ (2018) 16 SCC 158.

safeguards/protection against illegal arrests and mechanical remands as sought to be provided under Section 41-A of the Cr.P.C. are adequately provided under the PMLA.

30. It is relevant to note that Section 41-A was incorporated vide Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (Act 5 of 2009). It was brought in to protect individual liberty of people by preventing their arrest on the ground of mere suspicion. The object behind Section 41-A is to check the police officer's power of arrest and to prevent illegal arrests.

31. Section 19 of the PMLA provides for protection against illegal arrests in the form of recording reasons to believe in writing based on the material in possession of the arresting officer. The arrest can only be made if material exists that justifies the arrest of a person. Further, Section 62 of the PMLA provides for punishment of officers making illegal arrests. Further, a person based on whose false information an arrest is made is also punishable under Section 63 of the PMLA.

32. The Apex Court in **P. Chidambaram v. Directorate of Enforcement**¹⁰ explaining the safeguards provided under Section 19 of the PMLA held as follows:

33. Section 19 of PMLA deals with the power of the specified officer to arrest. Under Sub-section (1) of Section 19 of PMLA, the specified officer viz. the Director, the Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, on the basis of the material in possession, having "reason to believe" and "reasons for such belief be recorded in writing" that the person has been guilty of offence punishable under the PMLA, has power to arrest such

¹⁰ (2019) 9 SCC 24.

person. The authorised officer is required to inform the Accused the grounds for such arrest at the earliest and in terms of Sub-section (3) of Section 19 of the Act, the arrested person is required to be produced to the jurisdictional Judicial Magistrate or Metropolitan Magistrate within 24 hours excluding the journey time from the place of arrest to the Magistrate's Court. In order to ensure the safeguards, in exercise of power Under Section 73 of the Act, the Central Government has framed "The Prevention of Money-Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005". Rule 3 of the said Rules requires the arresting officer to forward a copy of order of arrest and the material to the Adjudicating Authority in a sealed cover marked "confidential" and Rule 3 provides for the manner in maintaining the confidentiality of the contents.

34. As rightly submitted by Mr. Tushar Mehta, the procedure under PMLA for arrest ensures sufficient safeguards viz.: (i) only the specified officers are authorised to arrest; (ii) based on "reasons to believe" that an offence punishable under the Act has been committed; (iii) the reasons for such belief to be recorded in writing; (iv) evidence and the material submitted to the Adjudicating Authority in sealed envelope in the manner as may be prescribed ensuring the safeguards in maintaining the confidentiality; and (v) every person arrested under PMLA to be produced before the Judicial Magistrate or Metropolitan Magistrate within 24 hours. Section 19 of PMLA provides for the power to arrest to the specified officer on the basis of material in his possession and has "reason to believe" and the "reasons for such belief to be recorded in writing" that any person has been guilty of an offence punishable under PMLA. The statutory power has been vested upon the specified officers of higher rank to arrest the person whom the officer has "reason to believe" that such person has been guilty of an offence punishable under PMLA. In cases of PMLA, in exercising the power to grant anticipatory bail would be to scuttle the statutory power of the specified officers to arrest which is enshrined in the statute with sufficient safeguards.

Further, as stated above, Section 41-A provides that police officer has to issue a notice where the arrest of a person is not required. A similar provision is provided in the form of Section 50 of the PMLA which grants

the authorised officer to summon a person to give evidence or produce any records. In the present cases also, the accused were arrested as they failed to cooperate with the investigation when the Section 50 proceedings were underway. Therefore, it cannot be contended that safeguards against illegal arrests as sought to be provided under Section 41-A of the Cr.P.C. is not available under the PMLA.

33. It can be argued that that Section 41-A of the Cr.P.C. grants pre-arrest protection and Section 19 of the PMLA provides safeguards during the arrest and post-arrest. This Court is not inclined to grant pre-arrest protection under Section 41-A of the Cr.P.C. considering the object of PMLA and the impact of money laundering on our economy.

Economic offences like money laundering constitute a class apart and have to be dealt with seriously. The Supreme Court in **State of Gujarat v. Mohanlal Jitamalji Porwal**¹¹ in the context of economic offences held as follows:

The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an evenhanded manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

34. The PMLA was enacted keeping in view the serious threat posed by money laundering. The Statement of Objects and Reasons of PMLA

¹¹(1987) 2 SCC 364.

states that money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty. The investigating authorities invest a lot of effort and resources in detecting the offence of money laundering. It is much more difficult for them to identify the perpetrators and arrest them. If the safeguards under Section 41-A of the Cr.P.C. are provided to a person who is alleged to have committed money laundering, there is every possibility of tampering evidence, influencing investigation, leaving the country, diverting the alleged proceeds of crime, etc. The Supreme Court in **P. Chidambaram** (supra), expressed a similar view in the context of anticipatory bail in PMLA matters and held as follows:

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the Accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the Accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the Respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

82. In a case of money-laundering where it involves many stages of "placement", "layering i.e. funds moved to other institutions to conceal origin" and "interrogation i.e. funds used to acquire various assets", it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would elude if the Accused knows that he is protected by a pre-arrest bail order. Section 438 Code of Criminal Procedure is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by

the department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the Appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the Appellant.

35. If the accused in every case is granted protection from arrest under Section 41-A of the Cr.P.C. it may significantly impair the investigation. Further, considering the object of PMLA and seriousness of economic offences, this Court is of the view that Section 41-A of the Cr.P.C. is not applicable to arrests made under Section 19 of the PMLA. As stated above, there are enough safeguards under the PMLA to prevent illegal and arbitrary arrests. In any case, the accused always has the option of seeking anticipatory bail when he apprehends arrest or regular bail after he is arrested under Section 45 of the PMLA. At this juncture, it relevant to discuss the judgments relied upon by the accused to contend that Section 41-A of Cr.P.C. is applicable to special statutes like the PMLA.

36. In **Vakamulla** (supra), the Delhi High Court had held that Section 41-A of the Cr.P.C. is applicable to arrests made under Section 19 of the PMLA. The Court therein held that there is no provision in the PMLA which suggest that Section 41-A would not apply. However, the Supreme Court vide order dated 04.01.2018 in SLP (Crl.) Diary No. 36918 of 2017 has stayed the operation of the decision of the Delhi High Court. Therefore, we cannot follow and apply the said judgment in light of the stay.

37. In **K. Ranjith** (supra), the Andhra Pradesh High Court held that Section 41-A of the Cr.P.C. will apply to arrests made under the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'). This Court is unable to agree with the view taken by the learned single judge. The Court therein ignored the fact that NDPS Act provides for a separate procedure for arrests under Sections 42, 43 and 44. Further, Section 52 provides how an arrested person is to be dealt with. Section 57 provides that an arrest under the NDPS Act is to be reported to the official superior. Likewise, Section 58 punishes vexatious arrests. The Court therein ignored the separate procedure of arrest provided under the NDPS Act. Further, the Court therein relied on the decision in Vakamulla (supra) ignoring the stay ordered by the Supreme Court. Therefore, the said decision cannot be applied.

38. In **P.V. Ramana Reddy** (supra) this Court, *inter alia*, had to decide whether the officers under the Central Goods and Services Act, 2017 (hereinafter 'CGST Act') are police officers and whether protection under Section 41-A of the Cr.P.C is applicable to arrests under the CGST Act. The Court therein held as follows:

40. Therefore, (1) in the light of the fact that Section 69(1) of the CGST Act, 2017 authorizes the arrest only of persons who are believed to have committed cognizable and non-bailable offences, but Section 69(3) of the CGST Act, 2017 deals with the grant of bail and the procedure for grant of bail even to persons who are arrested in connection with non-cognizable and bailable offences and (2) in the light of the fact that the Commissioner of GST is conferred with the powers of search and seizure under Section 67(10) of the CGST Act, 2017, in the same manner as provided in Section 165 of the Cr.P.C, 1973, **the contention of the Additional Solicitor General that the petitioners cannot take umbrage under Sections 41 and 41-A of Cr.P.C may not be correct.**

41. Though for the purpose of summoning of witnesses and for summoning the production of documents, the Proper Officer holding the enquiry under the CGST Act, 2017 is treated like a Civil Court, there are four other places in the Act, where a reference is made, directly or indirectly, to the Cr.P.C. They are (1) the reference to Cr.P.C. in relation to search and seizure under Section 67(10) of CGST Act, 2017, (2) the reference to Cr.P.C under sub-Section (3) of Section 69 in relation to the grant of bail for a person arrested in connection to a non-cognizable and bailable offence, (3) the reference to Cr.P.C in Section 132 (4) while making all offences under the CGST Act, 2017 except those specified in clauses (a) to (d) of Section 132 (1) of CGST Act, 2017 as non-cognizable and bailable and (4) the reference to Sections 193 and 228 of IPC in Section 70(2) of the CGST Act, 2017. Therefore, the contention of learned Additional Solicitor General that in view of Section 69(3) of the CGST Act, 2017, the petitioners cannot fall back upon the limited protection against arrest, found in Sections 41 and 41-A of Cr.P.C, may not be correct. As pointed out earlier, Section 41-A was inserted in Cr.P.C. by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008. Under sub-Section (3) of Section 41-A Cr.P.C, a person who complies with a notice for appearance and who continues to comply with the notice for appearance before the Summoning Officer, shall not be arrested. **In fact, the duty imposed upon a Police Officer under Section 41-A(1) Cr.P.C, to summon a person for enquiry in relation to a cognizable offence, is what is substantially ingrained in Section 70(1) of the CGST Act. Though Section 69(1) which confers powers upon the Commissioner to order the arrest of a person does not contain the safeguards that are incorporated in Sections 41 and 41-A of Cr.P.C, we think Section 70(1) of the CGST Act takes care of the contingency.**

42. In any case, the moment the Commissioner has reasons to believe that a person has committed a cognizable and non-bailable offence warranting his arrest, **then we think that the safeguards before arresting a person, as provided in Sections 41 and 41-A of Cr.P.C, may have to be kept in mind.**

61. **In view of the above, despite our finding that the writ petitions are maintainable and despite our finding that the protection under Sections 41 and 41-A of Cr.P.C, may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite our finding that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, we do not wish to grant relief**

to the petitioners against arrest, in view of the special circumstances which we have indicated above.

39. The decision in **P.V. Ramana Reddy** (supra) also does not help the accused. The CGST Act does not contemplate a separate procedure of arrest as envisaged under Section 19 and Rules, 2005. Although, the Court held that Section 41-A of the Cr.P.C. may apply to arrests made under CGST Act, it did not render a conclusive decision regarding its applicability. The Court only held that protection under Section 41-A of the Cr.P.C. may apply to arrest under CGST Act. It is clear from the paragraph No. 40 of the judgment that the court held that what is envisaged under Section 41-A is already ingrained in Section 70(1) of CGST Act. Further, the Court did not accord protection under Section 41-A of the Cr.P.C. to the Petitioners therein. Therefore, this judgment cannot be relied to contend that Section 41-A of the Cr.P.C. will apply to PMLA.

40. Further, **Ashok Kumar Sharma** (supra) is also not applicable and is distinguishable. In the said case, the Supreme Court considered the interplay between Drugs and Cosmetics Act, 1940 (hereinafter 'D&C Act') and the Cr.P.C. The Court, *inter alia*, held that the Drugs Inspector appointed under the D&C Act has the power to arrest under Section 22(1)(d). In the said context it had held as follows:

109. The Court must start with the presumption that Parliament, which is author of the CrPC and also the Act in question, was aware of the provisions of the CrPC, as it existed at the time when the Act was enacted in 1940. This is following the principle that the Legislature must be assumed to know the law which exists on the Statute Book when it makes a new law. It must, therefore, be assumed to know that the power of arrest is expressly conferred on the Police Officer in the manner which we have referred to. **The Legislature has not, in the Act, yet conferred express power on**

the Drugs inspector, to arrest. However, Section 22(1)(d) of the Act, which deals with the powers of the Inspector, *inter alia*, enables the Inspector to exercise such other powers as may be necessary for carrying out the purpose of Chapter IV or any Rules made thereunder. The sanction, which is contemplated under Chapter IV, is the criminal sanction by way of prosecuting a person for contravening the provisions of Chapter IV of the Act. In other words, the Legislature has given teeth to the law by providing for prosecuting offenders. The Inspector is at the center stage. In every other aspect, as can be seen from the Act, the implementation of its provisions is vitally dependent upon the powers and functions assigned to the Inspector. The very qualifications, which are provided in the Rules, as indispensable for being appointed as an Inspector, represents a carefully chosen value judgment by the Legislature to assign the implementation of the Act through the competent hands of qualified persons. The Act is enacted to achieve the highest public interest in as much as what is at stake is the health of the members of the public, which again is recognized as one of the aspects covered by the Fundamental Right protected under Article 21 of the Constitution of India. Keeping the Police Officer out from the categories of persons, who could prosecute offenders for offences under Chapter IV of the Act, is also a carefully thought out ideal.

150. Declaring the power to arrest with the Inspector, is not to be understood as proclaiming that the Inspector is bound to arrest any person. **The provisions of the CrPC, relating to arrest, would necessarily have to be followed by the Drugs Inspector. In fact, he is obliged to bear in mind the law, as declared by this Court in *D.K. Basu* (supra), and the peril of defying the same, would be to invite consequences, *inter alia*, as are provided therein.** As far as the arrest, not being mentioned in Section 34AA, as forming a ground for visiting the delinquent Officer with penalty, it may be noticed that there is a residuary power in Section 34AA and it would cover any act. We notice that Section 34AA(d) provides that if any Inspector, exercising powers under the Act or the Rules made thereunder, commits, as such Inspector, any other act, to the injury of any person without having reason to believe that such act is required for the execution of his duty, he shall be punishable with fine which may extend to one thousand rupees.

155. We again reiterate that the existence of the power to arrest with the Drugs Inspector is not to be understood as opening the doors to making illegal, unauthorized or unnecessary arrest. Every power comes with responsibility. In view of the impact of an arrest, the highest care must be taken to exercise the same strictly as per the law. The power of arrest must be exercised,

recognizing the source of his authority, to be Section 22(1)(d) of the Act, which is for carrying out the purpose of Chapter IV of the Act or any Rules made thereunder.

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IV. Having regard to the provisions of Section 22(1)(d) of the Act, we hold that an arrest can be made by the Drugs Inspector in regard to cognizable offences falling under Chapter IV of the Act without any warrant and otherwise treating it as a cognizable offence. He is, however, bound by the law as laid down in *D.K. Basu* (supra) and to follow the provisions of CrPC.

41. It is clear from the above judgment that the provisions relating to arrest and the protections under Cr.P.C were made applicable to the D&C Act as no express provision of arrest is provided under the said Act. The power of arrest was impliedly read into the he D&C Act by broadly interpreting Section 22(1)(d) which provides that the Inspector has such other powers as may be necessary to carry out the purposes of the D&C Act. To check the wide power of the Inspector, the Court held that the arrests should be made in accordance with the Cr.P.C. implying the applicability of Section 41-A. However, as mentioned above, PMLA provides a specific procedure for arrests and enough safeguards to check illegal arrests. Therefore, the decision in **Ashok Kumar Sharma** (supra) is not applicable.

42. In **Ashok Munilal Jain** (supra) the Supreme Court, relying on **Directorate of Enforcement v. Deepak Mahajan**¹², held that Section 167(2) of the Cr.P.C. applies to PMLA proceedings on the ground that there is no provision in the PMLA expressly barring Cr.P.C.'s applicability. This Court agrees that Cr.P.C. does apply to PMLA proceedings. However, when a separate provision exists and replaces the applicability of the general

¹² (1994) 3 SCC 440.

provision, the special provision shall apply. In the present case, as stated above, Section 19 of the PMLA replaces Section 41A of the Cr.P.C. Therefore, at the cost of repetition, this Court holds that Sections 41 and 41-A of the Cr.P.C. is not applicable to arrests made under Section 19 of the PMLA.

43. The learned Additional Solicitor General relying on **State of Punjab v. Barkat Ram**¹³, **Badku Joti Savant v. State of Mysore**¹⁴ and **Illias v. Collector of Customs Madras**¹⁵ contended that Section 41 of the Cr.P.C will apply only to police officers and not to authorized officers empowered to arrest under Section 19 of the PMLA. According to this Court, the said contention is not germane to decide the applicability of Cr.P.C. to arrests under PMLA.

Issue 2:

44. The next issue to be decided is whether the Designated Court constituted under the PMLA has the power to return an application for remand filed under Section 167(2) of the Cr.P.C. on the ground of non-compliance of Section 41-A of the Cr.P.C.

45. The impugned order dated 18.12.2021 passed in SR. No. 8731 of 2021 challenged in CrI.P.No. 9846 of 2021 is extracted below:

SR. No. 8731 of 2021

Date: 18-12-2021

Accused produced at 1.00.pm on 18-12-2021.

1. On hearing both sides and on perusal of the record it is found that the remand of the accused is sought under Section 3 for the punishable under Section 4 of PMLA Act. It is found that no notice under Section 41-A of

¹³ (2015) 15 SCC 1.

¹⁴ (1966) 3 SCR 698.

¹⁵ AIR 1970 SC 1065.

Cr.P.C has been issued by the Prosecution Authority to the accused herein.

2. Further on perusal of the arrest order and as per Section. 41(A)(3) no reasons are being recorded by the Prosecution Agency, arrest is necessary in his opinion as stated under Section 41(b) except stating that he is non cooperative and not disclosing about the facts in his knowledge and records in his possession which are not sufficient to cause arrest of the accused as per the provision of Section 41 of Cr.P.C.
3. Hence the remand report is returned.

46. The impugned order dated 18.12.2021 passed in SR. No. 8729 of 2021 challenged in Crl.P.No. 9825 of 2021 is extracted below:

SR. No. 8729 of 2021

Date: 18-12-2021

Accused produced at 1.00.pm on 18-12-2021.

1. On hearing both sides and on perusal of the record it is found that no notice under Section 41-A of Cr.P.C has been issued by the Prosecution Authority to the accused herein.
2. Further on perusal of the arrest order and as per Section. 41(A)(3) no reasons are being recorded by the Prosecution Agency that in his opinion the arrest of the accused is necessary.
3. Hence the remand report is returned.

47. A perusal of above orders clearly indicates that the remand applications were returned. According to this Court, the Designated Court cannot return a remand application filed under Section 167(2) of Cr.P.C. It is relevant to note that a Court performs a judicial function while deciding an application for remand under Section 167(2) of the Cr.P.C. The Court while exercising the judicial function under Section 167(2) of the Cr.P.C. is bound to pass a judicial order by applying its mind. The Court under Section 167 of the Cr.P.C. by passing a judicial order has to, where there are adequate grounds for proceeding with the investigation, remand the accused to judicial custody or where no such further investigation is required release him on bail on satisfying conditions as prescribed.

48. Explaining the nature of power under Section 167(2) of the Cr.P.C., the Supreme Court in **Manubhai Ratilal Patel v. State of Gujarat**¹⁶ held as follows:

24. The act of directing remand of an accused is fundamentally a judicial function. The Magistrate does not act in executive capacity while ordering the detention of an accused. While exercising this judicial act, it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand or, to put it differently, whether there exist reasonable grounds to commit the accused to custody and extend his remand. The purpose of remand as postulated under Section 167 is that investigation cannot be completed within 24 hours. It enables the Magistrate to see that the remand is really necessary. This requires the investigating agency to send the case diary along with the remand report so that the Magistrate can appreciate the factual scenario and apply his mind whether there is a warrant for police remand or justification for judicial remand or there is no need for any remand at all. It is obligatory on the part of the Magistrate to apply his mind and not to pass an order of remand automatically or in a mechanical manner.

49. It is also relevant to note that neither the Cr.P.C. nor the Criminal Rules of Practice have any provisions conferring the power on the Court to return an application seeking remand under Section 167(2) of the Cr.P.C. While the Code of Civil Procedure under Order VII Rules 10 & 10A provides for return of plaint, no such provision/procedure is provided under the Cr.P.C.

50. In the present case, the Designated Court had no power to return the remand applications filed by the DOE. Even if the Designated Court had

¹⁶(2013) 1 SCC 314

come to a conclusion that Section 41-A of the Cr.P.C. was not complied with, it was incumbent on it to pass a reasoned judicial order rejecting the remand application. The Designated Court could not have let off the accused, against whom serious allegations of money laundering exist, by simply returning the remand application and not passing a reasoned judicial order. Thus, the Designated Court had committed grave error by returning the applications filed by the DOE under Section 167(2) of Cr.P.C. Therefore, the contentions advanced on behalf of the accused that a remand application can be returned is unsustainable.

51. Therefore, both the orders dated 18.12.2021 returning the remand application are erroneous, illegal and are liable to be quashed.

Issue 3:

52. Crl.P.No.10021 of 2021 was filed seeking anticipatory bail by the accused in ECIR/HYZO/22/ 2019 dated 23.12.2019. A preliminary objection was raised regarding the maintainability of the anticipatory bail application by the DOE on the ground that the accused was already arrested under Section 19 of the PMLA.

53. It is relevant to note that the accused was arrested and produced before the I Additional Metropolitan Sessions Judge/Designated Court under PMLA on 18.12.2021 and remand of the accused was sought. The remand report was returned on the ground that Section 41-A was not complied with and the accused was released from DOE's custody.

54. It is also relevant to note that on the date of filing of the anticipatory bail application, the accused was not in the custody of the DOE.

55. In **Gurbaksh Singh Sibbia v. State of Punjab**¹⁷, the Apex Court explaining the difference between anticipatory bail and regular bail has held as follows:

7. The facility which Section 438 affords is generally referred to as ‘anticipatory bail’, an expression which was used by the Law Commission in its 41st Report. Neither the section nor its marginal note so describes it but, the expression ‘anticipatory bail’ is a convenient mode of conveying that it is possible to apply for bail in anticipation of arrest. Any order of bail can, of course, be effective only from the time of arrest because, to grant bail, as stated in Wharton's LAW LEXICON, is to ‘set at liberty a person arrested or imprisoned, on security being taken for his appearance’. Thus, bail is basically release from restraint, more particularly, release from the custody of the police. The act of arrest directly affects freedom of movement of the person arrested by the police, and speaking generally, an order of bail gives back to the accused that freedom on condition that he will appear to take his trial. Personal recognizance, suretyship bonds and such other modalities are the means by which an assurance is secured from the accused that though he has been released on bail, he will present himself at the trial of offence or offences of which he is charged and for which he was arrested. **The distinction between an ordinary order of bail and an order of anticipatory bail is that whereas the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is therefore effective at the very moment of arrest. Police custody is an inevitable concomitant of arrest for non-bailable offences.** An order of anticipatory bail constitutes, so to say, an insurance against police custody following upon arrest for offence or offences in respect of which the order is issued. In other words, unlike a post-arrest order of bail, it is a pre-arrest legal process which directs that if the person in whose favour it is issued is thereafter arrested on the accusation in respect of which the direction is issued, he shall be released on bail. Section 46(1) of the Code of Criminal Procedure which deals with how arrests are to be made, provides that in making the arrest, the police officer or other person making the arrest “shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”. **A direction under Section 438 is intended to confer conditional immunity from this ‘touch’ or confinement.**

¹⁷(1980) 2 SCC 565

56. The Apex Court **Narinderjit Singh Sahni v. Union of India**¹⁸

has held as follows:

51. On the score of anticipatory bail, it is trite knowledge that Section 438 CrPC is made applicable only in the event of there being an apprehension of arrest. **The petitioners in the writ petitions herein are all inside the prison bars upon arrest against all cognizable offences**, and in the wake of the aforesaid question relieving the petitioners from unnecessary disgrace and harassment would not arise.

57. Further, the Gauhati High Court in **Minakshi Das v. Md. Nur Azam Ali**¹⁹ held that ‘for making an application in terms of section 439 of the code, a person has to be in custody and section 438 of the code deals with direction for grant of bail to person apprehending arrest.’

58. From the above decisions, it can be said that an ordinary bail is sought by an accused to be released from the custody of the police, whereas anticipatory bail application is filed in anticipation of arrest and to prevent the police from taking custody of the accused. If the person is not in custody of the police, an application under Section 438 of the Cr.P.C. is maintainable. The Court has to see whether a person is apprehending arrest and subsequent custody of the police.

59. As stated above, though the accused was arrested under Section 19 of the PMLA, he was released following the impugned order dated 18.12.2021. He was not in DOE’S custody when the Crl.P.No. 10021 of 2021 was filed, therefore, he had filed an anticipatory bail application apprehending that DOE might take him into custody again. Therefore, the anticipatory bail application filed by the accused is maintainable.

¹⁸(2002) 2 SCC 210.

¹⁹2009 SCC OnLineGau 175

60. The next issue to be decided is whether the accused is entitled for anticipatory bail in the present case. It is to be noted that a separate procedure and conditions for grant of bail are prescribed under Section 45 of the PMLA. Recently, the Supreme Court in **The Assistant Director Enforcement Directorate v. Dr. V.C. Mohan**²⁰ has held that the conditions of bail as prescribed under Section 45 of the PMLA have to be satisfied for grant of anticipatory bail. The Supreme Court has held as follows:

For the nature of order that we propose to pass suffice it to observe that the High Court considered the matter as if it was dealing with prayer for anticipatory bail in connection with ordinary offence under the Indian Penal Code. Indeed, the offence under the PMLA Act is dependent on the predicate offence which would be under ordinary law, including provisions of Indian Penal Code. **That does not mean that while considering the prayer for grant of anticipatory bail in connection with PMLA offence, the mandate of Section 45 of the PMLA Act would not come into play.**

Mr. Dama Seshadri Naidu, learned senior counsel appearing for the respondent invited our attention to the dictum in paragraph 42 of the judgment in Nikesh Tarachand Shah vs. Union of India & Anr. reported in (2018) 11 SCC 1. **The observations made therein have been misunderstood by the respondent. It is one thing to say that Section 45 of the PMLA Act to offences under the ordinary law would not get attracted but once the prayer for anticipatory bail is made in connection with offence under the PMLA Act, the underlying principles and rigors of Section 45 of the PMLA Act must get triggered—although the application is under Section 438 of Code of Criminal Procedure.** As aforesaid, the High Court has not touched upon this aspect at all.

It is urged before us by the respondent that this objection was never taken before the High Court as it is not reflected from the impugned judgment. It is not a question of taking objection but the duty of court to examine the jurisdictional facts including the mandate of Section 45 of the PMLA Act, which must be kept in mind.

²⁰ CRIMINAL APPEAL NO.21 OF 2022 (Arising from the SLP(Crl.) No. 8441 of 2021).

61. It is relevant to note that a Division Bench of High Court of Judicature at Bombay Bench at Nagpur vide judgment dated 28.01.2022 in **Ajay Kumar Vs. DOE**²¹, referring to the principle laid down by the Apex Court in **Nikesh Tarachand** (supra) and also referring to the amendment, 2018 to the PMLA held that the twin conditions of section 45 of the PMLA stand revived after 2018.

62. Section 45 of the PMLA prescribes twin conditions to be satisfied for granting bail. Bail can only be granted if the Public Prosecutor has been given an opportunity to oppose the release of accused and the Court should satisfy itself, based on reasonable grounds, that the accused is not guilty of the alleged offence and he is not likely to commit any such offence. In addition to the said conditions, under Section 45(2), the Court should also consider the other limitations on granting bail as prescribed under the Cr.P.C.

63. The Apex Court has consistently held that economic offences constitute a class apart and bail should be granted by exercising caution and appreciating the nature of the allegations. In **P. Chidambaram** (supra), referring to the decision in **Y.S.Jagan Mohan Reddy Vs. CBI**²², the Supreme Court has held that grant of anticipatory bail in serious economic offences like money laundering may frustrate the investigation and make it difficult for the investigating agency to collect evidence. Therefore, only when reasonable grounds exist regarding the innocence of the accused bail should be granted.

²¹ Criminal Application (BA) No.1149 of 2021.

²² (2013) 7 SCC 439

64. Other factors to be considered while granting anticipatory bail were laid down by the Supreme Court in **Satlingappa Mhetre v. State of Maharashtra**²³ wherein the following was held:

The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice; iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

²³ (2011) 1 SCC 694

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

65. In the present case, the allegations against the accused are that he is the main conspirator and has derived proceeds of crime in the form of movable and immovable assets. The accused along with other IMS officials and private persons is alleged to have conspired and misappropriated the allocation of purchase orders meant for procuring medicines and medical equipment.

66. The alleged actions of the accused and others have resulted in huge loss to the State exchequer which is approximately Rs. 211 Crore. Crime proceeds amounting to Rs. 144,42,67,813/- were traced, which include the proceeds generated by the accused. Other allegations include, creation of shell companies to supply drugs and medicines at inflated prices, bribing and influencing public servants, etc.

67. According to the DOE, the Petitioner was summoned under Section 50 of the PMLA. However, he has remained non-cooperative and has failed to divulge the proceeds of crime and the names of other officials, bureaucrats and politicians involved in the crime. Therefore, the DOE sought the custody of the accused for further investigation. According to the accused the ECIR was registered based on the FIRs filed by the ACB, Telangana. The ECIR was registered in 2019 and the accused has always cooperated with the investigation and has

appeared eleven (11) times before the authorities and has furnished all the relevant documents. They have conducted searches in the residential and office premises of the accused and have also attached his properties as alleged proceeds of crime. Therefore, the investigation by the DOE is at the stage of completion.

68. It is relevant to note that the DOE had enclosed the grounds of arrest along with the arrest order in Form No.III issued under Rule 6 of the Rules, 2005. In the grounds of arrest, details about the registration of crime, issuance of summons, recording of statements, etc. are specifically mentioned. It was also stated that the respondents are not cooperating in the investigation. Therefore, according to the DOE, considering the seriousness and graveness of the allegations, the respondent was arrested and produced him before the Designated Court along with application under Section 167 of Cr.P.C. Thus, according to the DOE, the authorized officer has sufficient material in his possession to believe that the respondent is guilty of the offences under the PMLA.

69. In view of Section 45 of the PMLA, the law laid down by the Supreme Court, the facts of the case and the nature of allegations, this Court could not, prima facie, satisfy itself that the accused is not guilty. Therefore, the anticipatory bail application is dismissed.

70. **Conclusion**

- a. Crl.P.Nos. 9825 and 9846 of 2021 are allowed. Both the orders dated 18.12.2021 passed by the learned Metropolitan

Sessions Judge at Nampally, Hyderabad returning the remand applications are set aside.

- b. The accused in both the cases are directed to surrender before the Designated Court within ten days from today. The Designated Court is directed to consider the application of remand afresh in accordance with law.
- c. Crl.P.No.10021 of 2021 is dismissed.
- d. Consequently, miscellaneous petitions, pending if any, in these criminal petitions shall stand closed.

K. LAKSHMAN, J

Date: 15.02.2022

Note: Issue copy today.

L.R. copy to be marked.
b/o. vvr