

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2167 of 2024

Arising Out of PS. Case No.-7 Year-2022 Thana- E.C.I.R (GOVERNMENT OFFICIAL)
District- Patna

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Ajay Singh, S/O Late Suresh Singh, R/O Flat No. 18, AB, 18th Floor, Tower 2, The Empire, 16 A Gurusaday Road, Ballygunge, P.S- Karaya, Kolkata, West Bengal- 700019.

... .. Petitioner/s

Versus

1. The Directorate of Enforcement, through the Director, Pravartan Bhawan, APJ Abdul Kalam Road New Delhi, 110011.
2. The Deputy Director, Directorate of Enforcement, Patna Zonal Office First Floor, Chandpura Place, Bank Road, West Gnadhi Maidan, Patna.
3. The Assistant Director, Directorate of Enforcement, Patna Zonal Office First Floor, Chandpura Place Bank Road West Gnadhi Maidan, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajendra Narayan, Sr. Advocate Mr.Suraj Samdarshi, Advocate Mr.Avinash Shekhar, Advocate Mr.Vijay Shankar Tiwari, Advocate Ms.Abhilasha Jha, Advocate Ms.Simran Kumari, Advocate Rohit Singh, Advocate
For the Respondent/s through ED, UOI	:	Mr.Dr. Krishna Nandan Singh (A.S.G) Mr.Manoj Kumar Singh, Advocate Mr.Shiv Aditya Dhari Sinha, Advocate Mr.Ankit Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 05-02-2025

1. The instant writ petition has been filed for the following reliefs: -

“(i) To issue an appropriate writ, order or direction for declaring the arrest of Petitioner on 28.09.2024 in connection with ECIR/PTZO/07/2022 dated 10.01.2022 read with Addendum



ECIR dated 04.06.2023 and 09.11.2023 registered by Directorate of Enforcement, Patna Zonal Office, as wholly illegal and arbitrary in nature and in violation of Section 19 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA")

(ii) This Hon'ble Court may adjudicate and hold that since the arrest of the Petitioner by the Directorate of Enforcement is illegal and in violation of section 19 of PMLA, the consequential orders of remand passed by Learned Special Court, PMLA, Patna dated 28.09.2024 and 05.10.2024 and all other future orders extending the remand of the Petitioner are also illegal.

(iii) To issue a further appropriate writ, order or direction for the forthwith release of the Petitioner from judicial custody.

(iv) This Hon'ble Court may award the cost of litigation and suitable compensation to the Petitioner for the loss and damages caused on account of the illegal and arbitrary actions of the Respondent(s) Authorities.

(v) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and



circumstances of the case.”

2. The salient facts necessary for the adjudication of the instant writ petition are as follows:

One M/s Aditya Multicom Private Limited (hereinafter described as “M/s AMPL” for short) was granted settlement of all sand quarries (Ghats) for extraction of sand in the district of Aurangabad and Rohtas during the period between 1st January, 2015 and 31st of December, 2019. The said settlement was time to time extended after it was initially granted for five years till 30th of September, 2021 by four separate grants. However, M/s AMPL surrendered its settlement on 30th of April, 2021 w.e.f. 1st of May, 2021. Initial dispute arose between Mines and Geological Department, Government of Bihar and M/s AMPL over payment of royalty for the surrendered period and also with respect of M/s AMPL entitlement to sell sand which was stocked at K-license sites, i.e., storage sites. The Mines and Geological Department cancelled the K-licenses obtained by M/s AMPL in the said two districts *vide* order, dated 17th of August, 2021 and 7th of July, 2021, respectively, and seized the sand stocked by M/s AMPL. Subsequent to the cancellation of license and seizure of sand, the officials attached to Mining Department lodged several F.I.R.s against M/s AMPL, alleging, inter alia, that it had



misappropriated the sand stocked at K-license site without issuance of e-transit challans, causing loss of revenue to the Government. In all, 13 numbers of F.I.R. was registered against the said company and its Directors. On the basis of Dehri Nagar P. S. Case No. 407 of 2021, the Enforcement Directorate (hereinafter referred to as “ED” for short) registered ECIR/PTZO/07/2022, dated 10th of January, 2022 for the scheduled offence allegedly committed by M/s AMPL and its Directors under Sections 411 and 420 of the Indian Penal Code. The basis of the aforesaid case registered by ED is that the de facto complainant of Dehri Nagar P. S. Case No. 407 of 2021 alleged that M/s AMPL has embazelled sand valued at Rs. 24,42,67,900/- stored at two different places *vide* two K-licences issued to it by District Mining Office, Rohtas. However, the properties were suspected to be proceeds of crime. It is further alleged that only 600000 cubic ft. of sand was to be extracted/stored in the sites in respect of which K-license were granted, but there was 7784350 cubic ft. of sand stored in the said sites as per the report provided by the Project Management Unit. It was also alleged that the authorized staff / Director of the license holder sold the sand stealthily without issuing any pre-paid challans and thereby causing loss to the tune of Rs.



24,42,67,900/- to the Government. Thus, M/s AMPL allegedly embazelled huge quantity of sum by illegal mines and the above-mentioned sum was proceeds of crime under the Prevention of Money Laundering Act, 2002 (“the PMLA” for brevity). Subsequently, *vide* another addendum dated 9th of November, 2023, a second ECIR was registered taking into consideration subsequent 12 F.I.R.s against M/s AMPL and certain other persons. The Petitioner was neither named in the F.I.R., nor connected with sand mining business. No license was granted to the Petitioner for extraction of sand and he is no way connected with sand business of M/s AMPL. However, in course of investigation, the Petitioner was summoned to appear before the ED on 27th of October, 2023. The Petitioner informed the Investigating Officer of ED that at the relevant point of time he was out of the country. The Petitioner appeared before the ED on 25th of September, 2024 and furnished all required information claimed by the Investigating Officer under Annexure- A to the summon, dated 9th of September, 2024.”

3. It is pertinent to mention at this stage that on 10th of November, 2023, the ED, after completion of investigation, submitted a complaint against M/s AMPL and its Directors, namely, Jag Narayan Singh and Satish Kumar Singh under



Sections 3 and 4 of the PMLA.

4. Though the Petitioner fully cooperated with the Investigating Officer, he was informed in the late hours of 27/28th of September, 2024 that the ED would arrest him in connection with the second ECIR. On 28th of September, 2024, the Respondents/ED filed an application seeking judicial custody of the Petitioner before the learned Sessions Judge cum Special Judge, PMLA, Patna. He was time to time remanded to the custody of the Enforcement Directorate or in other words judicial custody.

5. It is contended on behalf of the Petitioner that the ED arrested the Petitioner violating the dictum of Section 19 of the PMLA and without collecting any document with regard to his involvement in respect of sand business and accumulation of proceeds of crime in association with M/s AMPL or any other person. The ED tried to make out a case that M/s AMPL used to run a syndicate in sand mining business in which many other people and companies including the Petitioner and his company are involved. They had different shares in respect of the said illegal business. The investigation of the case against M/s AMPL disclosed that the Petitioner allegedly had 10 per cent shares in the illegal business of sand mining and transaction was



made in favour of the Petitioner according to his share. It is the specific case of the Petitioner that there is no business relationship between the Petitioner and M/s AMPL. However, the Petitioner maintains personal relationship with Jag Narayan Singh, one of the Directors of M/s AMPL. There was certain monetary transaction absolutely of personal level through bank between Jag Narayan Singh and the Petitioner and the said amount has already been squared up through bank. Therefore, the amount of transaction through banking institution cannot be said to be proceeds of crime. The said amount was obviously shown in the Income Tax return of the Petitioner and the ECIR lodged against the Petitioner was illegal, inoperative and not binding upon him. Thus, arrest of the Petitioner on the basis of the said ECIR has claimed to be illegal and in violation of Article 21 of the Constitution of India.

6. Hence, the instant writ.

7. Mr. Rajendra Narayan, learned Sr. Advocate appearing on behalf of the Petitioner, at the outset, submits that the Petitioner is not implicated as an accused in Dehri Nagar P.S. Case No. 407 of 2021 which was registered by police attached to Dehri Nagar Police Station under Sections 411 and 402 of the IPC. In ECIR No. PTZO/07/2022, dated 10th of



January, 2022 and Addendum ECIR, dated 4th June, 2023, the contents of the FIR of the aforesaid case has been briefly narrated as hereunder:-

(i) Examination of the FIR no, 407/2021 dated 03.08.2021 revealed that Authorized Staff/Director of the license holder M/s Aditya Multicom Private Limited for the license no. K-ROHTAS/07/2021 having address Mauza - Makrain, Mauza no.-00, Block-Dehri Thana Dalmia Nagar, District-Rohtas, Khata No-112, Khesra No-408 and license no. K-ROHTAS/14/2021 having address- Mauza - Makrain, Mauza no-00, Block-Dehri, Thana Dalmia Nagar, District-Rohtas, Khata No.-112, Khesra No.-408 has, been charged with section 411 and 420 of Indian Penal Code for Dishonestly receiving stolen property and Criminal Conspiracy respectively have been invoked which are scheduled under Part A, Paragraph 1 of Prevention of Money Laundering Act, 2002.

(ii) In the above mentioned FIR, it is alleged that during the inspection of both the above license holding places, only 6,00,000 cubic feet of sand was found. Whereas, there is 77,84,350 cubic feet of sand stored at both the above



mentioned license holding places as per the report provided by P.M.U. (Project Management Unit). It is also alleged in the said FIR that Authorized Staff/Director of the license holder sold the sand stealthily without issuing prepaid E-Challans, thus causing loss to the tune of Rs. 24,42,67,900/- to the Bihar Government Exchequer.

(iii) Therefore, it appears from the above that the 71,84,350 cubic feet of sand amounting to Rs. 24,42,67,900/- have been embezzled by M/s Aditya Multicom Private Limited by illegal means which is accounting to 2002.) Proceeds of Crime and come under the ambit of PMLA, 2002.”

8. From the FIR, it is ascertained that the Petitioner is not a party to the sand license. He does not deal with the sand business.

9. A pertinent question has been raised by Mr. Rajendra Narayan that the said case, being Dehri Nagar P.S. Case No. 407 of 2021 was quashed by this Court vide order dated 7th of April, 2022. On quashment of the original FIR under Sections 411 and 420 of the IPC, there is no scheduled offence and in the absence of the scheduled offence, the Petitioner cannot be arrested in a case under PMLA Act.



10. The learned Senior Advocate further submits that the case of the respondents specially against M/s AMPL is that the said company and its Directors have caused loss of revenue amounting to Rs. 2109176276/- to the State Government by way of illegal mining of sand and selling the same without issuance of transit challans. During investigation, the ED seized certain documents claiming to be income tax return from the house of Radha Charan Sah. A ledger book of income and expenditure related to sell of sand in Aurangabad and Rohtas was also seized. It was learnt from the said ledger book that a syndicate was being operated by M/s AMPL and others who amongst themselves distributed profit proportionate to their share. As for example, M/s AMPL from April, 2020 to August, 2020, sold sand worth Rs. 90,92,71,400/- from sand ghats of Aurangabad and Rohtas and out of the said amount, sand worth Rs. 38,71,46,070/- was sold without issuance of E-transit Challans.

11. It is alleged that the syndicate members were engaged in sand mining and they participated in the auction process through dummy entities. After one dummy entity wins the bid, initial royalty payment is made pulling money from different persons. Actual mining is controlled by the syndicate and profits generated from illegal mining of sand are divided



amongst the syndicate members. The said profit from illegal mining is claimed to be the proceeds of crime. One Mithlesh Kumar being a syndicate member in his statement stated that the Petitioner/ Ajay Singh is part of the syndicate having 10 per cent share. On perusal of the bank accounts statement of S.G. Project Pvt. Ltd. (hereinafter described as SGPL), a Private Limited Company of the Petitioner, huge financial transaction was found between the said company and M/s AMPL. The said money amounting to Rs. 1 Crore 34 Lakhs, approximately are transactions in non-interests bearing loans to M/s AMPL. It is also alleged by the ED that huge amount of money was transferred from bank account of Vinay Vinimay Private Limited to M/s AMPL. It is claimed by the ED that the said amount was transferred as loans to M/s AMPL but no supporting documents has been filed by the ED in support of his claim.

12. The learned Senior Advocate for the petitioner has further pointed out that there are certain monetary transactions between M/s AMPL and M/s SGPL that reveal suspicious circumstances in respect of financial relationship between two companies. According the learned Senior Advocate on behalf of the petitioner the above-mentioned financial transactions between two companies are briefly “reason to believe” that the



petitioner is part of syndicate operating in Bihar in sand mining scam and thereby generating huge “proceeds of crime” through commission of offences under Sections 411 and 420 read with Section 120B of the IPC. It is further pointed out that the above stated facts constitute ground of arrest of the petitioner.

13. The learned Senior Counsel for the petitioner refers to definition of money laundering stated in Section 2(1)(p) of the said Act. It states:-

“2(1)(p) Money-laundering has the meaning assigned to it in section 3.”

14. Section 2(1)(u) defines “proceeds of crime” in the following words:-

“2(1)(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property



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

15. Section 3 defines offence of money laundering.

The provision runs thus:-

“3. Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or



(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

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

16. The learned Senior Counsel on behalf of the petitioner next refers to the provision contained in Section 19 of the said Act which speaks of power to arrest. Section 19 states as follows:-

“Section 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."



17. Referring to the above provisions, it is submitted by the learned Senior Counsel for the petitioner that the ED failed to prove any nexus between the petitioner and M/s AMPL in respect of the allegation of illegal sand mining, theft of miner and mineral, receiving sand as stolen property or commission of cheating in furtherance of criminal conspiracy with M/s AMPL. There is absolutely no evidence that the petitioner or his company took part in the auction process of sand ghats in Aurangabad and Rohtas. Monetary transaction between M/s AMPL and Ajay Singh does not prove that the said transaction was made for purchasing sand in clandestine manner. On the other hand, it is revealed that some amount of money was paid to M/s AMPL through bank and similar amount of money was paid to the petitioner also through bank. In support of his contention, he refers to page 140 to 147 of the writ petition.

18. The learned Senior Counsel on behalf of the petitioner next submits that the petitioner has been implicated in the case instituted by the ED by subsequent ECIR which is termed as addendum ECIR on the basis of so called entries in the ledger book of one Mithlesh Kumar. The said entries in the ledger book contained in some loose sheets cannot be used as a material evidence against the petitioner to hold that there was



reason to believe that the petitioner is guilty of an offence punishable under the said Act.

19. In support of his contention, learned Senior counsel for the petitioner has referred to Paragraph No. 15 of ***Central Bureau of Investigation v. V. C. Shukla & Ors.***, reported in ***1998 3 SCC 410***. It is held by the three Judge's Bench of the Hon'ble Supreme Court in paragraph no. 15 of the said judgment as hereunder:-

“15. After having held that the documents were neither books of account nor kept in the regular course of business the High Court observed that even if they were admissible under Section 34, they were not, in view of the plain language of the section, sufficient enough to fasten the liability on the head of a person, against whom they were sought to be used. As, according to the High Court, the prosecution conceded that besides the alleged entries in the diaries and the loose sheets there was no other evidence it observed that the entries would not further the case of the prosecution. As regards the admissibility of the documents under Section 10 the High Court held that the materials collected during investigation did not raise a reasonable



ground to believe that a conspiracy existed, far less, that the respondents were parties thereto and, therefore, these documents would not be admissible under Section 10 also. The High Court next took up the question as to whether those documents could be admitted under Section 17 and observed that the admissions, if any, therein could be used against the Jains only and not against Shri Advani and Shri Shukla. The High Court, however, observed that the production and proof of the documents by themselves would not furnish evidence of the truth of their contents and that during investigation CBI did not examine any witness or collect materials to prove the same. With the above findings and observations, the High Court arrived at the following conclusion:

“In the present case there is no evidence against the petitioners except the diaries, notebooks and the loose sheet with regard to the alleged payments (vide MRs 68/91, 72/91 and 73/91). The said evidence is of such a nature which cannot be converted into a legal evidence against the petitioners, in view of my above discussion.



There is no evidence in the instant case with regard to the monies which are alleged to have been, received by the Jains for the purpose of disbursement. There is no evidence with regard to the disbursement of the amount. Then there is no evidence with regard to the fact to prove prima facie that the petitioners i.e. Shri L.K. Advani and Shri V.C. Shukla accepted the alleged amounts as a motive or reward for showing favour or disfavour to any person and that the said favours and disfavours were shown in the discharge of their duties as public servants as contemplated by Section 7 of the Act (Prevention of Corruption Act, 1988). Thus the Court will have to presume all the above facts in the absence of any evidence in connection therewith to frame charges against the petitioners.”

20. Thus, it is submitted on behalf of the petitioner that in the aforementioned report, the Hon’ble Supreme Court held that entries in some loose sheets or some books of accounts are not admissible in evidence under Section 10 of the Evidence Act.

21. Section 10 of the Evidence Act reads as under:-

“10. Things said or done by conspirator in reference to common



design.

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

22. In ***Sardul Singh Caveeshar v. State of Bombay***, reported in ***AIR 1957 SC 747***, the Hon’ble Supreme Court observed that it is recognized on well established authority that principle underlying the reception of evidence of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. Ordinarily, a person cannot be made responsible for the acts of others unless they have been instigated by him or done with his knowledge or consent.

23. This Section provides an exception to the rule, by laying down an overt act committed by one of the conspirators being sufficient to make it the act of all. But then, the opening



words of Section made it abundantly clear that such concept of agency can be availed, only after the Court is satisfied that there is reasonable ground to believe that they have conspired to commit an offence or an actionable wrong. In other words, only when such reasonable ground exists, anything said, done or written by any one of them in reference to their common intention thereafter is relevant against the others, not only for the purpose of existence of the conspiracy but also for proving that the other person was a party to it.

24. It is urged by the learned Senior Counsel for the petitioner that if the case of the prosecution is believed in its face value, there was conspiracy between M/s AMPL and M/s. SGPL. The Investigating Officer failed to collect any document either from M/s AMPL or M/s SGPL or its Directors in order to prove monetary transaction as a result of conspiracy to run sand mining illegally in the districts of Aurangabad and Rohtas. The ED relied upon a so called ledger maintained by one Mithlesh Kumar with whom the petitioner had no business relationship. There is also no evidence that the petitioner and the said Mithlesh Kumar hatched conspiracy to deal with the proceeds of crime. Therefore, the statement of Mithlesh Kumar is not at all admissible against the petitioner.



25. On the same point, the learned Senior Counsel for the petitioner refers to another decision of the Hon'ble Supreme Court in the case of ***Common Cause / Manohar Lal Sharma & Ors. v. Union of India & Ors.***, reported in ***(2017) 11 SCC 731***. Discussions contained in paragraph no. 276 to 278 are relevant for our purpose and are quoted below:-

“276. Placing implicit reliance on the decision of this Court in CBI v. V.C. Shukla [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761] , it was submitted that it is open to any unscrupulous person to make any entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. There being no further corroborative material with respect to the payment, no case is made out so as to direct an investigation, and that too against large number of persons named in the documents. Such entries have been held to be prima facie not even admissible in V.C. Shukla case [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761] . He urged that in case investigation is ordered on the basis of such documents, it would be very dangerous and no constitutional functionary/officer can function



independently, as per the constitutional imperatives. No case is made out on the basis of material which is not cognizable in law, to direct investigation.

277. Before dilating upon the issue canvassed in the application we make it clear that we have not examined the main writ petitions vis-à-vis challenge to the appointments of Respondents 2 and 3. We are examining only the merit of IA No. 3 supported by IA No. 4, as to whether a case is made out on the basis of materials which are placed on record, to constitute SIT and direct investigation against the various functionaries/officers which are projected in Annexures A-8, A-9 and A-10 and other entries on loose sheets and further monitor the same.

278. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla case [CBI v. V.C. Shukla, (1998) 3 SCC 410 : 1998 SCC (Cri) 761] has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, notebooks and file containing loose sheets of papers not in the form of



“books of accounts” and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are made in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.”

26. It is submitted by the learned Senior Counsel for the petitioner that implication of the accused in the offence under Section 3 of the PMLA is in gross violation of Article 21 of the Constitution of India. Since, the ECIR was equivalent to FIR, the ECIR contains the grounds of arrest, details of offence etc. and without the knowledge of ingredients of such a document, the ability of the accused to defend himself at the stage of bail could not be fully realized. It was urged that the same may also hamper the ability of the trial at latter stage. It is for this reason there were adequate safeguards under Sections 19 of the PMLA which made the provision constituting complaint.

27. Section 19(1) empowers the Director, Deputy Director, Assistant Director or any other officer authorized in this behalf by the Central Government to arrest a person on the basis of material in his possession when he has “reason to



believe” (the reason of such believe to be recording in writing)
that any person is guilty of an offence punishable this Act.

28. The term “reason to believe” is of great implication and Arresting Officer is under obligation to establish at the initial stage of arrest of a person that he is having sufficient material which has “reason to believe” that the person is guilty under the Act.

29. In *Arvind Kejriwal v. Directorate of Enforcement (Criminal Appeal No. 2493 of 2024)* decided on 12th of July, 2024, the Hon’ble Supreme Court had the occasion to deal with various nuances of Section 19 of the PMLA. In paragraph no. 9 of the Arvind Kejriwal (supra), it is observed by the Hon’ble Supreme Court:-

“9. A bare reading of the section reflects, that while the legislature has given power to the Director, Deputy Director, Assistant Director, or an authorised officer to arrest a person, it is fenced with preconditions and requirements, which must be satisfied prior to the arrest of a person. The conditions are –

=> The officer must have material in his possession.

=> On the basis of such



material, the authorised officer should form and record in writing, “reasons to believe” that the person to be arrested, is guilty of an offence punishable under the PML Act.

=> The person arrested, as soon as may be, must be informed of the grounds of arrest.

These preconditions act as stringent safeguards to protect life and liberty of individuals.”

30. On the same issue, the learned Senior Counsel for the petitioner refers to paragraph no. 38 of ***Pankaj Bansal v. Union of India & Ors.*** reported in ***(2024) 7 SCC 576***. The Hon’ble Supreme Court, has observed, while interpreting Section 19 of the said Act with reference to Article 22 (1) of the Constitution of India, “In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. It may be noted that Section 45 PMLA enables the person arrested under Section 19 thereof to seek release on bail but it postulates that



unless the twin conditions prescribed thereunder are satisfied, such a person would not be entitled to grant of bail. The twin conditions set out in the provision are that, firstly, the Court must be satisfied, after giving an opportunity to the Public Prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail. To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorised officer arrested him/her under Section 19 and the basis for the Officer's "reason to believe" that he/she is guilty of an offence punishable under the 2002 Act. It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail. Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 PMLA, is meant to serve this higher purpose and must be given due importance.

31. It is learnt from the submission made by the learned Additional Solicitor General that the petitioner withheld relevant information which was exclusively within his



knowledge and contended that he had family relationship with Jag Narayan Singh, one of the Directors of M/s AMPL since his father's time and the money which was transited between the petitioner and M/s AMPL are friendly borrowings.

32. It is submitted by the learned Senior Advocate on behalf of the petitioner that if this Court proceeds by the narration of facts, it would obviously be found that except exchange of money by way of bank transaction by the petitioner in favour of M/s AMPL, no other document could be seized by the Investigating Officer. Monetary transaction between two companies does not lead to the reason to believe that the petitioner is guilty under the PMLA. Moreover, the statement of a co-accused implicating the petitioner or self-inculpatory statement of the petitioner can also not be used as material fact under the provisions of PMLA. It is gross violation of the constitutional mandate as well as the law of evidence to use one's confessional statement.

33. In this case, the statement of Mithlesh Kumar, has been taken for implicating another person, i.e., the petitioner. Similarly, no document has been filed by the ED to show that the petitioner has admitted his involvement in sand mining scam.



34. Therefore, it is submitted by the learned Senior Advocate on behalf of the petitioner that the petitioner's arrest is illegal, violative of fundamental right and is liable to be quashed.

35. Referring to the decision of the Hon'ble Supreme Court in *Pankaj Bansal v. Union of India & Ors.* reported in *(2024) 7 SCC 576*, it is contended on behalf of the Petitioner that the failure on the part of the petitioner to respond to the question put to him by ED would not be sufficient in itself for the Investigating Officer to hold that he was liable to be arrested under Section 19, as the said provisions specially required him to find reason to believe that they were guilty of an offence under the said Act. Mere non-corporation of a witness in response to the summons issued under Section 50 of the PMLA would not be enough to render him liable to be arrested under Section 19.

36. It was stated by the ED that the petitioner was evasive in providing relevant information. It was however not clarified as to why the petitioner's replies were categorized as evasive and that record is not placed before this Court for verification. Evasive reply by the petitioner as alleged by the ED cannot be a ground for his arrest.



37. The Assistant Director, ED, Patna Zonal Office, has filed a counter affidavit on behalf of the respondents. It is submitted on behalf of the respondents that as many as 24 FIRs have been registered in different Police Stations situated in the districts of Aurangabad and Rohtas in the State of Bihar against M/s AMPL, alleging illegal mining, transportation, storage and sale of huge quantity of sand causing revenue loss of Rs. 210,91,76,276/-. On the basis of the said complaints, police registered specific cases under penal provisions of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 and scheduled offences under Sections 411, 420, 120B, 384 and 467 of the IPC against the above-named company and its Directors. ED took up the investigation lodging ECIR under Paragraph No. 1 in part A of the Schedule to the PMLA. Again, on the basis of Dehri Nagar P.S. Case No. 407 of 2021, dated 3rd of August, 2021 registered against M/s AMPL for the offences under Sections 34, 120B, 379, 384, 406, 411, 420, 467, 468 and 471 of the IPC read with Rule 21 Mines and Mineral (Development and Regulation) Act, 1957 (2015), Rule 40 of Bihar Minor Mineral Concession Rules, 1972, Rules 11, 39 of Bihar Minerals (Concession, Prevention of illegal mining, Transportation and Storage) Rules,



2019 and Section 15 of Environment Protection Act, 1986, an investigation was initiated against M/s AMPL and its Directors after recording ECIR, dated 10th of January, 2022 read with addendum dated 4th June, 2023 and 9th of November, 2023 to the above-mentioned ECIR. In course of investigation and physical verification of the sites of stocking places of sand allotted to company by way of K-licences, it was found that huge quantity of sand stock was available at various sites though in the website, the stock of sand was shown “nil”. The ED recovered various documents and fixed deposits worth Rs. 6,85,77,580/- and seizure of cash Rs. 24,60,000/- from the premises of M/s AMPL, its Directors and other stockholders. During investigation, it was learnt that Income Tax Department, Patan, carried out searches in the month of February, 2023 at the premises of one Ashok Kumar, Director of one M/s Broadson Commodities Private Limited, Sudama Kumar (an Associate of Ashok Kumar) and Radha Charan Sah (one of the syndicate members of the illegal sand mining). The documents seized by the I.T. Department were procured under Section 54 of the PMLA.

38. It is further contended on behalf of the respondents that the documents seized from the premises of



Radha Charan Sah and Ashok Kumar include details of ledger of income and expenditure related to sale of sand from various Ghats of Aurangabad and Rohtas, Bihar and details of profit sharing percentage among the syndicate members. The entries recorded in the said documents were further corroborated with the transactions undertaken through bank account of M/s AMPL and others.

39. It was learnt from the ledger that sand worth Rs. 38,71,46,070/- was illegally sold during the period April, 2020 to August, 2020 without generation of challan causing revenue loss to the Government exchequer.

40. It is further stated on behalf of the respondents that the information was shared under Section 66(2) of the PMLA with the Mining Department, Bihar with a copy to DGP, Bihar Police. On the basis of the said information, the Mining Department filed the complaint before the State Police and accordingly FIR No. 6137017240047 was registered by the police in Dehri Nagar Police Station on 8th of February, 2024 as well as Dehri Nagar P.S. Case No. 5125024240115 on 13th of February, 2024 against M/s AMPL for commission of offences under Sections 420 and 379 of the IPC. The said FIRs were however quashed by a Co-ordinate Bench of this Court vide



order dated 7th of October, 2024. The investigation of the above-mentioned cases revealed that illegal sale of sand by the various companies was mainly controlled by syndicate, of which the petitioner is a member who by investing funds in the company either through banking or non-banking channels became syndicate members and the profit generated from illegal sale of sand is nothing but proceeds of crime which were distributed among syndicate members. As there was monetary transaction between the petitioner and M/s AMPL, his statement was recorded under Section 50 (3) of the PMLA on 25th of September, 2024 to 27th of September, 2024. Further statement of the petitioner under Section 50 (3) of the PMLA was recorded when he was in custody of the ED from 6th of October, 2024 to 11th of October, 2024. The ledger book recovered from Radha Charan Sah was confronted with the petitioner but he failed to give any specific explanation in respect of the transaction between M/s AMPL and him. The ledger book contained the name of the petitioner along with the others as syndicate members and also the percentage of profit sharing against their names. The petitioner was arrested on 28th of September, 2024 by the ED after complying substantive and procedural requirements of Section 19 of the PMLA. Further



investigation revealed that the petitioner is directly involved in sharing the proceeds of crime. He is one of the syndicate members dealing with illegal sand mining business as he invested proportionality in the said business. The bank accounts statement of M/s SGPL and Vinay Vinimay Private Limited, two companies owned by Ajay Singh reveals that he invested Rs. 10.63 Crore during the year 2014-2016, i.e., equivalent to 10 per cent of the bidding amount, confirming his 10 per cent share in the syndicate. Proceeds of crime generated from illegal sand mining were distributed to him through syndicate by M/s AMPL. Bank account analysis of M/s SGPL revealed huge cash deposits totaling Rs. 29.3 Crore in its account during the year 2016-2021.

41. The Learned Additional Solicitor General practically relied on the above-mentioned averments made on behalf of the respondents in the counter affidavit to provide an overview of the incident. It is submitted by him that syndicate of sand scam has been operating.

42. Entire process of tender of sand ghats is under the control of the syndicate. M/s AMPL, Radha Charan Sah, Ashok Kumar, the present petitioner and others are members of the said syndicate and illegal trade of sand was operated by syndicate



members and they used to receive proceeds of crime according to their share. M/s AMPL and Broadson Commodities Private Limited are the two major companies involved in illegal trade of sand. The ED filed complaint against M/s AMPL and its Directors after 24 numbers of FIRs were lodged alleging commission of scheduled offence by them. During investigation of the cases, ED found complicity of the present petitioner and others allegedly on the basis of ledger book seized from the possession of one Radha Charan Sah and documents seized by the Income Tax Department during raid and therefore the accused were arrested.

43. It is further submitted by the learned ASG that incriminating materials against the accused were found from the statement of one Mithlesh Kumar and the documents mentioned above. The petitioner was interrogated for three consecutive days but he failed to clear away the circumstances collected against him and, therefore, he was arrested.

44. It is submitted by learned ASG that the statement of the present petitioner before the ED is prima facie admissible on the ground that such statement was made by him before his arrest. It is further submitted by the learned ASG that during 2015-2021, a sum of Rs. 21 Crore was deposited in cash in the



account of the petitioner. Subsequently, a sum of Rs. 38 Lakh deposited in cash, in the ledger book maintained by Radha Charan Sah and monetary transaction between M/s AMPL and the petitioner as per petitioner's share in sand business is recorded. The documents seized by the Income Tax Department also shows involvement of the petitioner in sand scam. These are the "reason to believe" which the Arresting Officer had that the petitioner is guilty of an offence punishable under the PMLA.

45. It is admitted by the learned ASG that Section 19 is a procedural safeguard against the power of arrest by the authorised officers of ED and the procedural safeguards are:-

(i) The Arresting Officer has on the basis of material in his possession, "reason to believe" that any person has been guilty of an offence punishable under the PMLA;

(ii) The grounds of arrest shall be handed over to the petitioner simultaneously with his arrest:

(iii) no person can be arrested in absence of material in his possession against the accused.

46. According to the learned ASG, the petitioner was arrested following procedural safeguards. The Arresting Officer on the basis of the materials collected during investigation as



narrated above had “reason to believe” that the petitioner is guilty of offence. The said fact has been stated in the grounds of arrest which was supplied to the petitioner and during investigation, the ED collected incriminating material against the petitioner. There was not only monetary transaction between the M/s AMPL and the petitioner through bank but during the period 2014-2016, Rs. 29 Crores were transacted between the parties.

47. It is further submitted by the learned ASG that monetary transaction between two companies is not uncommon in the business, but when there is monetary transaction between two companies some norms are required to be followed. As for example, there should be a board meeting where decision for monetary transaction would be taken by the Board of Directors. On the basis of such resolution, the bank institutions shall be asked by the company to disburse the amount in the credit of the transferee company and there would be similar resolution at the time of transfer of the money in the account of transferee company. No such requirement was followed either by M/s AMPL or by the petitioner. Therefore, petitioner’s complicity is proved.

48. The learned ASG refers to page 92 of the writ



petition, consisting the statement regarding “reason to believe”.

Paragraph Nos. 9 to 14 and 19 to 20 of the said document states as follows:

“9. Further investigation in this case revealed that Shri Ajay Singh, Director of SG Projects Pvt Ltd is also a part of this syndicate with 10% of total share in the profit generated from the illegal sand mining and sale of sand by M/s Aditya Multicom Private Limited. Further document seized by income tax department also corroborates involvement of syndicate members, amount paid to them against the dding amount and share received from the illegal sale of sand. Further, the analysis of bank accounts of Mis SG Projects Pvt Ltd reflects huge transactions with Mis Aditya Multicom Pvt Ltd.

10. During the course of statement u's 50 of the PMLA, 2002 of Sh. Mithilesh Kumar Singh, Director of Broadson Commodities Pvt Ltd (the company is one of the members with 60.9% share of syndicate), revealed that there is a Syndicate behind the illegal sand mining and sale of sand and named Sh Ajay Singh, Director of SG Projects Pvt Ltd as one of the members of



syndicate with 10% share in the illegal profits.

11. Further, analysis of the documents procured from Income Tax Department, Patna u/s 54 of PMLA, 2002 revealed that on 28.07.2020, Rs 39,00,000/- were transferred from PNB Dehri account of Aditya Multicom Pvt Ltd to SG Projects Pvt Ltd. Similarly, on 19.03.2020, Rs 1 Cr were transferred from M/s Aditya Multicom Pvt Ltd to SG Projects Pvt Ltd against cash deposit of Rs 1 Cr which clearly establishes involvement of SG Projects Pvt Ltd in the illegal sand mining business of M/s Aditya Multicom Pvt Ltd.

12. Further, analysis of the bank accounts of M/s Aditya Multicom Pvt Ltd and SG projects Pvt Ltd reveals huge transactions however Sh. Ajay Singh could not satisfactorily explain the reason for such huge transactions. He stated that all these transactions were family loans given to M/s Aditya Multicom Pvt Ltd without any interest, however he accepted that he did not have any supporting documents regarding the same. However, analysis of the ledger of M/s Aditya Multicom Pvt Ltd revealed that transactions with M/s SG Projects Pvt ltd



were against sale of sand. Hence, it is evident that Ajay Singh. Director of SG Projects Pvt Ltd is giving contradictory replies and trying to hide the truth to mislead the investigation.

13. Further, analysis of bank accounts of Vinay Vinimay Pvt Ltd (an associated entity of Ajay Singh) reveals that Vinay Vinimay Pvt Ltd has transferred huge funds to M/s Aditya Multicom Pvt Ltd. Further, it can be seen from the analysis of the bank Accounts that in all instances money was transferred from SG Projects Pvt Ltd to Vinay Vinimay Pvt Ltd and the same amount was subsequently transferred to Mis Aditya Multicom Pvt Ltd on the same day however, when asked about the wa Ajay Singh could not satisfactorily explain nature and purpose of the transactions and gave misleading answers. He stated that Vinay Vinimay Pvt Ltd has given loans to M/s Aditya Multicom Pvt Ltd, however he accepted that he did not have any supporting documents regarding the same. Further, analysis of the ledger of M/s Aditya Multicom Pvt Ltd revealed that transactions with Vinay Vinimay Pvt Ltd were against sale of sand. Hence, it is



evident that Ajay Singh. Director of SG Projects Pvt Ltd is giving contradictory replies and trying to hide the truth to mislead the investigation.

14. Further on perusal of ledger of SG Projects Pvt Ltd it is seen that cash deposit of Rs 49,58,000/- was made into the account of SGPL on 17.06.2015 and on the same day Rs 3 Cr was transferred to M/s Aditya Multicom Pvt Ltd from SGPL.

19. Thus, in view of the above, I have reasons to believe that SG Projects Pvt Ltd through its director Shri Ajay Singh is involved in illegal sand mining business and also a part of the syndicate which is involved in illegal mining and its sale, thereby generating huge proceeds of crime through commission of offences u/s 120B, 411, 420 of IPC, 1860 which are scheduled offences under the PMLA, 2002. Further the said proceeds of crime are subsequently being layered and laundered through various entities/individuals. Thus, Ajay Singh is found to be involved in the activities related with the scheduled offence hence is guilty of the offence of the money laundering.

20. Shri Jag Ajay Singh has



been non cooperative during the investigation by resorting to withholding of relevant information which are in his exclusive knowledge and has shifted onus on others. He has thereby made attempts to misguide and frustrate the investigation proceedings under the Prevention of Money Laundering Act, 2002.”

49. On the question as to whether statement of a co-accused can be used against another to implicate him in a case under the PMLA, the learned ASG refers to Section 50 of the PMLA. Section 50 runs thus:-

“50. Powers of authorities regarding summons, production of documents and to give evidence, etc. -

(1) The Director shall, for the purposes of section 12, 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 .

(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.

50. In ***Abhishek Banerjee & Anr. v. Directorate of Enforcement***, reported in **2024 9 S.C.R. 110**, the Hon'ble Supreme Court observed in Paragraph No. 13 as follows:

“13. At the outset, it may be noted that as well settled by now, the provisions of PMLA are not only to investigate into the offence of money laundering but more importantly to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and the matters connected therewith and incidental thereto. As held by the Three-Judge Bench in Vijay Madanlal (supra),



the PMLA is a self- contained Code and the dispensations envisaged thereunder, must prevail in terms of Section 71 thereof, which predicates that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, which includes provisions of the Cr.P.C. The Section 65 of the Act predicates that the provisions of the Cr.P.C. shall apply insofar as they are not inconsistent with the provisions of the PMLA in respect of arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act. It is pertinent to note that Section 4(2) of the Code states that 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. Further, Section 5 of the Code states that nothing contain in the Code shall, in absence of 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. Thus, having regard to the conjoint reading of Section 71 and Section 65 of the PMLA as also Section 4(2) and Section 5 of the Code, there remains no shadow of doubt that the provisions of PMLA will have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including the provisions of the Cr.P.C.”

51. With regard to the conferment of power upon the authority under Section 50 of the PMLA excluding the procedural safeguard would be contrary to the stand of “procedure established by law” under Article 21 of the Constitution of India, the Hon’ble Supreme in *Abhishek Banerjee* (supra) quoted Paragraph No. 425 and 431 of *Vijay Madanlal Choudhary* (supra) in order to establish once again the validity of Section 50 of the PMLA in the touchstone of Article 20(3) and Article 21 of the Constitution of India. The aforesaid paragraph are quote below:-

“425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director,



Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression “proceeding” in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act...

426 to 430.....

431. In the context of the 2002



Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no



formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money -laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20 (3) or Section



25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.”

52. Finally in Paragraph No. 19 of the aforesaid judgement, the Hon’ble Supreme Court held as under:-

“19. The above ratio laid down in Vijay Madanlal clinches the contentions raised by the learned counsels for the appellants with regard to the provisions of Section 50 being violative of Article 20(3) or Article 21 of the Constitution, and we need not further elaborate the same, nor do we need to deal with the decisions of this Court on the said issue which have already been dealt with in Vijay Madanlal. Suffice it to say that Section 50 enables the authorized Authority to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of the



proceedings under the Act, and that the persons so summoned is bound to attend in person or through authorized agent, and to state truth upon the subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub- section (3) of Section 50. At the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution, the same being not “testimonial compulsion”. At the stage of recording of statement of a person for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime, is not an investigation for prosecution as such. The summons can be issued even to witnesses in the inquiry so conducted by the authorized officers. The consequences of Article 20(3) of the Constitution or Section 25 of the Evidence Act may come into play only if the involvement of such person (noticee) is revealed and his or her statements is recorded after a formal arrest by the ED official. In our opinion, the learned counsels for the appellants have sought to reagitate the issues which have already been settled in Vijay Madanlal.”



53. Referring to another decision in *Anoop Bartaria & etc. v. Directorate of Enforcement & Anr.*, reported in **2023 SCC OnLine SC 477**. It is submitted by the learned ASG that the power of the High Court to quash the complaint filed by the statutory agency under Article 226 of the Constitution of India and Section 482 of the Cr.P.C. are different though, the Constitutional Court must take into consideration the sever parameters delineated in State of *Haryana & Ors. v. Bhajan Lal & Ors.*, reported in **1992 Supp (1) SCC 335**. The instant case does not fall under any of the above parameters. There being enough material to show prima facie involvement of the petitioner in the alleged offence of money laundering, as contemplated under the PMLA, the order of the High Court dismissing the petition filed by the petitioner was affirmed by the Hon'ble Supreme Court.

54. In *Tarun Kumar v. Assistant Director Directorate of Enforcement*, reported in **AIR 2024 SC 169**, is another judgement of the Hon'ble Supreme Court which is relied upon by the learned ASG to submit that the petitioner does not have any scope to challenge the remand order passed by the learned Special Judge, Patna in view of twin conditions applicable for grant of bail contained in Section 45 (1) of the said Act.



55. In Tarun Kumar (supra), the Hon'ble Supreme Court refers to Paragraph No. 412 of ***Vijay Madanlal Choudhary (supra)*** which runs thus:-

“412. As a result, we have no hesitation in observing that in whatever form the relief is couched including the nature of proceedings, be it under Section 438 of the 1973 Code or for that matter, by invoking the jurisdiction of the Constitutional Court, the underlying principles and rigors of Section 45 of the 2002 must come into play and without exception ought to be reckoned to uphold the objectives of the 2002 Act, which is a special legislation providing for stringent regulatory measures for combating the menace of money-laundering.”

56. In ***Gautam Kundu v. Directorate of Enforcement*** reported in ***2015 16 SCC 1***, the Hon'ble Supreme Court observed that the conditions specified in Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and Section 71 of the said Act. 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.

57. Thus, the learned ASG concludes that the ED arrested the accused, while performing his mandatory duty regarding the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. The sufficient materials have been collected by the Investigating Officer in support to his involvement in the offence of sand scam operating in the State of Bihar by forming a syndicate. Under such circumstances, there is no reason to allow the application under Article 226 of the Constitution of India filed by the petitioner.



58. Though it has not been argued in great detail about the scope and import of the term “reason to believe”, Section 19 (1) casts a duty upon the Arresting Officer to form an opinion on the basis of materials in his possession collected by him that there is “reason to believe” that the person has been guilty of an offence punishable under the Act. The word reason to believe has not been defined in the PMLA. Section 26 of the IPC defines “reason to believe” in the following words:-

“26 “Reason to believe”:- a person is said to have “reason to believe” a thing, if he has sufficient cause to believe that thing but not otherwise.”

59. The term “reason to believe” is also used in Section 35 of the Foreign Exchange Regulation Act, 1973 and Section 103 of the Customs Act.

60. Section 35 (1) reads thus:-

“35. Power to arrest:- (1) If any officer of Enforcement authorised in this behalf by the Central Government, by general or special order, has reason to believe that any person in India or within the Indian customs waters 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) Every person arrested under sub-section (1) shall, without unnecessary delay, be taken to a Magistrate.

(3) Where any officer of Enforcement has arrested any person under sub-section (1), he shall, for the purpose of releasing such person on bail or otherwise, have the same powers and be subject to the same provisions as the officer-in-charge of a police station has, and is subject to, under the, [Code of Criminal Procedure, 1973 (2 of 1974).]”

59. Section 103 of the Customs Act states:-

“103. A comparative reading of Section 19 of the PMLA and the above-mentioned two provisions suggest that while PMLA and FERA prescribed Arresting Officer “reason to believe” that the person is guilty of offence, Section 103 speaks of the Customs Officers power to screen and scan a person with scientific equipment when he has reason to believe that any person referred to in sub-section (2) of section 100 has any goods liable to confiscation secreted inside his body.”

61. In ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.***, reported in ***(2023) 12 SCC 1***, the Hon’ble Supreme Court made detailed discussion on the meaning and



purport of “reason to believe” relying on a Canadian Judgement in the case of **Gifford v. Kelson**. The relevant paragraph in **Vijay Madanlal Choudhary** (supra) read:

“16(liii). Secondly, there must be material in possession with the authority before the power of arrest can be exercised as opposed to CrPC which gives the power of arrest to any police officer and the officer can arrest any person merely on the basis of a complaint, credible information or reasonable suspicion against such person. Thirdly, there should be reason to believe that the person being arrested is guilty of the offence punishable under the PMLA in contrast to the provision in CrPC, which mainly requires reasonable apprehension/suspicion of commission of offence. Also, such reasons to believe must be reduced in writing. Fifthly, as per the constitutional mandate of Article 22(1), the person arrested is required to be informed of the grounds of his arrest. It is submitted that the argument of the other side that the accused or arrested persons are not even informed of the case against them, is contrary to the plain language of the Act, as the Act itself mandates that the person arrested is to be



informed of the ground of his arrest.....

XX XX XX

16(lix). Reliance is then placed on the decision of this Court in Union of India v. Padam Narain Aggarwal [Union of India v. Padam Narain Aggarwal, (2008) 13 SCC 305 : (2009) 1 SCC (Cri) 1] , wherein the Court examined the power to arrest under Section 104 of the 1962 Act. Relying on the decision, it was stated that the power to arrest is statutory in character and cannot be interfered with and can only be exercised on objective considerations free from whims, caprice or fancy of the officer. The law takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the authorities may not misuse such power. It is submitted that the requirement of “reason to believe” and “recording of such reasons in writing” prevent arbitrariness and makes the provision compliant with Article 14. This is reinforced from the fact that only 313 arrests have been made under the PMLA in 17 years of operations of the PMLA.

16(Ix). Canadian judgment in Gifford v. Kelson [Gifford v. Kelson, (1943) 51 Man R 120 (Canada —



Manitoba)] was also relied on to state that “reason to believe” conveys conviction of the mind founded on evidence regarding the existence of a fact or the doing of an act, therefore, is of a higher standard than mere suspicion. Reliance has been further placed on Premium Granites v. State of T.N. [Premium Granites v. State of T.N., (1994) 2 SCC 691] to urge that the requirement of giving reasons for exercise of the power by itself excludes chances of arbitrariness....”

*We will reproduce what has been held in **Gifford** (supra):*

“A suspicion or belief may be entertained, but suspicion and belief cannot exist together. Suspicion is much less than belief; belief includes or absorbs suspicion.

XX XX XX

When, we speak of “reason to believe” we mean a conclusion arrived at as to the existence of a fact. Of course, “reason to believe” does not amount to positive knowledge nor does it mean absolute certainty but it does convey conviction of the mind founded on evidence regarding the existence of a fact or the doing of an act. Suspicion, on the



other hand, rings uncertainty. It lives in imagination. It is inkling. It is mistrust. It is chalk. 'Reason to believe' is not. It is cheese."

Gifford (*supra*) accurately explains the difference between the "reasons to believe" and "suspicion". "Suspicion" requires lower degree of satisfaction, and does not amount to belief. Belief is beyond speculation or doubt, and the threshold of belief "conveys conviction founded on evidence regarding existence of a fact or doing of an act". Given that the power of arrest is drastic and violates Article 21 of the Constitution, we must give meaningful, true and full play to the legislative intent."

62. Thus, it is now established that the term "reason to believe" cannot be equated with the term reasonable complaint or credible information or reasonable suspicion contained in Section 41 (1) (B) of the Cr.P.C. "Reason to believe" is the tangible evidence or material which constitutes sufficient cause to believe existence of certain facts. This reason to believe goes to the root of the power of arrest. The subjective opinion of Arresting Officer is based upon fair and objective consideration of material as available with him on the date of arrest. On the



basis of reason to believe, the Court shall form the secondary opinion on the validity of the exercise undertaken for compliance of Section 19 (1) of the PMLA when the arrest is made.

63. Coming to the instant case, it is found from Page No. 88 of the writ petition that the petitioner was supplied with the statements made containing reason to believe to invoke Section 19 (1) of the PMLA. The petitioner was also supplied with grounds of arrest.

64. The contents of the “reason to believe” are stated briefly hereinbelow:-

(a) M/s AMPL obtained licence of sand mining and its sale initially for 5 years starting 2015 to 2019. The said licence was however extended upto the year 2021. Licence was granted for extraction of sand from all Ghats in the District of Aurangabad and Rohtas, Bihar.

(b) As many as 24 FIRs were instituted against AMPL under Sections 34, 120B, 379, 384, 406, 411, 420, 467, 468 and 471 of the IPC read with Rule 21 of the Mines and Mineral (Development and Regulation) Act, 1957 (2015), Rule 40 of Bihar Minor Mineral Concession Rules, 1972, Rules 11, 39 of Bihar Minerals (Concession, Prevention of Illegal Mining,



Transportation and Storage) Rules, 2019 and Section 15 of Environment Protection Act, 1986 on the basis of complaints filed by the District Mining Officers, Aurangabad and Rohtas.

It is alleged that the company and its Directors caused huge revenue loss to the extent of Rs. 210,91,76,276 to the Government exchequer.

(c) As the accused persons named in the above-mentioned FIRs committed scheduled offence under the PMLA, ED took upon the cases for investigation by recording an ECIR No. PTZO/7/2022, dated 10th of January, 2022 read with Addendum ECIRs dated 04.06.2023 and 09.11.2023. During investigation, premises of Ashok Kumar, Director of Broadson Commodities Private Limited; Sudama Kumar, Associate of Ashok Kumar; and Radha Charan Sah, one of the syndicate members of the illegal sand mining were raided and IT returns of the said persons and the company were collected and seized.

(d) On examination of a ledger, seized from the premises of Radha Charan Sah, in respect of income and expenditure, Investigating Officer came to know details of profit sharing percentage amongst the syndicate members.

(e) Upon analysis of the said documents, it was ascertained that M/s AMPL illegally sold out sand extracted



from the mines without any permit amounting to Rs. 38,71,46,070/- without generation of challans causing revenue loss of the Government.

(f) During investigation, it was also learnt that syndicate members are operational in sand mining activity and they participated in the bidding process through dummy entities controlled by them. After one of the dummy entities wins the bid, initial royalty payments are made by pulling money from different persons in the accounts of the bid winning entity. Further the actual sand mining generated from illegal sand mining are divided among the syndicate members.

(g) It is also learnt that the petitioner is also a part of the syndicate with 10 per cent share in the profit generated from the illegal sand mining and sale of sand by M/s AMPL. The documents seized from the I.T. Department also corroborates involvement of syndicate members, amount paid them against the bidding amount and share received from the illegal sale of sand.

(h) One Mithlesh Kumar, Director of Broadson Commodities Private Limited having 60.9 per cent share of syndicate, revealed that there is a syndicate behind the illegal sand mining and sale of sand, and named the petitioner as one of



the members of the syndicate, having 10 per cent share in the illegal profits. The ledger account book seized from Radha Charan Sah and the statement of Mithlesh Kumar revealed that the transactions with M/s SGPL were against sale of sand.

(i) It is also learnt that Vinay Vinimay Private Limited and Associate Company of the petitioner transferred huge fund to M/s AMPL. Further investigation revealed that M/s SGPL transferred the money to Vinay Vinimay Private Limited and Vinay Vinimay Private Limited transferred the same to M/s AMPL. There were other documents seized from the house of Ashok Kumar and Radha Charan Sah regarding financial transactions of M/s SGPL with M/s AMPL.

65. Power to arrest under Section 19 (1) of the PMLA is not for the purpose of investigation. Arrest can and should wait and the power in terms of Section 19(1) of the PMLA can be exercised only when the material with the designated officers enables them to form an opinion by recording reasons in writing that the arrestee is guilty. Section 19(1) thus, does not permit arrest only to conduct investigation. Conditions of Section 19(1) have to be satisfied Clauses A, C, D and E to Section 41(1)(ii) of the Cr.P.C., apart from other considerations may be relevant.

66. On perusal of Clause 7 of the ECIR, dated 10th of



January, 2022, it is found that the said ECIR was lodged on the basis of FIR No. 407 of 2021, dated 3rd of August 2021.

67. The allegation in the said FIR was against M/s AMPL who was the licence holder in respect of sand blocks. It is the specific case of the ED in Clause 7 (ii) of the above-mentioned ECIR that the concerned FIR upon which Dehri Nagar P.S. Case No. 407 of 2021 was instituted revealed that only 600000 cubic ft. of sand was allegedly extracted, whereas there was 7784350 cubic ft. of sand stored at the both the above-mentioned licence holding places as per the report provided by the Project Management Unit. It was alleged in the said FIR that the authorised staff/Director of the licence holder sold the sand stealthily without issuing pre-paid challans. Thus, causing loss to the tune of Rs. 24,42,67,900/- to the Bihar Government Exchequer. Clause 7(3) also speaks of embezzlement of the said money by M/s AMPL.

68. It is not alleged in the ECIR that the petitioner is the licence holder of any of the sand blocks. It is also not alleged that men and agents of the petitioner or its company were engaged for illegal extraction and storage of sand at the storing places. Therefore, we can safely come to the conclusion that the ED could not collect any evidence to prove that the



petitioner was engaged in illegal mining operation in the State of Bihar. In the Addendum ECIR also, all allegations were made against M/s AMPL.

69. The petitioner was arrested in connection with the case on the basis of a statement purportedly made by one Mithlesh Kumar who alleged the involvement of the petitioner as a member of the syndicate. Secondly, a ledger book was recovered mentioning the accounts of syndicate members from the possession of one Radha Charan Sah, Director of Broadson Commodities Private Limited. Thirdly, some documents seized by Income Tax Department showing transfer of Rs. 39 lakhs on 20th of July, 2020 from the bank account of M/s AMPL to the bank account of M/s SGPL. Similarly, on 19th of March, 2020, a sum of Rs. 1 Crore was transferred from M/s AMPL to M/s SGPL against cash deposit of Rs. 1 Crore. The ED held that those monetary transactions between M/s AMPL and M/s SGPL establishes their involvement in illegal sand mining business.

70. The ED did not take into consideration the statement of Jag Narayan Singh, one of the Directors of M/s AMPL that he had a long family and business relationship with the petitioner and entire transaction between the petitioner and M/s AMPL was friendly transaction by way of loan. The said



money is not proceeds of crime and there is absolutely no iota of evidence that the said money was used in sand mining business.

71. According to the ED in sand mining business, syndicate was in operation in the way that after winning the bid, money was collected as per share of those unscrupulous businessmen employed in sand mining business and tender money is deposited on condition that the profit of business by way of illegal extraction would be shared amongst them. The ED has not come up with any material showing transaction of money between the petitioner and the M/s AMPL or any other syndicate members simultaneously with the call of bids and selection of the highest bidder.

72. In order to prove the involvement of the petitioner in illegal sand mining business, at least some material was required to be produced to the effect that the petitioner deposited money as per his share for winning the bid. No such evidence, unfortunately, was produced by the ED in course of its investigation.

73. There is no explanation as to why statement of Mithesh Kumar was accepted and the statement of Jag Narayan Sing was not considered by the ED.

74. The learned ASG has argued with great stress



about the power of the ED regarding summons, production of documents and to give evidence.

75. In this regard, it is the obligation of this Court to mention that in *Vijay Madanlal Choudhary* (supra), the validity of Section 50 has been challenged on the ground of being violative of Article 20(3) and 21 of the Constitution of India because it allows the various officers under PMLA to summon any person and record his statement during the course of investigation. Further the provision mandates that person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of the investigation. The person is also obliged to sign the statement so given with the threat of being punished for the falsity or incorrectness thereof in terms of Section 63 of the PMLA. Under Section 50 of the PMLA, the Director is vested with the same powers as are vested in a Civil Court in the matter of (b) enforcing the attendance of any person, including any officer of a (reporting entity) and examining him on oath. The Directors also empowered to impose fine under Section 13 of the said Act.

76. In this regard, the Hon'ble Supreme Court in Paragraph No. 338 and 339 of *Vijay Madanlal Choudhary* (supra), reported in (2023) 12 SCC 1, has observed hereunder:-



“338. In the context of the 2002 Act, it must be remembered that the summons is issued by the authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the adjudicating authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the adjudicating authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the adjudicating authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the authority. At this



stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself.

339. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the



consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.”

77. There is absolutely no ambiguity with regard to the scope of Section 50. The only question is as to whether the statement of the petitioner involved him in an offence of money-laundering. The petitioner admitted that he had financial transactions with M/s AMPL. According to the case of the prosecution, it is M/s AMPL and its Director who have proceeds of crime. There is absolutely no evidence that the petitioner directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity (here sand scam) connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property.



78. The documents filed by the petitioner, Annexure P8 series shows payment and receipt of money including an amount of Rs. 39 Lakhs which was claimed to be projected as tainted money by the ED. The ED has failed to establish that it has reason to believe that petitioner is involved in concealment, or possession, or acquisition, or use, or projecting as untainted property or claiming as untainted property, any money obtained by M/s AMPL through illegal sand mining business.

79. Thus, the statement containing “reason to believe” delivered by ED to petitioner does not contain satisfactory material to hold that the petitioner is guilty of offence under Section 3 of the PMLA.

80. In view of the above discussions, petitioner’s arrest, dated 20th of September of 2024, is illegal and in violation of the safeguards contained in Section 19(1) of the PMLA.

81. It is needless to say that any illegal detention is violative of right to life and personal liberty enshrined under Article 21 of the Constitution of India.

82. As a result, the instant writ petition is allowed.

83. The petitioner be released from the judicial custody of the learned Special Judge, (PMLA), Patna, forthwith,



on his executing a bond with or without sureties as learned
Special Judge deems fit and proper.

84. The instant writ petition is, thus, allowed on
contest.

85. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

uttam/skm/-

AFR/NAFR	AFR
CAV DATE	24.01.2025.
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