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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **RESERVED ON –01.06.2023.**
PRONOUNCED ON – 03.07. 2023.

+ W.P.(CRL) 705/2023 & CRL.M.A. 7192/2023

ABHISHEK BOINPALLY

..... Petitioner

Through: Mr. Vikram Chaudhari, Sr. Advocate
through v/c and Mr. Shri Singh, Mr.
Sumer Singh Boparai, Mr. Sidhant
Saraswat, Mr. Gurfateh Singh Khosa,
Mr. Varun Bhati, Mr. Prabhneer
Swaini, Mr. Suyash Goverdhan and
Ms. Srishti Khanna, Advs.

versus

DIRECTORATE OF ENFORCEMENT

..... Respondent

Through: Mr. Zoheb Hossain, Special counsel
for ED with Mr. Vivek Gurnani, Mr.
Kartik Sabharwal and Mr. Baibhav,
Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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J U D G M E N T

DINESH KUMAR SHARMA,J :

A. Factual Matrix

1. The present order shall dispose of the writ petition no. 705/2023 titled as “Abhishek Boinpally vs Directorate of Enforcement”.
2. The petitioner Abhishek Boinpally has assailed the orders dated 31.10.2022, 13.11.2022 and 14.11.2022 in the Writ Petition (Crl.) no. 705/2023 titled as “Abhishek Boinpally vs Directorate of Enforcement” in which the petitioner has challenged legality and validity of the arrest of the accused and has thus prayed that he be released on bail. In the W.P. No.705/203 the petitioner has made the following prayers:
“a) Quash and set aside the order dated 31.10.2022 passed by the Court of Learned Special Judge (PC Act), CBI09 (MPs/MLAs Cases), Rouse Avenue District Courts, New Delhi whereby, pursuant to an application seeking permission to record statement(s) of the petitioner purportedly under Section 50 of the Prevention of Money Laundering Act, 2002, the Learned Court has mechanically allowed such prayer in a manner alien to the settled tenets of law, equity and justice;
b) Quash and set aside the arrest memo dated 13.11.2022 whereby, the petitioner has been arrested by the Respondent Enforcement Directorate in utter violation of the law of the land; without adhering to Section 19 of



PMLA and without any implicit or explicit permission, leave or imprimatur of the court in whose custody the petitioner was already incarcerated;

c) Quash and set aside the order dated 14.11.2022 passed by the court concerned for production of the petitioner and simultaneously remanding him to custody of the respondent and all subsequent orders thereto;”

B. Submissions on behalf of the Petitioner

3. Sh. Vikram Chaudhary, learned senior counsel alongwith Sh. Sumer Singh Bopparai for the accused Abhishek Boinpally has submitted that the ED moved an application dated 29.10.2022 before the learned Trial Court seeking permission to interrogate and record petitioner’s statement in PMLA case without mentioning any provision as to the maintainability thereof. It has been submitted that the learned Special Judge wrongly permitted the ED to record statement for 3 days within a period of 30 days. It has been submitted that the said order was passed without issuing any notice to the petitioner or giving him an opportunity to show cause in flagrant violation of the principles of natural justice and *Audi Alteram Partem*. Learned senior counsel submitted that the permission to interrogate a person in custody in another case could not have been granted in absence of any specific provision in the Cr.P.C. It has been submitted that even if the prison rule permits some access to another investigating agency, it cannot be construed as being equivalent



to interrogation. Thus, the order dated 31.10.2022 passed by learned Special Judge is nullity in the eyes of law.

4. Learned senior counsel submitted that the ED arrested the petitioner on 13.11.2022 without any permission from the learned Session Judge. Learned senior counsel further submitted that the arrest order was on a printed format as provided under the arrest rules i.e., Form-3 wherein the blanks have to be filled. In the petitioner's case the blanks in the arrest order were typed however in the column of the name of the accused person 'Vijay Nair' was typed but the said name was struck off with a pen and the petitioner's name was inserted after over writing the said typed name. It has further been submitted that the application dated 14.11.2022 was filed by the ED referring to several provisions including Section 267 Cr.P.C. r/w Section 65 PMLA and Section 167 Cr.P.C. revealing absolutely vague stand of the ED. It has been submitted that Section 267 of Cr.P.C. could not have been attributed with Section 167 Cr.P.C. as the scope of both are absolutely different. It has been submitted that power under Section 167 Cr.P.C. could be exercised by the court only in the eventuality that 'the person is arrested and detained in custody'. It has been submitted that the expression 'detained in custody' in section 167 Cr.P.C. connotes custody in that very case and not in any other. It has been submitted that therefore the application moved by the ED was in teeth of the specific provisions of law as well as in violation of the due process of



law. It has further been submitted that there were no valid grounds for arrest under Section 19 PMLA, nor does the pre-requisite of section 19(1) PMLA existed. It has been submitted that even Section 19(2) PMLA r/w rules of 2005 were not followed as there was no availability of material in possession on the basis whereof the reasons are recorded in writing that the person is guilty. It has been submitted that under Section 19(2) PMLA it was a pre-requisite to send the material immediately to the adjudicating authority.

5. Learned senior counsel submitted that non-compliance of Section 19 PMLA would render the arrest and subsequent proceedings to be illegal, entitling the petitioner to bail on similar analogy as has been done by Hon'ble Supreme Court in ***Satyender Kumar Antil vs. Central Bureau of Investigation and Another*, 2022 10 SCC 51**. The reliance has also been placed on *Arnesh Kumar vs State of Bihar*. Learned counsel submits that even the twin conditions as laid down in Section 45(1) PMLA will not apply as the arrest itself was affected without following the due process of law or procedure.
6. Learned senior counsel further submitted that the objection raised by the respondent/ED as the maintainability of the writ petition is not only misconceived but thoroughly untenable. It has been submitted that the reliance of ED on ***SFIO vs Rahul Modi*(2019) 5 SCC 266** is also misplaced as the order of remand can be challenged by filing appropriate proceedings.



C. Submissions on the behalf of Respondent/ED

7. Sh. Zoheb Hossain, learned special counsel for ED submitted that the arrest and remand of the petitioner was strictly in accordance with law. It has been submitted that ED sought permission to interrogate and record the petitioner's statement under PMLA because the petitioner would not have been able to appear and comply with the summons under Section 50 PMLA being in judicial custody. It has been submitted that there was no legal requirement of issuing notice to the petitioner of the application moved to interrogate and record the petitioner's statement under PMLA.
8. Sh. Zoheb Hossain, submitted that proceedings under Section 50 are deemed to be judicial proceedings as provided under Sub-section (3) & (4) of Section 50. Reliance has been placed upon ***Vijay Madanlal Chaudhary vs. Union of India (2022) SCC online SC 929*** wherein it was held that the power exercised by the authority under this provision is analogous to the power vested in a civil court under the 1908 court while trying a suit in respect of matter refer to instruction 50 of the 2002 Act.
9. Sh. Zoheb Hossain further submitted that the power to arrest under Section 19 is an independent power and does not require the permission of the court. Sh. Zoheb Hossain placed reliance upon ***King Emperor vs. Khwaja Nazir Ahmad AIR 1945 PC 18*** wherein it was *inter alia* held that the judiciary should not



interfere in the matters which are in their province and into which the law imposes on them the duty of enquiry.

10. Sh. Zoheb Hossain further submitted that permission was sought from the Learned Special Judge as the petitioner was in custody in relation to the scheduled offence. It has been submitted that the power that was exercised permitting ED to record statement was the power of remand of the court under Section 167 Cr.P.C. which is the same power which the court exercises when it permits family members to meet the accused in judicial custody or to meet the lawyers to the accused in the judicial custody or permits a doctor to examine the accused in the judicial custody or permits the accused to be taken to a hospital or all of the above are employed powers available under Section 167 itself and for this reason the court was not required to refer to any express provision. Reliance has been placed upon **Sakiri Vasu V. State of U.P. (2008) 2 SCC 409**. Wherein it was held that if a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing.
11. Sh. Zoheb Hossain submitted that therefore no prior permission was required from the court to effect arrest of the petitioner. Sh. Zoheb Hossain further submitted that upon arrest of the petitioner the subsequent remand order was passed under Section 167 which is strictly in accordance with law as held by the Hon'ble Supreme Court in **CBI v. Anupam J. Kulkarni**



(1992) 3 SCC 141. Reliance has also been placed upon **State v. Dawood Ibrahim Kaskar, (2000) 10 SCC 438.**

12. Sh. Zoheb Hossain submitted that the allegation that the arrest order contained Vijay Nair's name and therefore there could not have been a reason to believe for the arrest of the petitioner is wholly fallacious for the reason that it is evident from the ground of arrest that the reason to belief to arrest Abhishek Boinpally was arrived at and available on the record when the arrest order was drawn up and it contained sufficient grounds to arrive at a reason to believe that the petitioner is guilty of the offence of money laundering. It has been submitted that it was merely a clerical mistake which was corrected by the IO by appending his signature. It has been submitted that the clerical error could be because the arrest of both the accused persons was affected on the same date. It has been submitted that no prejudice has been caused to the petitioner and this is evident from the fact that there was no objection to this effect taken by the lawyers on the accused when his first remand order was passed. Sh. Zoheb Hossain submitted that mere technicalities cannot be used to defeat substantive justice. Reference has also been made to section 68 of PMLA which provides that no notice etc. shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, documents or other proceedings. If such notice, summons, order, documents or other proceedings is in substance and the fact in conformity with or according to



the intent and purpose of this act. Reference has also been made to Section 292(B) of the Income Tax Act. Sh. Zoheb Hossain has also placed reliance upon **Income Tax v. Jagat Novel Exhibitors Private Limited, 2012 SCC Online Del 767**.

13. Sh. Zoheb Hossain submitted that even assuming without admitting that the order dated 13.11.2022 passed by Learned Special Judge suffered from some error. It would not affect either the arrest under Section 19 or the subsequent remand under Section 167 Cr.P.C. Reference has been made **Olga Kozireva v. State (CBI), 2001 SCC OnLine Del 432** wherein it was *inter alia* held that the procedural laws are hand maiden of justice aimed at facilitating and advancing investigations, enquiries, trials with a view to dispense justice in accordance with law and cannot be permitted to subvert or negate the ends of the justice. It was submitted that the arrest and remand of the petitioner in pursuance thereof was perfectly in accordance with law.
14. Sh. Zoheb Hossain submitted that the arrest cannot be questioned at this stage when the remand order has been passed and the only basis on which the release of the accused can be sought is by fulfilling the mandatory twin conditions under PMLA. It has been submitted that there were sufficient reasons to believe duly recorded in writing that the petitioner is guilty of offence of money laundering. It has also been submitted that there was full compliance of Section 19(1) PMLA and



intimation was also given to the adjudicating authority soon after the arrest in compliance of Section 19(2) of PMLA.

15. Sh. Zoheb Hossain submitted that expression “other proceedings” used in section 267(1) of Cr.P.C and the expression “purpose of any proceedings” in section 267(1)(A) included “court investigation”. Reliance has been placed upon **C. Natesan vs. State of Tamil Nadu & Ors. [1998 SCC OnLine Mad 931]** in which it was *inter alia* held that the true construction of section 267(1) of the code appears to be not to assign a restrictive meaning to the words “other proceedings of this court” so as to fall in line that can be attributed to “enquiry, trial” occurring earlier to the words referred to above. Learned Judge in **C. Natesan vs. State of Tamil Nadu & Ors. (Supra)** further *inter alia* held that the general words “other proceedings” under the Cr.P.C. occurring under section 267(1) of the code have to necessarily get a very wider meaning than the preceding words occurring in the very same section.

D. Finding and Analysis

16. Learned Special Judge on an application dated 29.10.2022 moved by the ED granted permission to interrogate and record petitioners statement for PMLA case. This permission was granted as petitioner was in custody in predicate offence. The contention of the petitioner that the notice to the petitioner should have been issued by the learned Special Judge has no basis as the permission was granted to the ED to record the statement of the petitioner under Section 50 of the PMLA. If



the contention of the petitioner is accepted then it would mean that before issuing a notice under Section 50 of the PMLA to summon any person, the ED would be required to issue a notice that why the summons to record the statement under Section 50 should not be issued to him.

17. In **Veer Bhadra Singh Vs. ED 2017 SCC OnLine Delhi 8930**

it was *inter alia* held that the power conferred on the enforcement officers for the purpose of complete and effective investigation includes the power to summon and examine “Any person” It was further *inter alia* held that the law declares any such person who is summoned is bound to state the truth. It was further *inter alia* held that no person is entitled in law to avail the command of the summons issued under Section 50 of PMLA on the ground that there is a possibility that he may be prosecuted in future. Thus, I consider that there is a force and contention of learned counsel for ED that there was no requirement of issuing summons to the petitioner by the learned Special Judge on application dated 29.10.2022.

18. It is also pertinent to mention that the proceedings under Section 50 are deemed to be judicial proceedings in view of sub-section (3) and sub-section (4) of Section 50. In **Vijay Madanlal Chaudhary (Supra)** it was *inter alia* held as under:

“452. This provision is only an enabling provision and applies to situations referred to therein. It is in the nature of providing consequences for not discharging the burden or cooperating with the authorities during the



proceedings before the Authority and pursuant to summons, production documents and to give evidence is issued by such Authority in exercise of power under Section 50 of the 2002 Act. The power exercised by the Authority is analogous to power vested in a civil Court under the 1908 Code while trying a suit in respect of matters referred to in Section 50 of the 2002 Act. This is in the nature of deeming provision empowering the concerned Authority to ensure prevention of money-laundering and also to take consequential steps for attachment and confiscation of the property involved in such money-laundering to be vested in the Central Government. Absent such authority given to the Director under the 2002 Act, the inquiry or investigation required to be done for fulfilling the mandate predicated under the 2002 Act, would eventually result in paper inquiry and no meaningful purpose would be served much less to combat the menace of money-laundering. In such inquiry if misleading revelations are made by any person or for that matter fails to cooperate, is required to be proceeded in accordance with law. In that sense, Section 63 is the procedure established by law. It is unfathomable to countenance the argument that such a provision must be regarded as unreasonable or manifestly arbitrary. It has clear nexus with the purposes and objects sought to be achieved by the 2002 Act.”



19. I consider that therefore there was no illegality or infirmity in the order of learned Special Judge in granting the permission to the ED to record the statement of the petitioner under Section 50 of PMLA. Therefore, this contention of the petitioner is also liable to be rejected.
20. Another contention raised by the learned senior counsel that the petitioner was arrested without seeking permission from the learned Trial Court has also no basis as the power to arrest under Section 19 has been conferred by the statute and is an independent power. The investigating agency does not need any permission from the court to arrest an accused person if the department has on the basis of material in their possession reason to believe that any person has been guilty of an offence punishable under this act. Section 19 of the PMLA provides sufficient safeguards and I consider that there was no requirement to seek permission from the learned Special Judge to affect the arrest of the accused person. In respect of the contention of the learned counsel that the arrest was affected mechanically as the arrest order bears the name of Vijay Nair and it was struck off and name of the petitioner was written in hand, I have gone through the grounds for arrest running into 14 pages. It has been noted that on each of the page there are the complete signatures of the petitioner alongwith the date. The petitioner has specifically written in his own hand writing that "I have read 14 pages of the ground of my arrest and I am



informed of the same”. I consider that there is a force in the contention of the learned counsel for the ED that the mention of Vijay Nair’s name was a clerical error which was corrected by the IO by appending his signature.

21. It is also pertinent to mention here that it has been stated on record by the learned special counsel for ED that mistake could have occurred on account of the fact that Vijay Nair and petitioner was arrested on the same day. This court is of the considered opinion that no prejudice has been caused to the petitioner. It is also a matter of record that no objection to this effect was taken by the lawyers of the accused/petitioner when his first remand order was passed. The reference can also be made to the Section 68 of PMLA which provides as under:

“Section 68 Notice, etc., not to be invalid on certain grounds.-No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.”

22. The bare perusal of this section makes it clear that any summon, notice or order shall not be invalid or shall be deemed



to be invalid merely by reason an any mistake, defect or omission in such notice, summons, order, document or other proceedings. If such notice, summons, order, documents or other proceedings is in substance and effect in conformity with or according to the intent and purpose of this act.

23. The contention of the learned senior counsel for the petitioner that the application dated 14.11.2022 filed by the ED referring to several proceedings including section 267 Cr.P.C. r/w section 65 PMLA and 167 Cr.P.C. was absolutely vague is also liable to be rejected. The contention raised was that Section 267 could not have been employed simultaneously with Section 167 as the scope is different. Learned senior counsel had submitted that Section 267 Cr.P.C. specifically provides form-36 which provides it to be an order requiring production in court of person in prison for answering to charge of offence.
24. The contention of the learned senior counsel that power under Section 167 Cr.P.C. could only be used by the court if any person is arrested and detained in custody. It has further been submitted that expression “detained in custody” in Section 167 Cr.P.C. connotes custody in that very case and not any other case. It was submitted that the Section 267 Cr.P.C could not be invoked for the production of an arrestee at investigation stage. I consider all that these contentions of the learned senior counsel is liable to be rejected in view of the clear position of the law that procedure is the hand maid of justice. The provisions have been incorporated with an aim to facilitate and



advance investigation, enquiries and trial. The object is to dispense justice in accordance with law. The provisions cannot be read to negate the ends of justice.

25. The another facet of the contention of the learned senior counsel is that the production warrant under Section 267 could not have been issued by the learned Special Judge in the PMLA case, while the petitioner was in custody in another case of the CBI. I consider that these contentions are also liable to be rejected outrightly in view of the law laid down by the Hon'ble Supreme Court in **CBI v. Anupam J. Kulkarni, (1992) 3 SCC 141** wherein it was *inter alia* held that the limitation of granting remand shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody. It was further *inter alia* held that the occurrence constituting two different transactions give rise to two different cases and the exercise of power under Section 167 (1) & (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases and the investigation in one



specific case cannot be the same as in the other.

26. Similarly in **Olga Kozireva v. State (CBI), 2001 SCC OnLine Del 432** wherein it was *inter alia* held that the law is well settled that the procedural laws are hand-maiden of justice aimed at facilitating and advancing investigations, enquiries and trials with a view to dispense justice in accordance with law and cannot be permitted to subvert or negate the ends of justice. It was further *inter alia* held that procedural technicalities should not be permitted to defeat the object sought to be achieved by the Act and the overall public interest and the social object is required to be kept in mind while interpreting the laws. It was further *inter alia* held that although the production warrants issued by learned Special Judge were not strictly within the four corners of Section 267 of the Code, yet the arrest and remand of the petitioner in pursuance thereof was perfectly in accordance with law. The production of petitioner on the basis of aforesaid production warrants was not an illegality going to the root of the matter so as to affect further proceedings undertaken by learned Special Judge. In this view of the matter the production warrants issued by learned Special Judge do not affect the impugned order so far as it relates to grant of police remand.
27. I consider that there is a force in the contention of the learned special counsel for the ED that the expression “other proceeding” used in Section 267(1) of the Cr.P.C. and the expression purpose of any proceeding in Section 267(1)(A) includes “investigation” and hence there was no illegality in the



present case as alleged by the petitioner. In **C. Natesan vs. State of Tamil Nadu & Ors. [1998 SCC OnLine Mad 931]**, it was *inter alia* held that the ambit and scope of the word 'proceeding' must be definitely given a wider meaning because in Clause (a) of sub-section (1) of Section 267 of the Code, the Legislature has expressed that the presence of the person confined or detained to be brought before the Court "for the purpose of any proceedings against him". It was further *inter alia* held that the words "any proceedings against him" definitely enable the Court to understand the words "other proceeding" appearing in sub-section (1) of Section 267 of the Code, in its natural meaning. Learned Judge observed that if really the Legislature wanted a restrictive meaning to be given to the words "other proceeding under this Code" appearing in Section 267(1), they need not have used the expression "any proceedings against him" in the latter part of that section.

28. It is also a matter of record that it has not been brought to the notice of this court that any of such objection was raised by the petitioner before the learned Special Judge at the time of during the remand proceedings. However, in any case, I consider that there is no force in the contentions raised by the petitioner and the petitioner cannot be released on the grounds raised by him in the writ petitioner number W.P.(CRL)705/2023. The petitioner is required to cross the bar of twin conditions as laid down under Section 45 of PMLA to be released on bail.
29. In view of the discussion made herein above writ petition



number W.P.(CRL)705/2023 alongwith pending application stands dismissed.

JULY 3, 2023/AR

DINESH KUMAR SHARMA, J