EXPERTS CORNER

SCC ONLINE BLOG | TRINITY CHAMBERS
Law Offices of Vasanth Rajasekaran

10 Important White-Collar Law Judgments of 2023

VASANTH RAJASEKARAN
Founder & Head of Trinity Chambers

HARSHVARDHAN KORADA
Counsel at Trinity Chambers

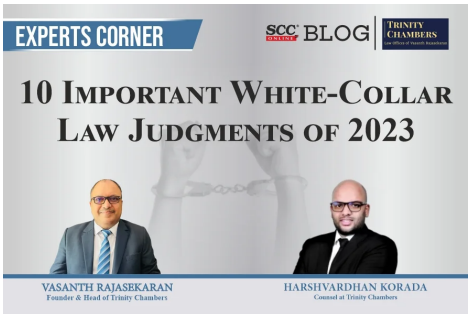
Citation: 2024 SCC OnLine Blog Exp 3

SCC ONLINE BLOG
Bringing you the Best Analytical Legal News

10 Important White-Collar Law Judgments of 2023

by Vasanth Rajasekaran† and Harshvardhan Korada††

Cite as: 2024 SCC OnLine Blog Exp 3
Published on January 8, 2024 - By Bhumika Indulia



In recent years, several noteworthy judgments have been rendered by the Indian courts in matters pertaining to white-collar laws. This article covers ten such significant decisions rendered in the year 2023.

1. *Rana Ayyub* v. *Enforcement Directorate*[1]

A person is guilty of the offence of money laundering if they: (*i*) directly or indirectly attempt to indulge; or (*ii*) knowingly assist; or (*iii*) knowingly are a party; or (*iv*) are actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projection as untainted property. The Special Court located at a place where any of the aforesaid activities or processes occurs would be having territorial jurisdiction to

try scheduled offences under Prevention of Money-Laundering Act, 2002 (PMLA).

Brief facts

In *Rana Ayyub*[2], by way of a writ petition under Article 32 of the Constitution of India[3], the petitioner had challenged a summoning order issued by the Court of the Special Judge, Anti-Corruption, CBI Court No. 1, Ghaziabad[4]. The summons were issued on a complaint lodged by the respondent under Section 44 of the Prevention of Money-Laundering Act, 2002[5].

The case of the petitioner was that she initiated a crowdfunding campaign through an online platform and ran three campaigns from April 2020 to September 2021. In connection with the same, the Mumbai Zonal Office of the Enforcement Directorate[6] initiated an enquiry against the petitioner under the Foreign Exchange Management Act, 1999[7]. An FIR[8] was registered for alleged offences under the provisions of the IPC 1860[9], the Information Technology (Amendment) Act, 2008, and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015[10].

Meanwhile, the petitioner received an order under Section 37 of the FEMA read with Section 133(6) of the Income Tax Act, 1961[11] from the Mumbai Zonal Office of ED seeking certain documents. Upon the petitioner's submission of a detailed response to the Mumbai Zonal Office of ED, the Delhi Office of ED registered a complaint in an enforcement case information report[12] in the Special Court, Ghaziabad.

Upon the registration of the complaint, the petitioner was summoned to ED's Delhi Office to furnish her statement under Section 50 of the PMLA. Thereafter, a provisional order of attachment of the petitioner's bank account was passed by ED. Eventually, the Special Court, Ghaziabad passed an order taking cognizance of the matter and summoning the petitioner for appearance. Upon coming to know of the summoning order, the petitioner preferred the present writ petition.

The petitioner argued that under Section 44(1) of the PMLA, an offence punishable under PMLA shall be triable only by a Special Court constituted for the area in which the offence has been committed. Therefore, as per the petitioner, the Special Court in Maharashtra alone could have taken cognizance of the complaint. In this regard, the petitioner relied heavily on the decision in *Vijay Madanlal Choudhary* v. *Union of India*[13]. On facts, the petitioner argued that no part of the alleged offence of money laundering was committed within the jurisdiction of the Special Court, Ghaziabad and that the petitioner's bank

account, where the proceeds of crime were deposited, is also located in Navi Mumbai, Maharashtra. Hence, it was argued that the lodging of the complaint at Ghaziabad was an abuse of process. It was also argued that the Special Court, Ghaziabad ought to have returned the complaint in terms of Section 201 of the Code of Criminal Procedure, 1973[14].

In response, the respondent argued that under the scheme of PMLA, the complaint of money laundering should follow the complaint of the scheduled offence. Since the complaint regarding the scheduled offence was registered in Ghaziabad, the respondent necessarily had to lodge the ECIR on the file of the same court, within whose jurisdiction the scheduled offence became triable. In addition, the respondent argued that the petitioner was alleged to have received money through an online crowdfunding platform and that several victims within the territorial jurisdiction of the Court of the Special Judge had contributed money. In other words, the respondent contended that a part of the cause of action had actually arisen within the jurisdiction of the Court of the Special Judge, Ghaziabad.

From the rival contentions, the Supreme Court noted that the two moot questions that arose in the instant matter are:

(*i*) Whether the trial of the offence of money laundering should follow the scheduled/predicate offence or vice versa?

(*ii*) Can the Special Court, Ghaziabad, be said to have exercised extraterritorial jurisdiction, even though the offence alleged was not committed within the jurisdiction of the said court?

Decision

To answer the first question, the Supreme Court examined the relevant provisions of the PMLA. At the outset, the Supreme Court examined the prerequisites for money laundering under Section 3 of the PMLA. It was observed that a person is guilty of the offence of money laundering if they: (*i*) directly or indirectly attempt to indulge; or (*ii*) knowingly assist; or (*iii*) knowingly are a party; or (*iv*) are actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projection as untainted property.

The Supreme Court then observed that the term proceeds of crime is defined in the PMLA under Section 2(1)(*u*) to mean any property or value of such property derived or obtained directly or indirectly by any person as a result of criminal

activity related to the scheduled offence, or the value of such property which is taken or held outside the country or abroad.

In terms of Section 43(1) of the PMLA, the Supreme Court noted that Special Courts could be constituted primarily for the purpose of trying an offence punishable under Section 4. Further, Section 43(2) of the PMLA also conferred additional jurisdiction upon a Special Court to try any other offence with which the accused may be charged at the same trial.

Insofar as the territorial jurisdiction of a Special Court is concerned, the Supreme Court referred to Section 44 of the PMLA which deals with two contingencies. Firstly, Section 44 of the PMLA deals with cases wherein the scheduled offence(s) and the offence of money laundering both take place within the territorial jurisdiction of the same Special Court. Secondly, Section 44 of the PMLA deals with cases where the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering.

If the court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money laundering, then the authority authorised to file a complaint under PMLA should make an application to the court which has taken cognizance of the scheduled offence. On the application so filed, the court which has taken cognizance of the scheduled offence should commit the case relating to the scheduled offence to the Special Court, which has taken cognizance of the complaint of money laundering.

A reference was then made to the decision in *Kaushik Chatterjee* v. *State of Haryana*[15] wherein it was held that the question of territorial jurisdiction in criminal cases revolves around the place:

(*i*) of commission of the offence;

(*ii*) where the consequence of the offence ensues;

(*iii*) where the accused was found;

(*iv*) where the victim was found;

(*v*) place where the property in respect of which the offence was committed, or was found; and

(*vi*) place where the property forming the subject-matter of an offence was required to be returned or accounted for, as the case may be.

Based on the above, the Supreme Court held that even if the schedule offence is

taken cognizance of by another court, that court shall commit the same, on an application by the authority concerned, to the Special Court which has taken cognizance of the offence of money laundering.

On the second question, the Supreme Court opined that there was not an iota of doubt that the offence of money laundering is triable only by the Special Court constituted for the area in which the offence of money laundering has been committed.

To find out the area in which the offence of money laundering has been committed, the Supreme Court referred to the definition in Section 3 of the PMLA. It was observed that a person may acquire proceeds of crime in one place and keep the same in their possession in another. The Supreme Court concluded that the area in which each of these places is located would be the area in which the offence of money laundering has been committed.

The Supreme Court referred to the petitioner's argument that the proceeds of crime in the present case came to be attached by ED under Section 5 of the PMLA in Navi Mumbai, Maharashtra. However, the Supreme Court pointed out that this argument overlooked six different types of processes or activities mentioned in Section 3 of the PMLA. As such, the bank account of the petitioner was held by the Supreme Court only to be the ultimate destination where all funds reached. Thus, Navi Mumbai, Maharashtra, was only a place where one of the six different processes or activities listed in Section 3 of the PMLA were carried out.

Thus, the Supreme Court was of the view that the issue of territorial jurisdiction could not be decided in a writ petition, especially when there is a serious factual dispute about the place/ places of commission of the offence. Hence, the Supreme Court concluded that this question had to be raised before the Special Court, Ghaziabad. Accordingly, the petitioner was given the liberty to raise the issue of territorial jurisdiction before the Special Court, Ghaziabad, and the writ petition came to be dismissed.

2. *Anoop Bartaria* v. *Enforcement Directorate*[16]

The knowledge of the accused that they dealt with proceeds of crime is not a mandatory prerequisite or a sine qua non for filing a complaint under the PMLA.

Brief facts

In *Anoop Bartaria*[17], the petitioners challenged the common judgment and order passed by the High Court of Rajasthan in two writ petitions, both of which came to

be dismissed. As per the petitioners, Anoop Bartaria is a leading engineer/ architect having expertise in providing structural, architectural, and design consultancy services. He is also the Chairman and Managing Director of the World Trade Park Ltd., which is in the business of selling and leasing commercial spaces in World Trade Park — one of the most sought-after real estate commercial properties located in Jaipur.

One Bharat Bomb and his associates approached the petitioners for the purchase of commercial units in the World Trade Park and booked certain units. Initially, the commercial units were booked in the name of one entity, namely, Raj Darbar Material Trading Pvt. Ltd. (Raj Darbar) and amounts aggregating to approximately INR 74 crores were paid to the petitioners in this regard along with a further amount of INR 1.4 crores for professional services provided by Anoop Bartaria. However, subsequently, Bharat Bomb and his associates asked the petitioners to register the units in the name of new entities and therefore, the petitioners returned the amount deposited by Raj Darbar.

Subsequently, in 2015, commercial spaces were sold by the petitioners to Bharat Bomb and his associates. In this regard, it was argued that all amounts were received through demand draft and/or RTGS and all legal formalities required for the registration were also followed in due course. The petitioners had taken loan/ financial assistance from several banks and financial institutions by mortgaging the units within the World Trade Park. Consequent to the sale made to Bharat Bomb and his associates, the petitioners were granted appropriate no-objection certificates (NOC) for the release of the units.

Eventually, an FIR came to be registered by Central Bureau of Investigation[18] against Bharat Bomb, his associates, and others for offences under the IPC and the Prevention of Corruption Act, 1988[19]. It was alleged that during 2011-2015, Bharat Bomb and his associates acting in collusion with the officials of a bank misused the banking system to launder money to the tune of approximately INR 18,000 crores. Since some of the offences alleged in the FIR were also scheduled offences, ED initiated investigation for the offence and registered an ECIR. During the investigation, it was revealed that the petitioner Anoop Bartaria and his companies had received more than INR 160 crores of defrauded funds from the accounts of fictitious firms/companies operated by Bharat Bomb.

The petitioners argued that they were neither named in the FIR registered by CBI nor were they named in the ECIR registered by ED. However, ED after the investigation of the said ECIR filed the prosecution complaint falsely including the

petitioners in the same. According to the petitioners, sine qua non and essential ingredient for the offence of money laundering as defined in Sections 3 and 4 of the PMLA is that the person must knowingly or actually be involved in any process or activity connected with the proceeds of crime. Unless the said essential prerequisite is met, no case could have been made out against the petitioners in law. Thus, the petitioners argued that the continuation of any proceedings against the petitioners under the PMLA would be abuse of the process of law.

The petitioners also contended that they only had a buyer-seller relationship with Bharat Bomb and his associates and had no knowledge that the money they received were the proceeds of a crime. Even otherwise, petitioners sold the units only upon obtaining valid NOCs from the banks and financial institutions, which never raised any grievance against the petitioners as all dues were cleared prior to the grant of NOCs, which was also prior to the sale.

On the other hand, the respondents vehemently submitted that the power of quashing of a criminal complaint can only be exercised in the rarest of the rare case where the allegations taken on face value do not prima facie constitute any offence.[20] In the instant case, the respondents argued that there were specific allegations of money laundering against the petitioners, which had surfaced during an investigation carried out by the authorised officer under the PMLA.

Decision

The Supreme Court held that the petitioners' argument that they did not possess any knowledge of the proceeds of crime and, as a consequence, no case of money laundering was made out, had no legs to stand on. In this regard, the Supreme Court referred to Section 3 of the PMLA.

The Supreme Court observed that it would be folly to hold that the knowledge of the accused that he was dealing with the proceeds of crime would be a condition precedent or sine qua non required to be shown by the prosecution for lodging the complaint under the PMLA. As the definition itself suggests, 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. Hence, apart from having knowledge, if a person who directly or indirectly attempts to indulge or is actually involved in the process or activity connected with the proceeds of crime, is also guilty of the offence of money

laundering. In the instant case, it was observed that the direct involvement of the petitioners in the activities connected with the proceeds of crime has been alleged, along with the material narrated in the complaint, which would require a trial to be conducted by the competent court.

Furthermore, the Supreme Court clarified that at this juncture, it was not required to go into the merits of the allegations. It was sufficient for the prosecution complaint to set out prima facie allegation of money laundering against the petitioners. As such the prosecution complaint had levied serious allegations and there was sufficient material on record to substantiate the said allegations, which indicate a direct involvement of the petitioners in the alleged offences of money laundering as defined under Section 3 of the PMLA.

The Supreme Court observed that money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty. Hence, any lenient view in dealing with such offences would be a travesty of justice. Accordingly, the petitions were dismissed and any interim relief granted earlier stood vacated. ED was left at liberty to proceed further with the prosecution complaint in accordance with the law.

3. *Enforcement Directorate* v. *Aditya Tripathi*[21]

The rigours of Section 45 of the PMLA and the facts surrounding the allegations levied, status of investigation are important considerations in deciding an application of an accused seeking bail in matters pertaining to a scheduled offence.

In *Aditya Tripathi*[22], feeling aggrieved and dissatisfied with the respective impugned judgments and orders passed by the High Court of Telangana in two criminal petitions, two criminal appeals came to be preferred by ED. By way of the impugned judgments and orders, bail applications filed by the respective first respondents in the present appeals came to be allowed, and further directions were passed for the enlargement of the aforesaid first respondents.

An FIR was registered by the Economic Offences Wing[23], Bhopal naming about 20 persons/companies as accused for offences punishable under the provisions of the IPC, Information Technology Act, 2000, and PCA. In the preliminary enquiry, it was found that e-tenders of Madhya Pradesh Water Corporation amounting to INR 1769 crores were tempered to change the bid price of certain bidders to make them the lowest bidders. Subsequent to the registration of the FIR, the EOW conducted an investigation and filed the charge-sheet before the competent

court. In the charge-sheet, it was found that the accused were proposed to be charged with provisions under the IPC and PCA, which also constituted scheduled offences under the framework of PMLA. Consequently, ED initiated a money-laundering investigation and registered an ECIR. Eventually, the first respondents in the present appeals came to be arrested on 19-1-2021. By the impugned judgments and orders passed by the High Court of Telangana, the first respondents were enlarged on bail.

ED argued that the High Court had seriously erred in enlarging the respective first respondents (accused) on bail. It was submitted that in allowing the bail applications, the High Court did not correctly appreciate the scope of Section 45 of the PMLA. It was submitted that the High Court had allowed the bail applications only on the grounds that the investigation was complete and the charge-sheet was filed with respect to the FIR. However, the High Court failed to take note that the investigation by ED was still ongoing and thus, the investigation was not complete in the true sense.

The first respondents in the respective appeals argued that the High Court had not committed any error in directing to enlarge the accused on bail. So far as the underlying FIR was concerned, it was submitted that except for the first respondents, all other accused had been acquitted or discharged in respect of the predicate offences.

Decision

The Supreme Court observed that when the enquiry/investigation against the respective first respondents in the present appeals was ongoing, the rigour of the provisions contained under Section 45 of the PMLA was to be considered. The Supreme Court held that the impugned judgments and orders failed to consider the nature of the allegations and the seriousness of the offences while granting bail. As such, the allegations levied were of such a nature that required thorough investigation, which, in the present case had not yet been completed. Insofar as the submissions of the respective first respondents that they were not named in the FIR and that all other accused are discharged/acquitted was concerned, the Supreme Court opined that mere discharge/acquittal of other accused could not be a ground for bringing the investigation to a standstill. The Supreme Court further observed that the mere filing of the charge-sheet for the predicate offences was not a good enough reason for the release of accused on bail in connection with the scheduled offences under the PMLA which were still under investigation.

In view of the above, the Supreme Court allowed both the appeals. Accordingly, the respective first respondents were directed to surrender before the competent court having jurisdiction within one week from the date of pronouncement of the judgment. Further, the matters were remitted back to the High Court for fresh consideration of the bail applications in light of the above observations.

4. *Y. Balaji* v. *Karthik Desari*[24]

Certain offences, despite being scheduled offences, may or may not generate proceeds of crime. In such circumstances, ED can proceed with investigation and issuance of summons without identifying the proceeds of crime.

The act of receiving bribe in itself constitutes money laundering.

Brief facts

The case dealt with a batch of appeals filed by ED and others, against two separate orders of the High Court of Madras — one by a Single Judge disposing of a batch of criminal petitions and another passed by a Division Bench, putting an ongoing investigation by ED at hold.

Between 2014 and 2015, recruitment drives were conducted for several positions, including drivers, conductors, junior tradesmen, junior engineers, and assistant engineers across the Transport Corporations in the State of Tamil Nadu. Allegations of collusion among various officials within the Transport Department came to light, implicating multiple individuals, including Senthil Balaji — a Minister of the then State Government.

In 2018, a complaint was lodged by one K. Arulmani against Balaji and others, alleging the acceptance of bribes from job seekers under the false assurance of securing appointments in the Metropolitan Transport Corporation (MTC). Arulmani, a technical staff member at MTC, asserted that he was approached by one of the accused in 2014, around the time when recruitment notifications were issued for driver and conductor positions in the State Transport Corporation. According to Arulmani, he was informed that these positions could be obtained by leveraging the influence of the Transport Minister (Senthil Balaji) in exchange for a monetary payment.

It was further claimed that Arulmani's friends purportedly collected around INR 40 lakhs from several hopefuls and transferred the sum to another co-conspirator. Nevertheless, those who had made payments to the accused to secure employment reportedly discovered that their names were absent from the

published recruitment list, and their money was not refunded.

Following the filing of an FIR, a charge-sheet was submitted, setting out a case of, amongst other things, cheating under the IPC. However, in 2021, the High Court of Madras dismissed the pending cheating case before a Special Court for Members of Parliament (MP) and Members of Legislative Assembly (MLA) in the State, citing a settlement between the complainant, alleged victims (witnesses in the case), and the accused. Two other FIRs related to this matter were also subsequently stayed.

Meanwhile, Balaji was served a summons by the office of the Deputy Director, ED, Madurai Sub Zonal Office, regarding the recruitment scandal. The summons were challenged before the High Court of Madras on the basis that there were no jurisdictional facts to initiate proceedings under the PMLA. This argument was accepted by the Bench, which, in September 2022, allowed the petitions filed by Senthil Balaji and two others, thereby quashing the summons issued by ED.

Soon thereafter, a Bench of the Supreme Court overturned the decision of the High Court of Madras, which had nullified the proceedings against the former Transport Minister and reinstated the criminal complaint against him and his associates. In November 2022, the High Court mandated a new investigation into the cash-for-job scandal. The Single Judge, presiding over the case, remarked that there were discrepancies in the inquiry conducted by the investigating agency and highlighted the oversight of certain critical aspects.

Before the Supreme Court in the present matter, it was argued ED had commenced investigations and called upon the accused without pinpointing the proceeds of the crime or the assets representing those proceeds, as stipulated by Section 3 of the PMLA. This identification of proceeds of crime, as per the accused, served as a fundamental/jurisdictional prerequisite. Furthermore, a contention was raised that, given the issuance of a notice in a review petition related to the *Vijay Madanlal Choudhary*[25] case, the Supreme Court should defer the hearing of these issues until a resolution is reached in the review petition and other associated petitions.

Decision

Re: Whether ED could initiate an investigation and issue summons without having identified the proceeds of crime or property representing the proceeds of crime or without identifying the activities connected to the proceeds of crime as prescribed under Section 3 of the PMLA.

The Supreme Court, in its interpretation of Section 3 of the PMLA, asserted that offences outlined in Sections 120-B, 419, 420, 467 and 471 IPC are scheduled offences under PMLA. Additionally, offences under Sections 7 and 13 of the PCA are also included in the Schedule of PMLA. In the present case, all three FIRs alleged that Senthil Balaji committed scheduled offences under the PMLA by accepting illegal gratification for facilitating appointments in the Public Transport Corporation. The Supreme Court emphasised that it is not complex to understand that a public servant receiving illegal gratification possesses proceeds of crime. Therefore, the argument suggesting that the mere generation of proceeds of crime is insufficient for the offence of money laundering was deemed unreasonable by the Bench.

The Supreme Court noted six processes or activities identified under Section 3 of the PMLA: (*i*) concealment; (*ii*) possession; (*iii*) acquisition; (*iv*) use; (*v*) projecting as untainted property; and (*vi*) claiming as untainted property. It was observed that taking a bribe constitutes the activity of "acquisition", and even if the individual does not retain it but "uses" it, they are guilty of money laundering.

The Supreme Court acknowledged that certain offences, despite being scheduled offences, may or may not generate proceeds of crime. For instance, a murder may or may not lead to creation of proceeds of crime, depending on the circumstances. In corruption offences, criminal activity and the generation of proceeds of crime are intertwined. The Supreme Court rejected the contention that ED's investigation lacked foundational/jurisdictional facts, emphasising that allegations in the FIR pointed to criminal activity, the generation, and the laundering of proceeds of crime under Section 3.

The Supreme Court concluded that the information about all complaints, the nature of complaints, and the allegedly collected amounts by way of illegal gratification had become public knowledge. Rejecting the idea that ED should have adopted an ostrich-like approach, the Supreme Court stated that investigating where the significant funds from the scam had gone was essential, considering the allegations of corruption and acquisition of proceeds of crime tantamount to money laundering.

Re: Whether it was necessary for the Supreme Court to defer the hearing in the matter until the review petition in *Vijay Madanlal Choudhary*[26] case was finally heard and decided.

The Supreme Court opined that the notice issued in the review petition does not

undermine the precedential value of *Vijay Madanlal Choudhary*[27]. As per the Supreme Court, the stance adopted by the accused individuals not only jeopardised the principles of judicial discipline and the doctrine of stare decisis but also had the potential to halt all ongoing investigations across the country. As per the Supreme Court, the order in the review petition only suggested that the Supreme Court was prima facie inclined to consider at least two issues raised in the review petition: (*i*) the accused not being provided with a copy of the ECIR; and (*ii*) the reversal of the burden of proof and presumption of innocence. The Supreme Court emphasised that the arguments presented by the respondents in this particular case are unrelated to these two issues. Hence, the accused cannot ride on the coat-tails of the review petition.

Consequently, the Supreme Court concluded that Senthil Balaji was not entitled to either request a reference to a larger Bench or to seek to defer the matter until a decision is reached in *Vijay Madanlal Choudhary*[28]. The appeals were allowed in these terms, and the order of the Division Bench of the Madras High Court was set aside. ED was also permitted to proceed beyond the stage constrained by the contested order.

5. *Jaya Thakur* v. *Union of India*[29]

The judgments of the Supreme Court can be nullified by a legislative enactment removing the basis of the judgment and such law could be retrospective. However, the retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. The defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed.

The nullification of mandamus by an enactment would be impermissible legislative exercise. Such transgression of constitutional limitations and intrusion into judicial power by the legislature is violative of Article 14 of the Constitution.

Brief facts

On 17-11-2021, Mr Sanjay Kumar Mishra, the then Director of ED, was scheduled to retire. However, three days before his retirement, on 14-11-2021, the President of India issued the Delhi Special Police Establishment (Amendment) Ordinance, 2021, and the Central Vigilance Commission (Amendment) Ordinance, 2021 (collectively referred to as "Ordinances").

The Ordinances introduced provisions allowing up to three one-year extensions for the directors of CBI and ED.

In a previous matter, namely, *Common Cause* v. *Union of India*[30], the Supreme Court addressed a challenge to the extension of Mr Mishra's tenure as Director of ED after the initial two-year period. The Supreme Court ruled that extensions could only be granted in "rare and exceptional cases" that too only for a short duration. However, the Supreme Court specifically issued a mandamus holding that no further extension should be given to Mr Mishra.

On 18-11-2021, Members of Parliament — Ms Mahua Moitra and Mr Randeep Singh Surjewala filed petitions at the Supreme Court challenging the Ordinances. They contended that the Ordinances contradicted the Supreme Court's decision in *Common Cause*[31] and allowed the Union to extend Mr Mishra's tenure. Subsequently, on 14-12-2021, Parliament enacted the Central Vigilance Commission (Amendment) Act, 2021[32] and the Delhi Special Police Establishment (Amendment) Act, 2021[33] (collectively referred to as "Acts"). These Acts affirmed the provisions for tenure extension that were initially introduced through the Ordinances. On 13-7-2022, the petitioner Ms Jaya Thakur, a leader from the Indian National Congress, approached the Supreme Court to challenge the Acts.

The petitioners contended that incremental tenure extensions could undermine the overall independence of investigative bodies, allowing a "carrot and stick" approach. This, they argued, might infringe on the right to a fair investigation and trial, speculating that the amendments introduced by the Acts could coerce directors of CBI and ED to align with the Union Government's wishes, for an extension.

The key issues that were brought forth in the challenge are as follows:

(*i*) Whether the amendments introduced by CVC Amendment Act, and DPSE Amendment Act are liable to be held ultra vires and set aside?

(*ii*) Whether the extension of tenure of Mr Sanjay Kumar Mishra as Director, ED is legal and valid. If not, whether the same is liable to be set aside?

Decision

Re: Impact on independence of investigative agencies

The Supreme Court emphasised that the amendments introduced through the Acts did not compromise the autonomy of CBI and ED. The Supreme Court asserted that labelling a statute as unconstitutional should not be done casually[34] and required a "flagrant violation of constitutional provisions" for such a declaration.

The Supreme Court also rejected the petitioner's argument that incremental tenure extensions could undermine the overall independence of investigative bodies. In this regard, the Supreme Court explained the appointment process for directors in both the CBI and ED.

The Director of ED was recommended by a committee led by the Central Vigilance Commissioner, which included members such as Secretaries from the Ministry of Home Affairs, Ministry of Personnel, and the Department of Revenue. The Central Vigilance Commissioner, heading this Committee, was appointed by a three-member body consisting of the Prime Minister, the Minister of Home Affairs, and the Leader of the opposition in Parliament.

Likewise, the CBI Director was recommended by a committee comprising the Prime Minister, the Leader of the opposition in Parliament, and the Chief Justice of India (or a Judge of the Supreme Court nominated by the CJI).

The Supreme Court maintained that both instances follow a procedure with minimal Government influence and observed that "when a committee can be trusted with regard to recommending their initial appointment, we see no reason as to why such committees cannot be trusted to consider as to whether the extension is required to be given in public interest or not. At the cost of repetition, such Committee is also required to record reasons in writing in support of such recommendations".

In terms of the amendments, these Committees are authorised to recommend extensions for incumbent directors when deemed necessary in the "public interest". Notably, the judgment observed that the Committee recommending the initial appointment of the incumbent director should not be barred from suggesting an extension for the same director.

Re: Extension of tenure of Mr Sanjay Kumar Mishra as Director of ED

It was noted that in November 2020, the Union Government prolonged the tenure of Mr Mishra by one year. The validity of this extension was contested in *Common Cause*[35], where the Supreme Court upheld it, emphasising that such extensions should be granted only in rare and exceptional cases.

However, the Court explicitly stated that no further extension should be given to Mr Mishra. In November 2021, Mr Mishra's tenure received another one-year extension through the Ordinances, which were subsequently enacted by both

Houses of Parliament, leading to the challenged enactments. Later, Mr Mishra's term was extended for a third time in November 2022.

The Supreme Court placed reliance on its decision in *Madras Bar Assn.* v. *Union of India*[36], wherein it was held that the effect of the judgments of the Supreme Court can be nullified by a legislative enactment removing the basis of the judgment and such law could be retrospective. However, the retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. The defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. It was also clarified that the nullification of mandamus by an enactment would be impermissible legislative exercise. Such transgression of constitutional limitations and intrusion into judicial power by the legislature was held to be violative of Article 14 of the Constitution.

The Supreme Court highlighted that the Court in *Common Cause*[37] had issued a mandamus preventing any further extensions for Mr Mishra. It was observed that the extensions granted in November 2021 and November 2022 violated the Supreme Court's mandamus, and as such, a legislative enactment could not annul a writ of mandamus.

In the above terms, the Supreme Court declared the extension given to Mr Mishra as unlawful and instructed the Union Government to designate a new director by 31-7-2023. Until then, Mr Sanjay Kumar Mishra was permitted to continue in his role as ED's Director.

6. *K.A. Rauf Sherif* v. *Enforcement Directorate*[38]

The lack of jurisdiction to entertain a complaint cannot be the ground to seek transfer of the matter. A congenital defect of lack of jurisdiction, assuming that it exists, inures to the benefit of the accused and hence it need not be cured at the instance of the accused to his detriment.

Brief facts

The matter pertains to a petition filed by an individual arrayed as the first accused in a complaint filed by ED. The petition sought the transfer of Sessions casefrom the Court of the Special Judge, PMLA, Lucknow[39] to the Court of the Special Judge, PMLA at Ernakulam, Kerala[40]. The petitioner claimed that he was the General Secretary of Campus Front of India, which is now banned as an unlawful association by a notification issued by Union of India, Ministry of Home Affairs under the Unlawful Activities (Prevention) Act, 1967[41].

The case under PMLA was registered sometime in 2018 in relation to predicate offences which were already being dealt with under UAPA in Lucknow jurisdiction. The petitioner alleged that the proceedings before the Special Court, Lucknow, were without jurisdiction, as all criminal activities alleged by the prosecution had admittedly taken place in Kerala. Further, the petitioner also explained that a predominant majority of the accused were residents of Kerala or hailed from Kerala.

ED, on the other hand, argued that the question of territorial jurisdiction had already been settled by the Supreme Court in *Rana Ayyub*[42], and the principles laid down therein were squarely applicable to the present case. Even otherwise, ED contended that the petition for transfer filed after the commencement of the examination-in-chief of prosecution witnesses and after the dismissal of the discharge application of one of the co-accused was an abuse of the process of law.

Decision

The Supreme Court, upon reading through the scheme of the PMLA, observed that irrespective of where the FIR relating to the scheduled offence was filed and irrespective of which Court took cognizance of the scheduled offence, the question of territorial jurisdiction of a Special Court to take cognizance of a complaint under PMLA should be decided with reference to the place/places where anyone of the following activities/process takes place in relation to the proceed of crime: (*i*) concealment; (*ii*) possession; (*iii*) acquisition; (*iv*) use; (*v*) projection as untainted property; and (*vi*) claiming as untainted property.

As per the brief provided by ED on the cause of action under PMLA, it was stated that as per the FIR filed by the U.P. Police Anti-Terrorism Squad, two members of PFI were found with improvised explosive devices, pistols, and live cartridges. A preliminary investigation in this regard revealed that an amount of INR 3,50,000 was transferred from various bank accounts of PFI to the persons with whom the weapons were found.

Therefore, the Supreme Court opined that the Special Court, Lucknow could not be said to be lacking territorial jurisdiction to entertain the complaint. In any case, the lack of jurisdiction of a court to consider a complaint could not be a ground to transfer the matter. A congenital defect of lack of jurisdiction, assuming that it exists, inures to the benefit of the accused and hence it need not be cured at the instance of the accused to his detriment.

On the argument that a predominant number of accused were from Kerala, the Supreme Court opined that it was hardly a ground for ordering the transfer of investigation. In view of the above, the Supreme Court found no legally valid or justifiable grounds to call for a transfer. Accordingly, the transfer petition was dismissed.

7. V. Senthil Balaji v. *State of T.N.*[43]

The plea pertaining to the violation of the statutory mandate set out under Section 19 of the PMLA can only be raised before the Magistrate.

Brief facts

In relation to the cash-for-jobs scam, ED registered a case against Senthil Balaji in the ECIR which was followed by a summons for his appearance. On 13-6-2023, an authorised officer conducted a search at Senthil Balaji's premises under Section 17 of the PMLA. Due to Senthil Balaji's alleged lack of cooperation, the authority invoked Section 19 of the PMLA resulting in his arrest on 14-6-2023. Despite being provided with grounds for arrest, Senthil Balaji refused to acknowledge them. A notification of the arrest was also conveyed to his brother, sister-in-law, and wife. As Senthil Balaji complained of chest pain, he was admitted to the Tamil Nadu Government Multi Super Speciality Hospital. On the same day, his wife filed a habeas corpus petition in the High Court of Madras. Simultaneously, the State sought judicial custody for 15 days through an application before the Court of the Principal Sessions Judge.

A remand order extended Senthil Balaji's judicial custody until 28-6-2023. Following a dismissed bail application, the State applied for further custody for investigation and was granted 8 more days of custody. Meanwhile, additional grounds were raised challenging the Principal Sessions Judge's orders in the ongoing habeas corpus petition. The State also filed an application to exclude the hospitalisation period from the custody period.

A Division Bench of Madras High Court delivered a split verdict on the habeas corpus plea filed by Senthil Balaji's wife against his arrest for money laundering. The matter was then referred to the Chief Justice for further orders.

In what may be termed as a tiebreaker judgment, the Madras High Court affirmed ED's authority to seek custody, excluding the time spent in the hospital from the initial 15 days for ED's custody. The Madras High Court determined that a habeas corpus petition could be maintainable in exceptional circumstances, but the present case did not meet such criteria. The matter eventually reached the

Supreme Court.

Decision

The Supreme Court underscored that a writ of habeas corpus is exclusively intended for cases of illegal detention. Generally, challenging an order of remand, a judicial function performed by a judicial officer, through a writ of habeas corpus is not permissible, and individuals with grievances are encouraged to explore alternative statutory remedies. However, the Supreme Court noted that instances of non-compliance with mandatory provisions and a complete lack of thoughtful consideration may warrant the consideration of a writ of habeas corpus, particularly when raised as a specific challenge.

According to the Supreme Court, only in situations where a cryptic order completely disregards the mandates of Section 167 CrPC, and Section 19 of the PMLA, a writ of habeas corpus may be entertained. Nevertheless, an order issued by a Magistrate providing reasons for remand should be assessed according to the procedures stipulated in the relevant statute and not by invoking Article 226 of the Constitution.

The Supreme Court highlighted the distinction between detention becoming illegal due to non-compliance with statutory mandates and instances where a judicial order contains incorrect or inadequate reasons. Contesting an order of remand on its merits should align with statutory provisions, while the failure to comply with a provision may empower a party to invoke extraordinary jurisdiction. Therefore, concerning an arrest under Section 19 of the PMLA, a writ of habeas corpus would be applicable only if an individual is not brought before the Supreme Court, as mandated under Section 19(3).

While reading through Section 41-A CrPC, the Supreme Court asserted that this provision should not be regarded as a supplement to Section 19 of the PMLA. The PMLA, being a unique legislation in its own right, has established its distinct procedures and mechanism for addressing arrests in line with its objectives, primarily aimed at preventing money laundering, ensuring proper recovery, and penalising offenders. This rationale is evident in the detailed procedures outlined in Chapter V of the PMLA covering summons, searches, seizures, etc. The Supreme Court emphasised that an arrest should only be executed after thorough compliance with the relevant provisions, including Section 19 of the PMLA. Consequently, there is no necessity to adhere to or apply Section 41-A CrPC, especially in light of Section 65 of the PMLA.

The Supreme Court clarified that in the absence of a specific mandate, it is inappropriate to compel the authorised officer to ensure compliance with Section 41-A CrPC, particularly when a distinct and separate methodology is readily available under the PMLA. Employing Section 41-A CrPC for an arrest under the PMLA would undermine the very essence of the inquiry/investigation under the PMLA. Until summons are issued to an individual, they are not expected to be aware of the proceedings. Any prior notification beyond what is mandated under the PMLA might significantly compromise the ongoing investigation.

The Supreme Court acknowledged the pertinent provisions of the PMLA, highlighting that the legislature, in its wisdom, has intentionally instituted necessary safeguards for an arrestee being mindful of their liberty and the requirement for external approval and supervision. This provision aligns with the constitutional principles outlined in Articles 21 and 22(2) of the Constitution.

Additionally, the Court asserted that Section 62 serves as a reaffirmation of the compliance with provisions carried under Section 19 of the PMLA. This safeguard is designed to introduce an element of fairness and accountability. The Supreme Court also observed that Section 65 incorporates the application of the CrPC concerning arrest, search and seizure while aligning it with the provisions of the PMLA. Section 4 CrPC reinforces that inquiries or investigations related to an offence under a special statute should exclusively fall under that statute, not the CrPC. This position is reiterated in Section 5 CrPC, explicitly stating that the CrPC does not impede the operation of special laws.

The Supreme Court was of the view that a combined reading of Section 65 of the PMLA along with Sections 4 and 5 CrPC, 1973, establishes the precedence of the PMLA over the CrPC in investigations.

Regarding Section 167(2) CrPC, the Supreme Court acknowledged that a Magistrate, under proviso (*a*), can authorise detention beyond 15 days, excluding police custody. However, it was clarified that this 15-day period, the maximum allowed for police custody, spans from time to time during the entire investigation period of 60 or 90 days. Any other interpretation, the Supreme Court opined, would undermine the investigative authority and compromise the accused person's protection by limiting the investigation period —— a facet of Article 21 of the Constitution.

Taking cognizance of Section 167(3) CrPC, which mandates the Magistrate to provide reasons while granting the authorisation, the Supreme Court emphasised

that judicial orders impacting the rights of an accused should contain adequate reasons. Such orders are subject to challenge in higher judicial forums, though not through a habeas corpus petition.

The Supreme Court clarified that the term "such custody" in Section 167(2) CrPC encompasses not only police custody but other forms as well. Moreover, it asserted that a habeas corpus petition is not tenable for challenging an order of remand.

Rejecting the plea that the ED arrest was illegal, the Supreme Court maintained that any deviation from the arrest procedure outlined in Section 19 of the PMLA could lead to action against the officer concerned under Section 62 of the PMLA.

The Bench also referred to the judgment in *CBI* v. *Anupam J. Kulkarni*[44], which held that police custody beyond the initial 15 days of remand is impermissible and referred it to a larger Bench for reconsideration.

8. *Enforcement Directorate* v. *M. Gopal Reddy*[45]

When the investigation against the accused is still ongoing under the PMLA, the strict provisions of Section 45 of the PMLA would apply, rendering the grant of anticipatory bail under Section 438 CrPC legally unsustainable.

Brief facts

In the present case, ED contested the verdict issued by the High Court of Telangana, which granted anticipatory bail to the first respondent in connection with a money-laundering offence as outlined in Section 3 and punishable under Section 4 of the PMLA. According to the initial investigation, there was unauthorised access to various e-tenders, leading to manipulation of bids from certain companies.

The FIR listed offences under the IPC, and PCA also being scheduled offences under the PMLA. Anticipating his arrest, the first respondent approached the High Court of Telangana with an anticipatory bail application under Section 438 CrPC. The High Court granted the anticipatory bail without taking into account the restriction imposed by Section 45 of the PMLA.

Decision

The Supreme Court noted that since the investigation against the first respondent was still ongoing under the PMLA, the strict provisions of Section 45 of the PMLA would apply, rendering the grant of anticipatory bail under Section 438 CrPC

legally unsustainable.

The Supreme Court opined that the High Court overlooked the nature and gravity of the alleged money-laundering offences under the PMLA, and instead addressed the request for anticipatory bail solely in connection with the ordinary IPC offence. The Supreme Court emphasised that the acquittal of other accused in the instant case did not provide a basis to halt the investigation against the first respondent.

Citing the precedent in *P. Chidambaram* v. *Enforcement Directorate*[46], the Supreme Court highlighted that in the context of economic offences with a significant societal impact, courts should exercise discretion under Section 438 CrPC cautiously.

With these remarks, the Supreme Court quashed and set aside the High Court's order granting anticipatory bail to the first respondent, noting that any future bail application on his behalf, following his potential arrest, would be assessed in accordance with the law and based on its individual merits.

9. *Pankaj Bansal* v. *Union of India*[47]

Section 19 of the PMLA outlines inherent safeguards that authorised officers must adhere to when making arrests under the PMLA. It is the duty of the authorised officer to document reasons supporting the belief that the person is culpable of an offence and requires arrest. The arrested individual must be informed of the grounds of arrest, ensuring compliance with Article 22(1) of the Constitution.

Brief facts

1. An FIR was lodged by the Anti-Corruption Bureau in Panchkula, Haryana invoking the PCA, along with Section 120-B IPC alleging corruption, bribery, and criminal conspiracy against specific individuals, including the M3M Group and one of its promoters.
2. The appellants, namely, Pankaj Bansal and Basant Bansal (appellants) served as promoters/directors within the M3M Group. Notably, they were not explicitly named as accused parties in either the FIR or the first enforcement case information report (first ECIR) filed by ED.
3. Upon ED's property raids, bank account seizures of the M3M Group, and the arrest of one of the accused, the appellants fearing arrest sought interim protection through anticipatory bail from the Delhi High Court which came to be granted. ED contested this protective measure in the Supreme Court — the proceedings in which were still pending at the time of disposal of the instant

matter.

4. Meanwhile, ED registered a second ECIR (second ECIR) in which as well, the appellants were not implicated as accused.
5. Subsequently, ED issued summonses to the appellants. While they appeared at ED office on the specified date, the first appellant Pankaj Bansal received fresh summons related to the second ECIR, instructing him to appear before another investigating officer on the same day.
6. Following this, the appellants were arrested on the same day under the provisions of Section 19 of the PMLA and were then presented before the Vacation Judge/Additional Sessions Judge in Panchkula. During this appearance, they were served with the remand application filed by ED. The Vacation Judge issued an order granting custody to ED for a period of 5 (five) days, which was subsequently extended before the appellants were placed in judicial custody.
7. Aggrieved with these developments, the appellants filed writ petitions before the High Court of Punjab and Haryana which came to be dismissed. Subsequently, the appellants contested the decisions of the High Court of Punjab and Haryana by filing criminal appeals before the Supreme Court.

Decision

The Supreme Court, drawing upon its rulings in *Vijay Madanlal Choudhary* v. *Union of India*[48] and *V. Senthil Balaji* v. *State of T.N.*[49], reaffirmed the following:

(*i*) Section 19 of the PMLA outlines inherent safeguards that authorised officers must adhere to when making arrests under the PMLA.

(*ii*) It is the duty of the authorised officer to document reasons supporting the belief that the person is culpable of an offence and requires arrest.

(*iii*) The arrested individual must be informed of the grounds of arrest, ensuring compliance with Article 22(1) of the Constitution.

(*iv*) The authorised officer is obligated to present the arrested person before the Magistrate within 24 hours, as stipulated by Section 167 CrPC.

(*v*) The responsibility lies with the investigating agency to convince the Magistrate of the necessity for the accused's custody through substantial evidence.

(*vi*) The Vacation Judge/Additional Sessions Judge failed to record a determination that he had reviewed the grounds of arrest and verified whether ED had valid reasons to believe that the appellants were guilty under the PMLA.

(*vii*) Importantly, Section 19 of the PMLA lacks specific guidance on the method of "informing" the arrested individual about the grounds of arrest. This particular aspect was not explicitly discussed in *Vijay Madanlal Choudhary* v. *Union of India*[50] and *V. Senthil Balaji* v. *State of T.N.*[51]

(*viii*) To ensure the effective adherence to Article 22(1) of the Constitution, which ensures that an arrested person is promptly informed of the grounds for arrest, it is crucial that the mode of conveying these grounds is meaningful.

Thereafter, the Supreme Court examined the dual conditions outlined in Section 45 of the PMLA that enable an arrested person to seek release on bail. Firstly, the Court must be convinced that there are reasonable grounds to believe the arrested person is not guilty of the offence. Secondly, the Court must be satisfied that the arrested person is unlikely to commit another offence while on bail.

To fulfil these requirements, the Supreme Court emphasised the necessity for an arrested person to be aware of the grounds of arrest. This awareness enables them to plead and prove before the Special Court that there are grounds to believe they are not guilty, facilitating the grant of bail.

Communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the PMLA, serves this higher purpose and deserves due importance.

The Supreme Court scrutinised the regulations governing arrests under the PMLA and highlighted the disparate procedure adopted by the ED in conveying grounds of arrest.

Consequently, the Supreme Court recommended providing written grounds of arrest for the following reasons:

(*i*) First, orally reading out the grounds may lead to conflicting accounts between the arrested person and the authorised officer regarding compliance.

(*ii*) Secondly, providing a written copy fulfils the constitutional objective of enabling the arrested person to seek legal counsel. Therefore, permitting the authorities to merely read out the grounds of arrest (which in some cases might run into volumes of pages) would defeat the very purpose of securing the statutory and constitutional right.

Therefore, considering the above, the Supreme Court ruled that a copy of the

written grounds of arrest must be provided as a standard practice, not an exception, thereby ensuring due compliance with the mandate prescribed under Article 22(1) of the Constitution and Section 19 of the PMLA.

Based on the above, the Supreme Court determined that, in the present case, the arrest of the appellants did not comply with the requirements of Section 19 of the PMLA and Article 22(1) of the Constitution. Consequently, the Court held that the arrest of the appellants and their subsequent remand to ED custody and judicial custody was not legally sustainable.

10. *Ram Kishor Arora* v. *Enforcement Directorate*[52]

The verdict in *Pankaj Bansal* v. *Union of India*[53] is effective from the date of the judgment onwards. Accordingly, any failure to provide written grounds of arrest before this judgment cannot be deemed illegal.

The appellant, who is the founder of Supertech Limited, faced multiple FIRs being registered against him. Simultaneously, the ED initiated a case, serving summons to the appellant under Section 50 of the PMLA on various dates, during which the appellant's statements were recorded. On 12-5-2023, a notice was issued to the appellant under Section 8(1) of the PMLA, directing the appellant to show cause as to why the properties provisionally attached should not be confirmed as assets involved in money laundering. However, before the appellant could respond to the show-cause notice, he was arrested on 27-6-2023 without being provided with any grounds for the arrest.

Following the arrest, the Special Court remanded the accused/appellant to ED's custody until 10-7-2023, after which he was placed in judicial custody for another 14 days until 24-7-2023. Subsequently, the appellant filed a petition before the High Court of Delhi seeking a declaration that ED's arrest was illegal and violative of the fundamental rights guaranteed under the Constitution. The aforesaid petition came to be dismissed by the High Court of Delhi in terms of the impugned order.

Aggrieved by the decision of the High Court of Delhi, the appellant approached the Supreme Court. Before the Supreme Court, the controversy revolved around the interpretation of Section 19 of the PMLA, which addresses the power of ED to make arrests.

The appellant, relying heavily on another recent decision by the Supreme Court in *Pankaj Bansal* v. *Union of India*[54], argued that the mere oral communication of the

grounds of arrest, or having the accused read them, and obtaining his signature without providing the written grounds of arrest does not constitute sufficient compliance with the provisions of Section 19(1) of the PMLA.

Decision

At the outset, the Supreme Court read through the decision in *Vijay Madanlal Choudhary* v. *Union of India*[55] wherein the provisions under Section 19 were examined and constitutionally upheld. In *Vijay Madanlal*[56], the Supreme Court observed that Section 19 was held to have a reasonable nexus with the object and goals of PMLA.

On whether furnishing a copy of the ECIR to the person facing arrest was necessary, the *Vijay Madanlal*[57] case ruled that informing the person about the arrest grounds satisfies the constitutional mandate under Article 22(1) of the Constitution. The supply of ECIR to the person concerned is not obligatory in every case, and the contemporaneous disclosure of arrest grounds during the arrest was also deemed sufficient.

Citing the case in *Pankaj Bansal* v. *Union of India*[58], the Supreme Court highlighted the necessity of furnishing a written copy of arrest grounds to the arrested person. Delving into the doctrine of binding precedent, the Court referred to the decision in *Union of India* v. *Raghubir Singh*[59], emphasising that decisions by a Division Bench are binding on a similar or smaller Division Bench. Thus, the Court maintained the precedence set by the three-Judge Bench in *Vijay Madanlal case*[60], asserting the reasonable nexus of Section 19(1) of the PMLA with its objectives.

Addressing the term "as soon as may be" the Supreme Court noted that the term was not specifically explained in *Vijay Madanlal*[61]. However, the Supreme Court went on to interpret it as conveying immediacy within a reasonably convenient or requisite time-frame. Considering the duty imposed on the officer concerned to forward the arrest details to the adjudicating authority promptly, the Supreme Court deemed twenty-four hours after the arrest as a reasonable and convenient time for informing the arrestee about the grounds.

Consequently, the Supreme Court, relying on *Vijay Madanlal*[62], ruled that oral communication of arrest grounds during the arrest, coupled with furnishing a written communication as early as possible and within twenty-four hours would constitute sufficient compliance with Section 19 of the PMLA and Article 22(1) of the Constitution.

Examining the case in *Pankaj Bansal* v. *Union of India*[63], the Supreme Court clarified that the mandatory written communication of arrest grounds was effective from the date of the judgment onwards. Accordingly, any failure to provide written grounds before this judgment could not be deemed illegal. In the current case, the Supreme Court noted the document containing grounds of arrest was handed to the accused during his arrest, and his signature and endorsement confirmed awareness of the grounds, leading the Supreme Court to conclude that the arrest adhered to Section 19 of the PMLA and Article 22(1) of the Constitution.

---

†Founder and Head of Trinity Chambers, Delhi.

†Counsel at Trinity Chambers, Delhi.

1. (2023) 4 SCC 357.
2. (2023) 4 SCC 357.
3. Constitution of India, Art. 32.
4. Special Court, Ghaziabad.
5. Prevention of Money-Laundering Act, 2002 (PMLA).
6. Enforcement Directorate (ED).
7. Foreign Exchange Management Act, 1999 (FEMA).
8. First information report (FIR).
9. Penal Code, 1860 (IPC).
10. Black Money Act.
11. Income Tax Act, 1961.
12. Enforcement case information report (ECIR).
13. 2022 SCC OnLine SC 929
14. Criminal Procedure Code, 1973 (CrPC).
15. (2020) 10 SCC 92.
16. 2023 SCC OnLine SC 477.
17. 2023 SCC OnLine SC 477.
18. Central Bureau of Investigation (CBI).
19. Prevention of Corruption Act, 1988 (PCA).

20. *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335.
21. 2023 SCC OnLine SC 619.
22. 2023 SCC OnLine SC 619.
23. Economic Offences Wing (EOW).
24. 2023 SCC OnLine SC 645.
25. 2022 SCC OnLine SC 929.
26. 2022 SCC OnLine SC 929.
27. 2022 SCC OnLine SC 929.
28. 2022 SCC OnLine SC 929.
29. (2023) 10 SCC 276.
30. (2023) 10 SCC 321.
31. (2023) 10 SCC 321.
32. Central Vigilance Commission (Amendment) Act, 2021 (CVC Amendment Act).
33. Delhi Special Police Establishment (Amendment) Act, 2021 (DSPE Amendment Act).
34. *Binoy Viswam* v. *Union of India*, (2017) 7 SCC 59.
35. (2023) 10 SCC 321.
36. (2022) 12 SCC 455.
37. (2023) 10 SCC 321.
38. (2023) 6 SCC 92.
39. Special Court, Lucknow.
40. Special Court, Ernakulam.
41. Unlawful Activities (Prevention) Act, 1967 (UAPA).
42. (2023) 4 SCC 357.
43. 2023 SCC OnLine SC 934.
44. (1992) 3 SCC 141.
45. 2022 SCC OnLine SC 1862.
46. (2019) 9 SCC 24.
47. 2023 SCC OnLine SC 1244.
48. 2022 SCC OnLine SC 929.

49. 2023 SCC OnLine SC 934.
50. 2022 SCC OnLine SC 929.
51. 2023 SCC OnLine SC 934.
52. 2023 SCC OnLine SC 1682.
53. 2023 SCC OnLine SC 1244.
54. 2023 SCC OnLine SC 1244.
55. 2022 SCC OnLine SC 929.
56. 2022 SCC OnLine SC 929.
57. 2022 SCC OnLine SC 929.
58. 2023 SCC OnLine SC 1244.
59. (1989) 2 SCC 754.
60. 2022 SCC OnLine SC 929.
61. 2022 SCC OnLine SC 929.
62. 2022 SCC OnLine SC 929.
63. 2023 SCC OnLine SC 1244.