

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Reserved on 07.03.2024**  
**Pronounced on 15.03.2024**

**WP(Crl) No. 9/2024**  
**CM No. 648/2024**

Anil Kumar Aggarwal

.....Appellant(s)/Petitioner(s)

Through: Mr. Vikram Chaudhari, Sr. Adv. with  
Mr. Tejeshwar Singh, Adv.  
Ms. Arveen Sekhon, Adv.

**vs**

Enforcement Directorate th. its Assistant  
Director, Jammu

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with  
Mr. Eishan Dadhichi, CGSC  
Mr. Anishwar Chatterji Koul, CGSC &  
Mr. Sumant Sudan, Adv.  
Ms. Sweety Chauhan, Adv.  
(legal Consultant, Enforcement Directorate)

**Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**ORDER**

**CM No. 648/2024**

1. The petitioner has called in question the action taken by the respondent that has led to his arrest in a case arising out of Enforcement Case Information Report(ECIR) bearing No. ECIR/JMSZO/02/2023 dated 31.03.2023 registered by the respondent. Challenge has also been thrown to Arrest Memo dated 06.02.2024, Arrest Order dated 06.02.2024 and Remand Order dated 07.02.2024 passed by the learned Special Judge, (PMLA) Jammu, whereby the petitioner has been remanded to custody of the respondent. In this regard, the petitioner

has invoked the jurisdiction of this Court under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure(Cr.P.C.). By way of interim relief, the petitioner has sought his release from the custody of the respondent.

2. It appears that on 11.02.2020, the State Bank of India, the Consortium Leader of the Banks from which M/s Bharat Paper Limited (hereinafter to be referred as the BPL), of which the petitioner was one of the directors, had obtained loan, filed a complaint before the Central Bureau of Investigation(CBI) against the BPL and its four directors including the petitioner herein. On the basis of this complaint, the Anti Corruption Bureau(ACB) CBI, Jammu registered an FIR bearing No. RC0042020A0001 dated 12.02.2020 for offences under Sections 5(1)(d) read with 5(2) of the J&K Prevention of Corruption Act, 2006 and Sections 120-B, 409 and 420 of J&K RPC.
3. It was alleged in the FIR that the accused persons have perpetrated bank loan fraud for an amount running into approximately Rs. 200 crores with the Consortium of Banks with lead bank as State Bank of India, the other banks being J&K Bank, Punjab National Bank and Karur Vyasya Bank. It appears that a writ petition bearing CWP No. 6507/2021 came to be filed by the BPL and its directors before the High Court of Punjab and Haryana, whereby besides challenging circular dated 01.07.2016 read with circular dated 03.07.2017 by virtue of which the account of BPL was declared as fraud, the petitioners therein also sought a direction that no coercive action should be taken

against them. The petitioners therein further sought stay of proceedings in respect of FIR bearing No. RC0042020A0001 dated 12.02.2020 of Police Station, ACB, Jammu.

4. On 19.03.2021, the High Court of Punjab and Haryana passed an interim direction, whereby taking of coercive steps against the petitioners therein including the petitioner herein was stayed, however, it was provided that investigation in the FIR may go on. It appears that another order came to be passed by the High Court of Punjab and Haryana in the same writ petition on 18.11.2022, whereby arrest of the directors of the BPL including the petitioner herein in the aforesaid FIR was stayed. Yet another order came to be passed by the High Court of Punjab and Haryana on 23.11.2022, whereby investigation against the BPL and its directors, which includes the petitioner herein, in the aforesaid FIR was stayed.
5. On 31.03.2023, an ECIR was registered by the respondent and investigation in respect of offences under Prevention of Money Laundering Act (hereinafter to be referred as the PMLA) was set into motion. It is pertinent to mention here that the registration of ECIR regarding offences under PMLA is based upon the scheduled offences that are subject matter of aforesaid FIR registered with ACB Jammu.
6. It appears that during investigation relating to offences under PMLA, the respondent conducted search operations at different places where properties belonging to the BPL and its directors are located, whereupon seizure of cash and other items was effected. During the

investigation, the respondent issued summons to the petitioner, pursuant where to, the petitioner and the co-accused approached the High Court of Punjab and Haryana by way of another petition under Section 482 Cr.P.C. whereby investigation in relation to offences under PMLA arising out of ECIR dated 31.03.2023 have been challenged. The petitioner and the co-accused have also challenged summons issued to them by the respondent in exercise of their powers under Section 50 of the Prevention of Money Laundering Act, 2002. The said petition is stated to be pending before the High Court of Punjab and Haryana.

7. While all this was going on, the petitioner pursuant to the summons issued by the respondent, put in his appearance before the respondent on 06.02.2024 but he was arrested on the same day at about 9.40 PM. The petitioner was produced before the Special Judge (designated under PMLA), Jammu on 07.02.2024 and vide impugned Remand Order dated 07.02.2024 passed by the said court on the same date, he was remanded to custody by the said respondent. This has led the petitioner to filing of the present petition challenging the action of the respondent with regard to his arrest and subsequent remand to custody.
8. Heard the learned counsel for the parties on the question of grant of interim relief and perused the record of the case including the Case Diary produced by the learned Deputy Solicitor General of India appearing for the Enforcement Directorate(ED).

9. Learned Senior Counsel appearing for the petitioner has urged a number of grounds to challenge the action of the respondent as also the Order of Remand passed by the Special Judge, PMLA, but the main thrust of his argument was on the contention that once the investigation in the predicate offence has been stayed by the High Court of Punjab and Haryana by virtue of order dated 23.11.2022 passed in CWP No. 6507 of 2021, it was not open to the respondent to register a case under PMLA and to proceed further to investigate the said case. Learned Senior Counsel has contended that once investigation in the predicate offence is stayed, the proceedings in the said case are eclipsed, therefore, proceedings in respect to offences under PMLA, which essentially owe their origin to the predicate offence, cannot be taken forward till the stay of investigation of the predicate offence is subsisting. Another contention that has been raised by the learned Senior Counsel is that action of the respondent leading to arrest of the petitioner is contrary to the guidelines laid down by the Supreme Court in the case of **Pankaj Bansal v Union of India and others, 2023 SCC Online SC 1244**.
10. *Per contra*, learned DSGI has argued that the petitioner has raised similar contentions before the High Court of Punjab and Haryana, while challenging the proceedings initiated by the respondent pursuant to which, he has been arrested. It has been contended that the petitioner cannot invoke jurisdiction of more than one court for similar relief. According to the learned DSGI, the petitioner has approached this

Court after realizing that the High Court of Punjab and Haryana does not have jurisdiction to entertain his petition and without withdrawing the said petition, he has approached this Court, which is not permissible in law. It has also been contended that merely because FIR in the predicate offence has been stayed, does not preclude the respondent-ED to register case relating to offences under PMLA and to undertake investigation in respect of the said offences. It has been contended that unless an accused is discharged, acquitted or the FIR lodged against him in respect of predicate offence is quashed, the proceedings under PMLA would continue to operate. It has been further contended that in the instant case, all the statutory requirements as postulated in Section 19 of the PMLA, 2002 have been adhered to by the respondent, while effecting arrest of the petitioner inasmuch as grounds of arrest have been furnished to him. He has further contended the impugned order passed by the learned Special Judge, PMLA is also in accordance with law.

11. Before coming to the merits of the case, it would be apt to deal with the preliminary objection raised by the learned DSGI about the maintainability of the present writ petition.
12. It is an admitted fact that the petitioner has invoked the jurisdiction of the High Court of Punjab and Haryana for challenging the proceedings initiated against him under PMLA and he has also challenged the summons issued by the respondent against him. In the instant case, the petitioner has challenged the action of the respondent leading to his

arrest as also the order of learned Special Judge designated PMLA, Jammu, whereby he has been remanded to custody of the respondent. Both these events viz., arrest of petitioner and his remand to custody of the respondent have taken place within the territorial jurisdiction of this Court, therefore, the petitioner has rightly approached this Court by invoking the jurisdiction of this Court under Section 226 of the Constitution read with Section 482 of the Cr.P.C. for challenging the aforesaid actions.

13. The question whether the High Court of Punjab and Haryana has jurisdiction to entertain the challenge to the proceedings initiated by the respondent against the petitioner and co-accused will have to be determined by that Court. It would not be appropriate for this Court to render any opinion on this issue in the present proceedings. However, one thing is clear that the cause of action for invoking the jurisdiction of High Court of Punjab and Haryana and cause of action for invoking the jurisdiction of this Court are separate from each other, inasmuch as, there are two different events, that have taken place on different occasions, may be the same are part of a single transaction. Merely because grounds of challenge raised before this Court are identical to the grounds of challenge raised by the petitioner in the petition filed by him before the High Court of Punjab and Haryana, does not disentitle him from invoking the jurisdiction of this Court. The preliminary objection of the learned DSGI to the maintainability of this petition, *prima facie*, appears to be untenable.

14. That takes us to the other contentions raised by the learned counsel for the parties. As already stated, the main ground urged by the learned Senior Counsel appearing for the petitioner is that it was not open to the respondent to undertake investigation in respect of the offences under PMLA once FIR relating to predicate offences had been stayed by the High Court of Punjab and Haryana. In this regard, learned Senior Counsel has placed heavy reliance upon a Division Bench judgment of the High Court of Madras in the case of **B. Shanmugam v Karthik Dasari, Deputy Director Directorate of Enforcement, 2022 SCC Online Mad 4417**. In the said judgment, the High Court of Madras, while considering the effect of stay order in a predicate offence, observed as under:

“What is the effect of a stay order?

17. The effect of an order of stay means that the operation of the impugned order is stayed or stands stalled as if the impugned order does not exist. Therefore, to bring the parties to the proceedings from taking further action in relation to the subject matter pending the final adjudication, stay order is granted in the interest of both parties. During the currency of stay order, if any proceedings are permitted to go on and in the meanwhile, if any damage has been caused to the reputation or the goodwill of the parties, the same cannot be compensated. Whereas if the Department waits for the final outcome of the proceedings, no prejudice would be caused to them. In all these cases, the admitted case of the respondent Department is that the ECIR has been initiated based on the three First Information Reports in Crime Nos.441 of 2015, 298 of 2017, 344 of 2018, which culminated in the proceedings in C.C.No.24 of 2021, C.C.No.19 of 2020 and C.C.No.25 of 2021 respectively and the proceedings in C.C.No.25 of 2021 culminating from Crime No.344 of 2018 have been quashed. The calendar cases arising out of the other two First Information Reports have been stayed. As stated supra, since the ECIR itself was only on the basis of the said three First Information Reports, when the proceedings pursuant to the said First Information Reports have been stayed by the High Court, whether the ECIR, which is also pursuant to the First Information Reports, can be proceeded with, is a

question that stares at open. Our considered answer is in the negative.

18. Because, it is not the case of the respondent that apart from the above three First Information Reports, there are other materials based upon which they have initiated the proceedings under the Prevention of Money laundering Act. Hence, in our view, when the calendar cases which culminated from the said two First Information Reports also have been stayed, the respondent Department should also refrain itself from proceeding any further, as it is their admitted case that the summons issued to the petitioners are pursuant to the initiation of ECIR based upon the three First Information Reports.

19. Learned Senior Counsels appearing for the petitioners in extenso argued that there is no jurisdictional facts to initiate the proceedings under the Prevention of Money-laundering Act. According to them, the following jurisdictional facts have to be there for initiating proceedings under the Prevention of Money-laundering Act.

20. Firstly, there must be predicate/scheduled offence.

21. Secondly, there must be a criminal activity.

22. Thirdly, there must be proceeds of crime which is quintessential to connect the first and second i.e. Scheduled offence and criminal activities.

23. According to them, except for the three First Information Reports indicating commission of scheduled offence, there is no document or pleading on the side of the respondent to substantiate that there are proceeds of crime as per Section 2(1)(u) of the Prevention of Money-laundering Act and that proceeds had a link with the scheduled offence. According to them, out of three calendar cases, one has been quashed and two Calendar Cases have been stayed. Therefore, in the eye of law, firstly, there is no scheduled offence as per section 2(y) of the Prevention of Money-laundering Act, 2002 as on this date for the respondent to proceed under the said Act.

24. On the contrary, Mr. R. Sankaranarayanan, learned Additional Solicitor General strenuously contended that it is true that the proceedings have been stayed, but that does not mean the offence has been wiped out. Till it is quashed by a competent Court or the person is discharged or acquitted, the offence continues to be alive and the respondent has the authority to proceed under the Act.

25. Let us see what is the jurisdictional fact to be taken into account by a Court before assuming jurisdiction over a particular matter. The Hon'ble Supreme Court explaining the above facts in Arun Kumar and others v. Union of India and others, (2007) 1 SCC 732, has held as follows:-

“74. A “jurisdictional fact” is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is

one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."

26. Further, the Apex Court in the case of State of Punjab v. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770, has held that if a foundation is being removed, structure/work falls.

27. A mere perusal of the above judgment clearly shows that the existence of jurisdictional fact is a condition precedent for the exercise of power by a Court of limited jurisdiction. Therefore, in the cases on hand, when there is no cause of action, since the proceeding in one of the calendar cases was quashed by the order dated 30.07.2021 in Criminal Original Petition No.13374 of 2021 and the proceedings in two other calendar cases have been stayed by this Court, there is no jurisdictional fact or cause of action for the respondent/department to initiate any proceedings during the period of order of stay operating against the two FIRs. Viz. C.C.No.19/2020 and C.C.No.24 of 2021.

28. Secondly, as already held by us, when the basis, namely, the proceedings which culminated through the First Information Reports had been stayed, the respondent should await the result of such proceedings before continuing any further under the Prevention of Money-laundering Act. It is the further case of the learned Additional Solicitor General that the Hon'ble Supreme Court in Vijay Madanlal Choudhary and others has held that the summons issued to the individual is to collect factual evidence as regards to the offence of money-laundering. It is his further case that only after concluding such inquiry, the authorities under the Prevention of Money-laundering Act could proceed any further as provided under the Act, that is, after ascertaining

the proceeds of crime and its nexus with the scheduled offence. Till the First Information Report is quashed, the scheduled offence continues to be alive.

29. In our view, the grant of stay of any particular proceedings would amount to eclipsing the proceedings initiated. An order of stay is interim in nature pending the final proceedings. The Hon'ble Apex Court in *State of Haryana and others v. Bhajan Lal and others*, 1992 Supp (1) SCC 335, in paragraph-5 stated thus:

“Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be.”

30. Therefore, the Apex Court has given the guidelines to be followed by the Courts while exercising the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not constitute any offence or make out a case against the accused, based on which, when the orders of stay are granted, the parties to the proceedings bound by the rule of law, should abide by the orders of stay. In this background, when the learned Additional Solicitor General appearing for the respondent fairly conceded that in view of the order of quash passed in Criminal Original Petition No.13374 of 2021 dated 30.07.2021, the respondent Department would not proceed against the accused therein, the same analogy would equally apply to the other cases, where orders of stay granted are operating against the C.C.No.19/2020 and C.C.No.20 of 2020 based on which the ECIRs are recorded and summons are issued till the cases are decided. Therefore, the impugned proceedings/summons do not have any legal sanctity. Interim order of stay granted will be subject to the final orders in the main proceedings, after which the eclipse would also wane away. In such circumstances, we are not inclined to enter upon the merits and demerits of the proceedings initiated by the Department, as it is at the stage of budding. It may either blossom into a full flower or wither away. Hence, we leave open all the questions that are raised on the merits and de-merits of the proceedings initiated by the respondent, to be dealt with in appropriate proceedings.

31. Generally, the summons are issued for appearance of a party on a particular date. If a party does not appear on the given date, fresh summons demanding the appearance of the person have to be issued. In the present cases, in view of the reasonings and the findings as stated supra, the last of the summons issued to the petitioners for their appearance on 09.05.2022 have elapsed. Therefore, as we have concluded that in view of the quashing of the proceedings in C.C.No.25 of 2021 and staying of the

proceedings in C.C.No.19 of 2020 & C.C.No.24 of 2021 as highlighted above, the scheduled offence for the present is eclipsed, suspended or stop operating during the period of stay, the respondent Department has to await the finality of the said proceedings. Needless to mention, if the proceedings in C.C.No.19 of 2020 and C.C.No.24 of 2021 are quashed pursuant to the orders in the applications filed by the respective persons to quash the proceedings, in which event, the respondent cannot step in or initiate any proceedings under the Prevention of Money-laundering Act, as held by the Hon'ble Supreme Court in Vijay Madanlal Choudhary and others and in Parvathi Kollur and another v. State by Directorate of Enforcement, 2022 LiveLaw (SC) 688 cited supra. Therefore, the respondent is hereby refrained from proceeding any further pursuant to the impugned proceedings in ECIR/MDSZO/21/2021, till the disposal of the Criminal Revision Case No.224 of 2021, Criminal Original Petition No.15122 of 2021 and the SLP (Crl) Diary No.9957 of 2022 (SLP (Crl) No.3841 of 2022).”

15. The aforesaid ratio laid down by the High Court of Madras has been relied upon by a Single Judge of High Court of Karnataka in the case of **Mantri Developers Pvt. Ltd. and others vs Directorate of Enforcement and another, (Writ petition No. 20713/2022 decided on 14.12.2022)**. In the said case, a crime case relating to offences punishable under Sections 406, 415, 417, 420 read with Section 34 of IPC was challenged before the High Court in a writ petition and the investigation was stayed by the High Court. Thereafter, Enforcement Directorate registered an Enforcement Case Information Report (ECIR) pursuant where to a show cause notice was issued to the petitioner therein calling upon him to appear before the Investigating Officer. The petitioner therein challenged the proceedings relating to ECIR as also the provisional attachment order by way of a writ petition before the High Court of Karnataka. The learned Single Judge of the High Court of Karnataka took note of the conclusions arrived at by the Supreme

Court in the case of **Vijay Mandanlal Choudhary and others v. Union of India, 2022 SCC Online SC 929**, as contained in para 467 of the judgment. Sub para 3(d) of para 467 of the said judgment, which is relevant to the context is reproduced as under:

“467(3)(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.”

16. After noticing the aforesaid conclusion drawn by the Supreme Court in **Vijay Mandanlal Choudhary’s case** (supra), the learned Single Judge of the High Court of Karnataka held that if the proceedings under the predicate offence are eclipsed, they would become applicable to the proceedings under the ECIR. While holding so, it was observed as under:

“Clause (d) of the aforesaid conclusion the Apex Court considers Section 3 of the Act and later upholds the constitutional validity of Section 5 of the Act in terms of clause (vi) supra. Section 5 of the Act is what deals with the attachment of the properties. Clause (v)(d) of paragraph 467 (supra) establishes the link between the two. The Apex Court holds that in the event the accused in the PMLA or whose allegations are linked to any persons in the predicate offence such accused in the predicate offence gets a clean chit on three circumstances – one by acquittal after a full blow trial; two on discharge by the competent Court and three on the proceedings being quashed by the High Court in exercise of its jurisdiction under Section 482 of the Cr.P.C.

14. In these circumstances the offence alleged under the provisions of the PMLA cannot be sustained and cannot be permitted to be

continued. Therefore, if the allegations in the predicate offences are considered to be the flesh, the offences under the PMLA is the blood. Therefore, if the predicate offence is not permitted to move forward, the impugned proceedings cannot. It would have been altogether different circumstance, if the petitioners were all acquitted of the offences under the IPC or any other predicate offence to which the offence under the PMLA is linked. The situation in the case at hand is not with regard to acquittal, however, the proceedings are stayed. Therefore, they are eclipsed and not extinguished. The Apex Court does not deal with a circumstance as to what should happen in a case, where it is eclipsed. The Apex Court only dealt with a situation where there is extinguishment of predicate offences. Therefore, it is necessary to consider taking cue from the findings of the Apex Court as to whether attachment order should be permitted to be confirmed or otherwise.

15. It cannot be disputed, that at a later point in time if the petitioners are acquitted, no proceeding under ECIR can continue. In the event they are convicted, it is always open to the Enforcement Directorate to pass any order of attachment or conviction as the case would be. If that be the right of the Enforcement Directorate, since there is no determination in Crime No.163 of 2020, in the light of the interim order being granted by this Court, so long as the interim order is in operation, the impugned proceedings of attachment, in the considered view of this Court, cannot be permitted to continue failing which, it would run completely counter to the findings of the Apex Court.”

17. From the aforesaid analysis of law on the subject, it is clear that though offences under PMLA are stand alone offences, yet their origin is the Scheduled offences. Once the Scheduled offence ceases to exist or is extinguished, an accused cannot be proceeded against in respect of offences under PMLA. It is for this reason that the Supreme Court has, in **Vijay Mandanlal Choudhary’s case** (supra) clearly laid down that if a person is finally discharged/acquitted of the scheduled offences or a criminal case against him is quashed, there cannot be any offence of money laundering against him. As an obvious corollary to this is that once investigation in FIR relating to predicate scheduled offences is stayed, the proceedings in the said FIR would get eclipsed. The same

will definitely have a bearing upon the offences of money laundering as the said offences owe their origin to the predicate offences. Therefore, the said offences would also stand eclipsed till such time the stay of investigation is in operation.

18. Learned DSGI has submitted that there are contrary judgments on this issue from the High Court of Telangana as also from the High Court of Madras and both these High Courts have held that mere stay of predicate offence is not a ground for preventing the Directorate of Enforcement from proceeding under PMLA. In this regard reliance has been placed upon the judgment of the High Court of Madras in **Soodamani Dorai and others vs the Joint Director of Enforcement(PMLA) and others, 2018 (4) MLJ (Criminal) 455** and the judgment of Telangana High Court in the case of **Sukesh Gupta vs Government of India, 2022(2) ALT (Cri.) 83**.
19. In **Sudhamani Dorai's case** (supra), a Single Judge of Madras High Court has observed that stay of predicate offence is not a ground for preventing Directorate of Enforcement from proceeding under PMLA. A similar view has been taken by the Telangana High Court in **Sukesh Gupta's case**(supra). Both these cases have been decided prior to the decision of three Judge Bench judgment of the Supreme Court in **Vijay Mandalal Choudhary's case**(supra), wherein, as already stated, it has been clearly laid down that if a person is finally discharged/acquitted of the scheduled offence or the proceedings against him are quashed, there can be no offence of money laundering

against him. The effect of this conclusion of the Supreme Court was obviously not under discussion and debate before either the High Court of Madras or before the High Court of Telangana in the aforesaid two cases as these cases were decided prior to the judgment(supra) of the Supreme Court. On the other hand, the aforesaid ratio laid down by the Supreme Court in **Vijay Mandanlal Choudhary's case**(supra) has been taken note of by the Division Bench of the High Court of Madras in the case of **B. Shanmugam's case** (supra) and by the Karnataka High Court in **Mantri Developers Pvt. Ltd.'s case** (supra).

20. For the reason that in the judgments relied upon by the learned DSGI, the position of law enunciated by the Supreme Court in **Vijay Mandanlal Choudhary's case**(supra) was not available before the High Courts of Madras and Telangan, this Court is *prima facie*, of the opinion that the view taken by the Karnataka High Court and Division Bench of the Madras High Court as stated hereinbefore is more acceptable. In any case, the issue needs to be elaborately debated and decided at the time of final disposal of the petition, but *prima facie* it appears that it was not open to the respondent-Enforcement Directorate to proceed against the petitioner in respect of offences under PMLA once the FIR in respect of the predicate offences had been stayed by the High Court of Punjab and Haryana.
21. Another ground that has been urged by the learned Senior Counsel appearing for the petitioner is that the respondent has not adhered to the guidelines laid down by the Supreme Court in **Pankaj Bansal's**

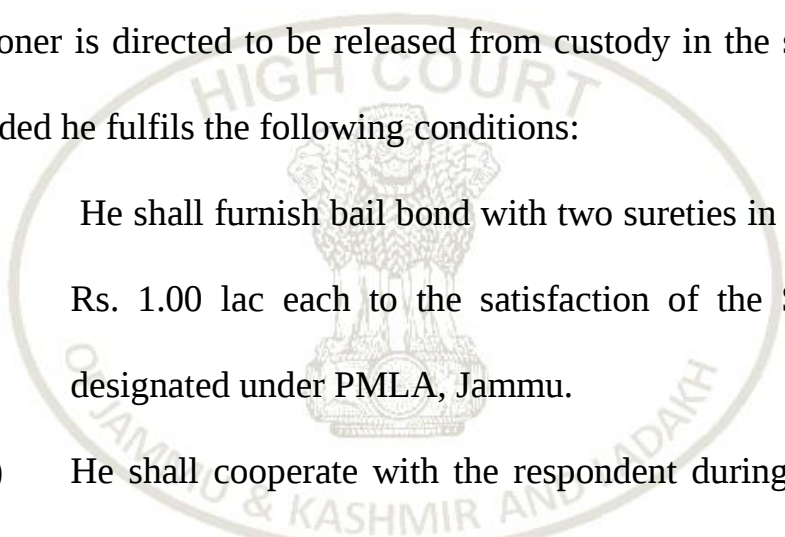
**case**(supra), while effecting arrest of the petitioner and even the Special Judge has passed the impugned order in a mechanical manner without adhering to the guidelines laid down in the said judgment.

22. In order to test the merits of the aforesaid contention raised by the learned Senior Counsel appearing for the petitioner, it would be apt to notice as to what guidelines have been laid down by the Supreme Court in **Pankaj Bansal's case**(supra). In the said judgment, the Supreme court has held that in order to give true meaning and purpose to the constitutional and statutory mandate of Section 19(1) of the PMLA, of informing the arrested person of the grounds of arrest, it would be necessary that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.
23. In the instant case, the Case Diary that has been produced by the learned DSGI would reveal that the grounds of arrest have been furnished to the petitioner immediately after his arrest. However, a perusal of the impugned Order of Remand passed by the Special Judge, PMLA reveals that it is nowhere recorded in the said order as to whether or not the grounds of arrest have been furnished to the petitioner. The learned Special Judge has simply recorded that she has carefully perused the Case Diary and entire material on record and because investigation of the case is at initial stage and the accused is involved in a serious non bailable and economic offence, as such, he is remanded to custody of the Enforcement Directorate. The learned Judge has not even recorded a finding as to whether or not she has

perused the grounds of arrest so as to ascertain whether the ED had recorded reasons to believe that the petitioner was guilty of an offence under PMLA and whether or not there was proper compliance with the mandate of Section 19 of the PMLA.

24. In view of this, this Court is of *prima facie* view that the impugned order dated 07.02.2024 passed by the learned Special Judge, PMLA smacks of non application of mind.

25. For all what has been discussed hereinbefore, the petitioner has been able to carve out a case for grant of interim relief. Accordingly, the petitioner is directed to be released from custody in the subject ECIR, provided he fulfils the following conditions:

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- (i) He shall furnish bail bond with two sureties in the amount of Rs. 1.00 lac each to the satisfaction of the Special Judge designated under PMLA, Jammu.
  - (ii) He shall cooperate with the respondent during investigation of the case and he shall not hamper or tamper with the evidence.
  - (iii) He shall deposit his passport with Assistant Director, Enforcement Directorate Jammu and shall undertake that he shall not leave the limits of the country without prior permission of the Special Judge.
  - (iv) The bail granted to the petitioner shall stand automatically withdrawn, if and when, stay of investigation of the predicate offences is vacated.

26.

Anything stated in this order shall not be taken as an expression of opinion on merits of the main petition as the observations made hereinbefore have been made for the limited purpose of deciding the present interim application. The same stands disposed of accordingly.
27.

The main petition shall come up for further proceedings on 19.04.2024.

(SANJAY DHAR)  
JUDGE

Jammu  
15.03.2024  
Rakesh PS

Whether the order is speaking:

Yes/No

Whether the order is reportable:

Yes/No

