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

% Judgment reserved on: 09.10.2023
Judgment pronounced on: 13.10.2023

\+ **CRL.M.C. 7277/2023**

AMIT CHAKRABORTY ..... Petitioner

versus

STATE (NCT OF DELHI) ..... Respondent

CRL.M.C. 7278/2023,
CRL.M.A. 27162/2023, CRL.M.A. 27164/2023

PRABIR PURKAYASTHA ..... Petitioner

versus

STATE (NCT OF DELHI) ..... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Rohit Sharma, Mr. Rounak Nayak, Mr. Nikhil Purohit and Mr. Jatin Lalwani, Advocates (in CRL.M.C. 7277/2023)

Mr. Kapil Sibal, Mr. Dayan Krishnan and Mr. Siddharth Aggarwal, Sr. Advocates with Mr. Arshdeep Singh Khurana, Mr. Harsh Srivastava, Mr. Harshit Mahalwal, Mr. Sidak Singh Anand, Mr. Manan Khanna, Mr. Nikhil Pawar, Ms. Rupali Samuel, Ms. Sowjhanya Shankar, Mr. Shreedhar Kale, Mr. Chaitanya and Mr. Vibhu

Walia, Advocates (in CRL.M.C. 7278/2023)

For the Respondent : Mr. Tushar Mehta, Solicitor General with Mr. Amol Sinha, ASC, Mr. Akhand Pratap Singh, Mr. Kshitiz Garg, Mr. Ashvini Kumar, Mr. Rahul Kochar, Ms. Chavi Lazarus, Mr. Zoheb Hossain, Mr. Vivek Gurnani, Mr. Baibhav and Ms. Manisha Dubey, Advocates for STATE

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

[The proceeding has been conducted through Hybrid mode]

1. Upon the requests made by the learned counsel for the parties, CRL.M.C. 7278/2023 is taken up for adjudication first.

CRL.M.C. 7278/2023

2. The petitioner seeks following reliefs:-

> *"A. Declare the arrest of the Petitioner as illegal and in gross violation of the fundamental rights of the Petitioner guaranteed under Article 21 and 22 of the Constitution of India in relation to FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police;*
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> *B. Declare and set aside the Remand Order dated 04.10.2023 passed by the Ld. Special Judge, Patiala House Court as null and void as the same being passed in complete violation of all constitutional mandates including failure to consult and to be defended by legal practitioner of his choice during the Remand Proceedings, being violative of Petitioner's right guaranteed under Article 22 of the Constitution of India.*

C. Direct immediate release of the Petitioner from custody in FIR No. 224/2023 dated 17.08.2023 PS Special Cell, Lodhi Road, Delhi Police."

3. Facts as culled out from the petition filed by the petitioner are as follows:-

"ix. On 03.10.2023 during the wee hours of the morning i.e. from 6:30 AM onwards, officers of Special Cell, PS Lodhi Road carried out extensive raids at the residential and official premises of the Petitioner and the said Company in relation to the said FIR and admittedly seized various documents and digital devices belonging to the Petitioner and other employees of the said Company during its search and seizure proceedings. It is submitted that despite having searched the premises of the said Company and having sealed its office after seizure of all digital devices, no panchnama/seizure memo or backup of any of digital devices seized from the office of the Company was provided by the raiding party of Special Cell PS Lodhi Road at the conclusion of the search. It is further submitted that the Petitioner apprehends that the digital data retrieved during the course of the aforesaid raids may be tampered with so as to falsely implicate the Petitioner and the said company in the said FIR.

x. It is further pertinent to note that the Petitioner herein was unlawfully arrested and has been in the custody of the officers of Special Cell, PS Lodhi Road from the morning of 03.10.2023 i.e., 6:30 AM onwards. The Petitioner was taken to the office of the said Company in the afternoon on 03.10.2023 by the officers of the Special Cell, PS Lodhi Road in their custody and thereafter the Petitioner was taken to Special Cell, PS Lodhi Road in the evening. The Petitioner was informed only around 7 PM that he has been arrested in the said FIR. However, no grounds of arrest were communicated to the Petitioner either orally or in writing at the time of the arrest. Notably, the same has yet not been communicated to the Petitioner at the time of filing of the instant Petition either. The Petitioner was briefly shown certain documents at the time of his arrest, which he was told were a memo of arrest and a personal search memo, and he was asked to sign the said documents, without giving him any opportunity or time to read them. It is relevant to note that even these documents have not been provided to either the Petitioner or his counsel.

xi. It is submitted that even after his arrest, the Petitioner was not supplied with the copy of the said FIR. Though the Petitioner was allowed to meet his counsel briefly on 03.10.2023 at the Special

Cell office at Lodhi Road, Delhi, he was not permitted to sign any Vakalatnama nor was the Counsel provided with a copy of the said FIR despite multiple requests. The Petitioner and his counsel were informed that he would be produced for the purposes of Remand the next day i.e. on 04.10.2023 during court hours.

xii. On 04.10.2023, without any prior notice, again during the wee hours of morning, the Petitioner was abruptly woken up and taken to the residential premises of the Ld. Special Judge at around 6-6:30 AM. At the residence of the Ld. Special Judge, the Public Prosecutor, and a Legal Aid Counsel ("LAC")/remand counsel were already present, and the counsel for the Petitioner, whose identity was known to the IO, was not informed. It is submitted that no documents authorising the LAC to appear on his behalf were executed by the Petitioner. Neither the Petitioner's counsel nor any of his family members were informed about the aforesaid proceedings and were consequently not present during the course of the hearing which commenced upon arrival of the Petitioner and the police authorities at the said residence. The entire remand proceedings took place in absence of Petitioner's counsel and family members. During the hearing, the Petitioner expected that his family or counsel would have been informed and will present themselves. It is only when the Petitioner realized that the remand hearing was getting concluded around 7 AM without their presence, he enquired whether his family or Counsel were informed and upon getting an answer in the negative, he made a request to the Ld. Special Judge that he requires the presence of his counsel to consult and make submissions on his behalf.

xiii. Resultantly, at around 7 am, one of the Petitioner's family members was apprised of the Remand Proceedings on his mobile phone and he was requested to inform the Petitioner's Counsel about the same and request the Petitioner's Counsel to call the Investigating Officer ("IO"). The Petitioner's Counsel called the IO immediately and was informed of the Petitioner's Remand Proceedings. The Petitioner's counsel immediately objected to the said Remand Proceedings and requested that he may be permitted to reach the residence of the Ld. Special Judge to appear physically and take part in the Remand Proceedings after meeting and taking instructions from the Petitioner. It is submitted that the Petitioner's counsel was informed that the Remand Application would be forwarded to him on his phone and he can file his objections through WhatsApp.

xiv. At around 7:07 PM an unsigned copy of the Remand Application was sent through WhatsApp messages to the

Petitioner's counsel through the IO. It is pertinent to mention that the Remand Application neither mentions the time of the arrest nor mentions if the grounds of arrest were communicated to the Petitioner.

xv. Upon receipt of the Remand Application, the Petitioner's counsel immediately responded that the Petitioner would be filing an application for opposing the remand of the Petitioner and which application was sent around 8 AM on the IO's phone. The IO responded on WhatsApp by providing the number of the Naib Court and requested the counsel to forward all applications to the said number. These applications were provided to the Naib Court around 8.12 AM with a request to forward the same to the Hon'ble Court for the purposes of deciding the remand. A document containing detailed objections to the grant of remand was forwarded within an hour of the receipt of the remand application.

xvi. However, shockingly, the Petitioner's counsel was informed that the Impugned Order has already been passed and seven days police custody remand has been granted vide the Impugned Order. The order was passed without hearing the Petitioner's Counsel and without consideration of the aforesaid documents. It is submitted that despite the illegal arrest of the Petitioner in the said FIR and the unlawful manner in which the Remand Proceedings were conducted due to the actions of the Respondent, the Ld. Special Judge on 04.10.2023, without application of judicial mind, particularly on the issue of non-compliance with Article 22, erroneously proceeded to remand the Petitioner herein to police custody for seven days.

xvii. It is also pertinent to mention that the order records that it has been signed at 6:00 AM which is not/cannot be the case as no remand order was passed at least till 7 AM when the Petitioner's family member was called to join the remand proceedings. Further, shockingly, the order also records the presence of the Petitioner's Counsel through telephone, though he was contacted only after 7 AM and thus could not have been present at 6 AM.

xviii. It is submitted that a perusal of the aforesaid Impugned Order dated 04.10.2023 would reveal that apart from the Petitioner's counsel, the Public Prosecutor and the LAC were already aware about the said production and were thus physically present at the residence of the Ld. Special Judge. However, as no prior notice of production was given either to the Petitioner's family or his counsel, the Petitioner, who was already deprived of the reasons for the arrest or allegations against him due to non-supply of

grounds of arrest or said FIR, was denied his right to legal representation of his choice by the Respondent in a well thought manner, since the Petitioner's counsel who wished to appear physically to oppose the remand application, had no other option but to join the proceedings through a telephone call on such short notice.

xix. That thereafter on 04.10.2023, the Petitioner was permitted to meet his counsel in the evening, pursuant to permission granted by Ld. Special Judge, and it was in this meeting that the Petitioner informed his counsel about the aforesaid events that transpired during the remand proceedings.

xx. Till the time of filing of the instant Petition, the Petitioner has not been provided any grounds of arrest, either orally or in writing. However, the Petitioner's application for supply of copy of FIR has been allowed by the Ld. Special Judge vide order dated 05.10.2023, however, the Petitioner and his counsel are yet to receive the copy of the said FIR. It is pertinent to mention even this application of the Petitioner was opposed by the Respondent as is evident form the reply filed by the Respondent, even after three days of Petitioner's arrest."

4. Before adverting to the arguments and facts as addressed in the present case, it is deemed relevant to consider the law which would govern the considerations in the present case.

LEGAL ANALYSIS

5. This Court considers that the following legal issues arise in the present case:-

(a) *Whether ratio laid down by the Supreme Court in Pankaj Bansal versus Union of India and Others reported in Criminal Appeal Nos.3051-3052 of 2023 can be made applicable to the present case?*

6. The substratum of the arguments addressed on behalf of the petitioner revolves around the ratio recently laid down by the Supreme Court in ***Pankaj Bansal Vs. Union of India & Ors***, reported in ***2023 SCC OnLine SC 1244***, which will be adverted to in the following

paragraphs. According to the petitioner, though the aforesaid case was in the context of the provisions of sections 19(1), 19(2) and 45 of The Prevention Of Money-Laundering Act, 2002 (hereinafter referred to as "PMLA") read with Article 22(1) of the Constitution of India, however, the language of section 19 of PMLA being *pari materia* with section 43B of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as "UAPA"), the ratio would be squarely applicable to the facts of the present case. The emphasis was on the following paragraphs:-

> *"**32.** 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 of the Act of 2002 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 authorized 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 Act of 2002. 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 of the Act of 2002, is meant to serve this higher purpose and must be given due importance.*

33. *We may also note that the language of Section 19 of the Act of 2002 puts it beyond doubt that the authorized officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of an offence punishable under the Act of 2002. Section 19(2) requires the authorized officer to forward a copy of the arrest order along with the material in his possession, referred to in Section 19(1), to the Adjudicating Authority in a sealed envelope. Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be 'informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002. As already noted hereinbefore, It seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.*

36. *That being so, there is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception. There are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard. In the case on hand, that is the situation insofar as Basant Bansal is concerned. Though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in V. Senthil Balaji (supra). Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.*

37. *The second reason as to why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person. Conveyance of this information is not only to apprise the arrested person of why he/she is being*

arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses. In this regard, the grounds of arrest in V. Senthil Balaji (supra) are placed on record and we find that the same run into as many as six pages. The grounds of arrest recorded in the case on hand in relation to Pankaj Bansal and Basant Bansal have not been produced before this Court, but it was contended that they were produced at the time of remand. However, as already noted earlier, this did not serve the intended purpose. Further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible for either Pankaj Bansal or Basant Bansal to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies. More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her. The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002.

38. *We may also note that the grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation.*

39. *On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in Moin Akhtar Qureshi (supra) and the Bombay High Court in Chhagan Chandrakant Bhujbal (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants*

and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted supra, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained."

7. It would be apposite to extract Section 19(1) & (2) of the PMLA as also Section 43A & 43B of the UAPA and Article 22(1) of the Constitution of India, which are as under –

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

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) xxx

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

*[**43A. Power to arrest, search, etc.—**Any officer of the Designated Authority empowered in this behalf, by general or special order of the Central Government or the State Government, as the case may be, knowing of a design to commit any offence under this Act or has reason to believe from personal knowledge or information given by*

any person and taken in writing that any person has committed an offence punishable under this Act or from any document, article or any other thing which may furnish evidence of the commission of such offence or from any illegally acquired property or any document or other article which may furnish evidence of holding any illegally acquired property which is liable for seizure or freezing or forfeiture under this Chapter is kept or concealed in any building, conveyance or place, may authorise any officer subordinate to him to arrest such a person or search such building, conveyance or place whether by day or by night or himself arrest such a person or search a such building, conveyance or place.

43B. Procedure of arrest, seizure, etc.—

(1) Any officer arresting a person under section 43A shall, as soon as may be, inform him of the grounds for such arrest.

(2) Every person arrested and article seized under section 43A shall be forwarded without unnecessary delay to the officer-in-charge of the nearest police station.

(3) The authority or officer to whom any person or article is forwarded under sub-section (2) shall, with all convenient dispatch, take such measures as may be necessary in accordance with the provisions of the Code.

THE CONSTITUTION OF INDIA, 1950

ARTICLE 22. Protection against arrest and detention in certain cases.*— (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."*

A minute scrutiny of the aforesaid provisions would bring to fore the following aspects:-

i. Article 22(1) of the Constitution of India provides that no person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds of such arrest. The words *"as soon as maybe"* have been taken note of by the Constitution Bench of the Supreme Court in ***K.M. Abdulla Kunhi and B.L. Abdul Khader vs. Union of India and Others,*** reported in **(1991) 1 SCC 476**, wherein it was

categorically held that there is no period prescribed either in the Constitution or under the concerned detention law, within which the representation should be dealt with and the requirement according to the Supreme Court is that there should not be supine indifference, slackness or callous attitude in considering the representation. Though the Supreme Court was dealing with the interpretation of the words *"as soon as maybe"* occurring in clause (5) of Article 22 of the Constitution, however this Court is of the considered opinion that the same can also be applied to the present case. In that, the grounds of arrest have to be informed to the arrestee as soon as maybe but within a reasonable period from the time of arrest. The reason is not far to see, in that, the rights of the arrestee to be informed of such reasons is fundamental and intertwined with his right to life and personal liberty and freedom as the arrestee is likely to be detained and deprived of both the rights. Having said that, the logical question would be as to what would be the reasonable period for such grounds of arrest to be communicated to the arrestee. As per sections 56 and 57 of the Cr.P.C, 1973, it is mandatory for the police authorities to produce the arrestee before a Magistrate and such arrest/detention beyond 24 hours is not permissible unless an order of further detention is obtained from the Magistrate. Meaning thereby, detention beyond 24 hours without an order permitting such detention is prohibited. If such would be the case, then communication of grounds of detention/arrest

beyond 24 hours would surely not serve the purpose and would be violative of the fundamental rights of such arrestee. That apart, at the time of seeking remand, the Magistrate is to be informed of the grounds of remand which may, to some extent, include the grounds of arrest and as such, the same cannot be construed to go beyond 24 hours of such arrest. Moreover, communication of the grounds of arrest are zealously protected by Article 22(1) of the Constitution of India and thus, it is incumbent upon Courts of Law, in particular, Constitutional Courts to construe the provisions and balance them in such a manner so as to further the constitutional guarantee envisaged under the Constitution. Thus, in the considered opinion of this Court, the words "*as soon as may be*" ought to be construed as not beyond 24 hours from the time of such arrest. Another facet of the issue would be the indelible rights of the arrestee/detainee to obtain or seek bail which would be impacted in case such grounds of arrest are not communicated within a reasonable period and the same cannot be countenanced.

ii. Section 50 of the Cr.P.C., 1973 also mandates that the arrestee has the right to be communicated the grounds of arrest forthwith. This is manifest by the use of the word *"shall"* in that provision. In the opinion of this Court, the use of the word *"shall*" in section 50 has to be read as mandatory in nature since the same would otherwise violate the rights of the arrestee/detainee which have been guaranteed under Article

22(1) of the Constitution of India. The fundamental right to freedom and liberty cannot be lightly interfered with.

iii. So far as the provisions of the Article 22(1) in respect of the right of the arrestee to consult and defended by a legal practitioner of his choice is concerned, the same cannot be diluted for any reason whatsoever. For better appreciation of this right, it would be worth referring to section 41D of the Cr.P.C., 1973 wherein the right and entitlement of the arrestee/detainee to meet/consult an advocate of his choice has been stipulated. It is clear that the same is in consonance and resonates with the noble principles enshrined in Article 22 of the Constitution. In the considered opinion of this Court, every arrestee has an indelible right to consult and be defended by an advocate of his choice.

iv. These sentiments are also reiterated in Part E of Delhi High Court Rules titled as *"Instructions to Criminal Courts in Delhi [Vol. III of High Court Rules and Orders]"* formulated by this Court (hereinafter referred to as "DHC Rules"), though at a different stage of the criminal proceedings, by incorporating the same in various rules relating to remand procedure, particularly, Rule 12 of Part B of Chapter 11 relating to "*Remands to Police Custody*". In fact, it is incumbent upon the Magistrate to grant sufficient time for the counsel to appear and argue the matter, and in the interregnum, the Magistrate may grant temporary remand as per the requirements of a particular case. It would be apposite to extract Rule 12 of Part

B of Chapter 11 of DHC Rules, which is as under:-

> ***12. Before the grant of remand accused should be heard and allowed to engage a counsel****— (i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates in regard to remands (Punjab Government circular Letter No. 6091-J-36/39829 (H.—Judl.), dated the 19th December, 1936, at all District Magistrates in the Punjab).*
>
> *(a) Before a remand is granted in any case, the Magistrate should inform the accused that he is a Magistrate and that a remand has been applied, for and he should ask the accused whether he has any objection to offer to the remand. The order granting the remand should be written at the time it is announced, in the presence of the accused.*
>
> *(b) If the accused wishes to be represented by counsel, the Magistrate should allow time for counsel to appear and argue the matter before him. He may grant a temporary remand in such circumstances until arguments have been heard.*
>
> *(ii) Right of accused to access to counsel and friends—The Punjab Government have issued the following instruction in regard to the right of accused to access to counsel and friends :—*
>
> *An accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Information regarding his place of confinement should at all times be given to his friends on their application, and the prisoner himself should be informed that he is entitled to have the assistance of counsel and to communicate with his relations and friends."*

Rule 12 of Part B of Chapter 11 of DHC Rules, thus, also reiterates the rights of the arrestee to be represented by an advocate at the time of remand proceedings.

v. Now coming to the provisions of The Prevention Of Money-Laundering Act, 2002 in context whereof, the judgement in ***Pankaj Bansal (supra)*** was delivered by the Supreme Court. A perusal of provisions of section 19(1) makes it apparent that the authorised officers on the basis of "*material in his possession"* has *"reason to believe"* which is to be *"recorded*

in writing" that any person is guilty of an offence may arrest such person and shall, as soon as maybe, inform him of the grounds of arrest. The similarity in the language of section 19(1) of PMLA in comparison to section 43B of UAPA appears to be *pari materia* but for the words "*material in his possession"* and *"recorded in writing"*. When compared to the language employed in section 43A of UAPA, except for the words reason to believe, the words "*material in his possession"* and *"recorded in writing"* appear to be deliberately omitted or not inserted by the legislature. It is trite that Courts cannot read into the statute, words which are deliberately or purposefully omitted or not inserted. Therefore, it does not appear to be correct that there is any mandate upon such officer in section 43A of UAPA to record in writing the reason for such belief on the basis of material in his possession.

vi. In so far as the provisions of section 19(2) of PMLA is concerned, the Authorised Officer is required to, immediately after the arrest of a person under section 19(1), forward a copy of the order alongwith the material in his possession referred to sub-section (1), to the Adjudicating Authority, who shall keep such order and the material for such period as may be prescribed. Reading both the sections together, it is apparent that for the purposes of arrest, not only the Authorised Officer has to have material in his possession giving reasons to believe but which are also to be recorded in writing before effecting

arrest of any person. In other words, unless such reasons are recorded in writing and available with the officer, the arrest *de hors* such recorded reasons would be *void ab initio*. It is pertinent to observe that no such provision is present in section 43B of UAPA, where *"reasons to believe"*, for the purposes of arrest, need not be recorded in writing. This is the distinction drawn between provisions of section 19(1) & (2) of PMLA on the one hand and section 43A & 43B of UAPA on the other. Thus, though there may be similarity in certain portions of the language, however, the aforesaid provisions of both the statutes cannot be said to be *pari materia*.

8. That keeping in view the aforesaid, this Court shall now consider the effect of the aforesaid material distinctions in the language of the statutes on the ratio laid down by the Supreme Court in ***Pankaj Bansal (supra)***. In the said case, the Supreme Court was considering the effect of section 19(1) & (2) of PMLA and as to the right of an arrestee to be furnished with the written grounds of arrest at the time of arrest. The Apex Court had observed, on facts, that the authorities under PMLA were providing information of grounds of arrest in varied methods, in that, at some places, the grounds of arrest were informed orally and in some places, they were being permitted to be read or were read out and in others, written grounds of arrest were being furnished. After considering the effect of section 19(1) & (2) of PMLA and coming to the conclusion that it was incumbent upon the authorities to record the reasons for arrest in writing as per section 19(1), the Supreme Court held that there was no reason why the authorities could not provide the

grounds of arrest in writing to the arrestee. The Supreme Court had also reached the said conclusion keeping in view the power to initiate action under section 62 of PMLA against the officer concerned, in case of non-compliance of the provisions of section 19 of PMLA, while relying upon the judgement of the Supreme Court in ***V. Senthil Balaji vs. State Represented by Deputy Director and Ors***, reported in ***2023 SCC OnLine SC 934.*** It is pertinent to note that there is no such corresponding provision in UAPA.

The Supreme Court also considered the effect of section 45 of PMLA to conclude that the rights of the arrestee to obtain bail under the stringent conditions would not be possible unless the arrestee has correct and complete information with respect to his grounds of arrest. In the opinion of the Supreme Court, the said communication of the grounds of arrest as mandated by Article 22(1) of the Constitution and section 19 of PMLA is meant to serve the higher purpose of availing bail after arrest. In other words, according to the Supreme Court, the communication in writing, of the grounds of arrest would serve the dual purpose of Constitutional and Statutory mandate.

Another issue which was considered by the Supreme Court in respect of Section 19(1) of PMLA was with regard to the sensitive material which may be contained in the grounds of arrest. To that, the Supreme Court had observed that such information/sensitive portions could always be redacted, so as to safeguard the sanctity of the investigation.

It was in the above peculiar facts and circumstances regarding disparate procedure conveying the grounds of arrest, that the Supreme

Court mandated that the grounds of arrest ought to be conveyed in writing. It has also passed the said judgement directing that it would be necessary henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course without exception. On that basis, the impugned arrest orders and the orders of remand passed by the learned Sessions Court were set aside and the appellants therein were directed to be released forthwith.

9. So far as the UAPA is concerned, no such similar statutory obligation is cast upon the authorities under the provisions of section 43A & 43B and thus, the ratio of the Supreme Court in ***Pankaj Bansal (supra)*** cannot be said to be squarely applicable to a case arising under the provisions of UAPA.

10. It would also be relevant in the above context to consider the Preamble of both the enactments. The same are extracted hereunder:-

PREAMBLE OF PMLA

"An Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto.

WHEREAS the Political Declaration and Global Programme of Action, annexed to the resolution S-17/2 was adopted by the General Assembly of the United Nations at its seventeenth special session on the twenty-third day of February, 1990;

AND WHEREAS the Political Declaration adopted by the Special Session of the United Nations General Assembly held on 8th to 10th June, 1998 calls upon the Member States to adopt national money-laundering legislation and programme;

AND WHEREAS it is considered necessary to implement the aforesaid resolution and the Declaration."

PREAMBLE OF UAPA

"An Act to provide for the more effective prevention of certain unlawful activities of individuals and associations [1][, and for dealing with terrorist activities,] and for matters connected therewith.

[2][WHEREAS the Security Council of the United Nations in its 4385th meeting adopted Resolution 1373 (2001) on 28th September, 2001, under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism;

AND WHEREAS Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations require the States to take action against certain terrorists and terrorist organisations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory, and prevent the direct or indirect supply, sale or transfer of arms and ammunitions to the individuals or entities listed in the Schedule;

AND WHEREAS the Central Government, in exercise of the powers conferred by section 2 of the United Nations (Security Council) Act, 1947 (43 of 1947) has made the Prevention and Suppression of Terrorism (Implementation of Security Council Resolutions) Order, 2007;

AND WHEREAS it is considered necessary to give effect to the said Resolutions and the Order and to make special provisions for the prevention of, and for coping with, terrorist activities and for matters connected therewith or incidental thereto.]"

A plain reading of the Preamble alongwith aims and objects of the UAPA would make it apparent that the said Act was promulgated with a view to make powers available, for dealing with activities directed against the integrity and sovereignty of India. In other words, it was felt necessary by the legislature, keeping in view the external and internal threats to the stability, sovereignty and integrity of this country, that an

enactment has to be brought into force to prevent and effectively counter any such threat. It need not be emphasized that the noble aim of such enactment, is the national security of this country. Whereas, the Preamble and aims and objects of PMLA is to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Clearly the PMLA is an enactment for maintaining the internal law and order in relation to financial crimes and may or may not have relation to threats to the stability, sovereignty and integrity of this country. In other words, the sensitivity of the information/intelligence being gathered by the investigating authorities under the UAPA is of a greater significance having direct impact on the issues relating to national security. Thus, the ratio laid down by the Supreme Court in ***Pankaj Bansal (supra)*** while relying upon ***V. Senthil Balaji (supra)*** which was purely in relation to the provisions of PMLA cannot, by any stretch of imagination, be made applicable, *mutatis mutandis,* to the cases arising under UAPA.

11. This of course, would not mean that there is no constitutional or statutory obligation enjoined upon the respondent to provide information of grounds of arrest as soon as may be, within 24 hours of such arrest.

12. Thus considering the aforesaid analysis of the law as also the judgements of the Supreme Court, it is held that the grounds of arrest need to be informed to the arrestee within 24 hours of such arrest, however furnishing of such grounds, in written, are not mandated by the UAPA. Keeping in view the law laid down by the Supreme Court in

Pankaj Bansal (supra), and also considering the stringent provisions of UAPA, it would be advisable that the respondent, henceforth, provide grounds of arrest in writing, though after redacting what in the opinion of the respondent would constitute *"sensitive material"*. This too would obviate, as held by the Supreme Court, any such challenge to the arrest as made in the present case.

13. It is a settled law that judgements are not Euclid's theorem to be applied to all cases without considering the facts in the case which is sought to be made applicable to a particular case. In this regard, it would be beneficial to appreciate the judgement of the Supreme Court in ***Commissioner of Central Excise, Bangalore vs. Srikumar Agencies & Ors.*** reported in **(2009) 1 SCC 469** as under:

> *"**5**. "15. ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes ..."*

In this regard, the reference is also made to the judgement of the Supreme Court in ***Goan Real Estate and Constructions Limited & Another vs. Union Of India & Others*** reported in **(2010) 5 SCC 388** as under:

> *"**31**. It is well settled that an order of a court must be construed having regard to the text and context in which the same was passed. For the said purpose, the judgment of this Court is required to be read in its entirety. A judgment, it is well settled, cannot be read as a statute. Construction of a judgment should be made in the light of the factual matrix involved therein. What is more important is to see the issues involved therein and the context wherein the observations were made. Observation made in a judgment, it is trite, should not be read in isolation and out of context. On perusal of para 10 of the judgment, it is abundantly clear that even under the 1991 Notification which is the main notification, it was stipulated that all development and activities within CRZ will be valid and will not violate the provisions of the 1991 Notification till the management plans are approved. Thus, the intention of legislature while issuing the Notification of 1991 was to protect the past actions/transactions which came into existence before the approval of the 1991 Notification."*

It is clear from the above law that the factual situation as also the legal proposition presented before the Supreme Court in ***Pankaj Bansal (supra)*** was entirely distinct from that in the present case inasmuch as the Supreme Court in the aforesaid case was dealing with and interpreting the provisions of section 19(1) & (2) read with section 45 of the PMLA which, as observed above by this Court are not *pari materia* with the provisions of section 43A & 43B of UAPA and as such, cannot be made applicable to the present case. In view of the aforesaid conclusion, the issue (a) is answered accordingly.

CONTENTIONS ON BEHALF OF THE PEITIONER: -

14. Mr. Kapil Sibal and Mr. Dayan Krishnan, learned Senior Counsel

appear on behalf of the petitioner and submit that the petitioner challenges the arrest on the basis that grounds of arrest in written were not conveyed to the petitioner either at the time of arrest or even till date. The petitioner also challenges the order of remand dated 04.10.2023 passed by the learned Special Judge.

15. At the outset, learned Senior Counsel seek to challenge the aforesaid in two parts, namely, the illegality of the arrest in non-supply of grounds of arrest which is mandatory as per ***Pankaj Bansal (supra)*** and the illegality in the remand order dated 04.10.2023 which according to them was passed in violation of Article 22 and Rules of DHC Rules.

16. The primary thrust of the learned Senior Counsel while challenging the arrest of the petitioner, was that the grounds of arrest were not disclosed or conveyed to the petitioner simultaneous with the arrest itself. According to the learned Senior Counsel, it was incumbent upon the respondent to inform the ground of arrest, that too in writing at the time of arrest. Since the same was not complied with in letter and spirit, the arrest itself and the subsequent detention becomes illegal, unsustainable and wholly unconstitutional entitling the petitioner to be released forthwith.

17. For the aforesaid proposition, learned Senior Counsel completely relied upon the judgement of the Supreme Court in ***Pankaj Bansal (supra)***, to submit that the provisions of section 19(1) & (2) of PMLA are *pari materia* with the provisions of section 43B of UAPA and as such, the judgement in ***Pankaj Bansal (supra)*** having been rendered on 03.10.2023, the ratio laid down was not only squarely applicable but also binding upon the respondent. They submit that, admittedly, no

written communication of grounds of arrest, as mandated by the Supreme Court in ***Pankaj Bansal (supra)*** were ever furnished to the petitioner. Learned Senior Counsel submit that the failure thereof would render the arrest *void ab intio* and an illegal act at that and as such, the said arrest ought to be declared as illegal and the petitioner be released forthwith. In fact, the assertions of the learned Senior Counsel is that even till date, the respondent have not furnished the written grounds of arrest at all.

18. While referring to the various observations and the ratio laid down by the Supreme Court in ***Pankaj Bansal (supra)*** and ***In Re Madhu Limaye and Ors***, reported in **(1969) 1 SCC 292**, learned Senior Counsel submit that it was incumbent upon the respondent to have furnished written grounds of arrest to the petitioner and the alleged oral furnishing of grounds of arrest would not be in accordance with the law as declared by the Supreme Court. According to learned Senior Counsel, failure of the above condition would necessarily entail immediate release of the petitioner.

19. So far as the challenge to the remand order is concerned, learned Senior Counsel submit that the same suffers from the following fatal defects:-

19.1 That the petitioner was deprived of having the benefit of a counsel of his choosing at the time when the remand application was being considered, which is violative of not only Article 22(1) of the Constitution of India and Rule 12 of Part B of Chapter 11, apart from the other relevant rules of DHC Rules.

19.2 That the remand order was passed without hearing the objections of the counsel for the petitioner.

19.3 That the remand order was already passed at 06:00 A.M. on 04.10.2023 as noted by the learned Special Judge in the remand order at the place where the signature was appended. Thus, the so called opportunity afforded to the petitioner to be defended by the counsel of his choice was a mere formality since the copy of the remand application was sent by the IO to the counsel for the petitioner, objections to which was sent around 8 A.M. which was directed to be forwarded to the concerned Naib Court and was done accordingly at 8:12 A.M., while the remand order was already passed at 6:00 A.M., as noted in the order itself.

19.4 That the learned Special Judge did not apply its mind to the facts inasmuch as there is neither any reference to the Case Diary nor have any arguments/objections of the petitioner recorded in the impugned order, reflecting the mechanical manner in which the said remand order was passed. It was incumbent upon the learned Special Judge, particularly in view of DHC Rules to take into consideration not only the contents of the Case Diary but also the arguments/objections on behalf of the arrestee before passing the order of remand.

19.5 That the insertion of the sentence *"Copy of remand application sent through WhatsApp to counsel for*

accused persons" in the remand order between the two paragraphs appears to be an interpolation inserted to show as if the rules of remand have been complied with. However, the said interpolation displays complete arbitrariness bordering on judicial indiscipline. On that count too, learned Senior Counsel submits that the remand order ought to be set aside.

19.6 Though the remand application was purported to have contained the grounds of arrest, however the same are conspicuous by their absence. In any case, the remand application only contains, at best, grounds as to why the respondent requires remand of the petitioner and definitely not the grounds of arrest.

19.7 The order of remand is bereft of any reasons and does not even advert to the facts or allegations made in the FIR nor does it display any application of mind at all before the same was passed.

20. That apart from the above arguments, learned Senior Counsel have adverted to the ratio laid down in the judgement passed by the Supreme Court in ***Pankaj Bansal (supra)***, ***In Re Madhu Limaye (supra)*** and ***V. Senthil Balaji (supra)***. Having regard thereto, learned Senior Counsel submit that the petitioner is entitled to be released forthwith either for the non-compliance of furnishing written grounds of arrest or release on account of illegal or unlawful order of remand passed by the learned Special Judge.

CONTENTIONS ON BEHALF OF THE RESPONDENT:-

21. Mr. Tushar Mehta, learned Solicitor General of India (hereinafter referred to as "learned SG") appears for the respondent and submits that the controversy in the present case revolves around primarily two aspects:

i. Whether the arrest is in accordance with law?

ii. Whether the order dated 04.10.2023 directing remand of the petitioners to police custody was in accordance with the law, rules and procedures?

21.1 Insofar as the issue regarding arrest of the petitioner is concerned, learned SG referred to the allegations broadly leveled against the petitioner.

21.2 According to learned SG, the offences leveled against the petitioner are in respect of allegations regarding stability and integrity of the country and as such are very serious offences affecting the national security of the entire country.

21.3 Learned SG also submits that the email exchanges between the petitioner and other entities which have been analysed till now indicate a deliberate attempt to show the State of Jammu & Kashmir and Arunachal Pradesh as *"disputed territories"*. So much so that the words used for Arunachal Pradesh in particular are *"Northern Border of India"* which according to learned SG is generally used as a Chinese propaganda.

21.4 Learned SG also submitted that the emails allegedly also

contained physical map of India to show certain portions as *"disputed territories"*.

21.5 Overall, the offences alleged against the petitioner for which they were arrested, according to learned SG are very serious and as such ought not to be interfered with by this Court on technical grounds.

21.6 Learned SG submits that the arrest is under the provisions of UAPA which are stringent for the reasons that the same deal with stability, integrity and national security of the country as a whole. As such, when it comes to such offences, the Courts ought to deal with the same keeping in mind the avowed statements of objects and reasons of the said enactment.

21.7 According to learned SG, the provisions of section 43B of UAPA do not require or mandate supply of grounds of arrest in writing. Learned SG submitted that the words *"as soon as may be"* employed in the said section do not mandate that the said grounds of arrest are to be furnished in written simultaneous to the arrest itself. Even Article 22 of the Constitution of India does not prescribe or mandate any specific time or manner in which the grounds of arrest are to be communicated and as such, the contention of the petitioners on this point is untenable, both on statutory and constitutional provisions.

21.8 While referring to Para 35 & 36 of the reply, learned SG

submits that the expression *"as soon as may be"* in the context of Article 22(5) has been interpreted by the Supreme Court in ***Abdulla Kunhi (supra)*** to mean that there is no period prescribed either under the Constitution or under the law so long as the legal requirement of informing is not dealt with supine indifference, slackness or callous attitude. The same interpretation was also borne out by the Constituent Assembly Debates wherein the suggestions to quantify the time period to inform the grounds of arrest was found to be unnecessary and it was observed by Dr. B.R. Ambedkar that in any case, informing such grounds of arrest cannot be later than 24 hours, particularly when the grounds of arrest and further custody are required to be informed to the Magistrate itself in the presence of the arrestee.

21.9 That apart, while referring to Para 15 of the reply, learned SG categorically asserted that the petitioner was indeed virtually informed of the grounds of arrest, apart from the fact that the grounds of arrest were also contained in the Memo of Arrest, though not very detailed. Learned SG also asserted that said Memo of Arrest was signed in acknowledgement by the petitioner and his family member. As such, there being no statutory or constitutional mandate of the manner in which grounds of arrest have to be communicated, the

compliance under Article 22(1) and section 43B of UAPA were duly effected as per law. Learned SG also submits that, in any case, the grounds of arrest were virtually mentioned in the application seeking remand itself which was served upon the counsel for the petitioner within 24 hours of his arrest.

21.10 While referring to the provisions of section 19(1) & (2) of PMLA, learned SG submits that the written grounds of arrest are predicated on the reason of such belief of the designated officer which are to be sent to the Adjudicating Authority before any such arrest is effected. According to learned SG, the reasons are not far to see since the provisions of section 62 of PMLA prescribe stringent punishment against the officers in case of non-compliance or non-adherence to the mandate under section 19(1) & (2) of PMLA. Learned SG submits that the punishment is prescribed against the officer who, without reasons recorded in writing, detains or searches or arrests any person as per Section 62 of PMLA. It is for this reason that the furnishing of written grounds of arrest are made applicable in PMLA in contra-distinction to provisions of 43B of UAPA, where it is not so.

21.11 Learned SG refers to clause (h) of sub-rule (1) of rule (2) of the Prevention of Money-Laundering (the Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating

Authority and its Period of Retention) Rules, 2005, to submit that the definition ascribed in clause (h) to the word *'order'* means the order of arrest of the person and includes the grounds for such arrest under sub-section (1) of section 19 of PMLA. On that basis, learned SG submits that the requirement under section 19(1) & (2) of PMLA is distinct from the requirement under section 43B of UAPA.

21.12 That in the alternate, learned SG submits that the judgement of Supreme Court in ***Pankaj Bansal (supra)*** was no doubt rendered on 03.10.2023, however was uploaded only on 04.10.2023 on the official website of the Supreme Court by which time, the petitioners were already arrested. He also submits that the respondent was not party to the ***Pankaj Bansal (supra)*** and as such, did not have knowledge of the ratio laid down therein. On that basis, he submits that as on the date of arrest, the judgements of the Division Benches of Delhi High Court and Bombay High Court were good law which enunciated that the grounds of arrest are to be informed to the arrestee at the earliest but there is no statutory requirement for the same to be in writing. In order to further the aforesaid arguments, the learned SG relied upon the judgement of the Supreme Court in ***State of Punjab vs. Baldev Singh*** reported in **(1999) 6 SCC 172**, wherein it was held that the oral communication of

grounds of arrest would be a sufficient compliance of Section 50 of The Narcotic Drugs And Psychotropic Substances, Act, 1985. According to learned SG, the respondent had in fact communicated the grounds of arrest to the petitioner which is a sufficient compliance of section 43B of UAPA.

21.13 That apart, learned SG also referred to the word *"henceforth"* as used by the Supreme Court in ***Pankaj Bansal (supra)*** in Para 39, to submit that the said direction is prospective and not retrospective. On that basis, he submits that the ratio laid down in ***Pankaj Bansal (supra)*** even otherwise would not be applicable to the facts of the present case. In support of the said contention, learned SG referred to the definition contained in Black's Law Dictionary.

21.14 That so far the ratio laid down in ***In Re Madhu Limaye (supra)*** is concerned, learned SG submits the same is clearly distinguishable on facts. In that, admittedly the grounds of arrest were never furnished to the petitioners at all, whereas in the present case, the same were duly informed to the petitioner at the time of arrest. To substantiate the above argument, learned SG relied upon Para 1 and particularly Para 9 of the judgement in ***Re Madhu Limaye (supra)***.

22. So far as the issue no (ii) in regard to the question of remand is concerned, learned SG made the following submissions:-

22.1 On instructions, learned SG submits that the time of 6:00 A.M. as entered in the remand order, pertains to the time when the petitioner was produced before the learned Special Judge and not the time when the remand order was passed and as such, the order is in accordance with law and procedures prescribed.

22.2 So far as the allegation of interpolation is concerned, learned SG submits that such insinuation against the judicial officer without any supporting affidavit or evidence is in poor taste. He further submits that the words pointed out by learned Senior Counsel for the petitioner only describe that the counsel for the petitioner was indeed supplied a copy of the application for remand. This fact that the remand application was furnished to the counsel for the petitioner is not disputed at all. Thus, it was only a recording of a fact.

22.3 Learned SG also submits that even if the said remand order is held to be illegal, that would not *ipso facto* entitle the petitioner to be released, rather the petitioner would only be further detained in judicial custody. He further submitted that the petitioner would be entitled to be considered for release on bail thereafter.

23. On the basis of the above submissions, learned SG submits that no grounds for interference are made out and the petitions be dismissed.

REBUTTAL ON BEHALF OF THE PETITIONER

24. In rebuttal, Mr. Kapil Sibal, learned Senior Counsel submits as

under:

24.1 That the word *"henceforth"* need not necessarily always imply the decision to apply prospectively, but in given cases and in a fact situation, may apply retrospectively too. In that, according to learned Senior Counsel, if the word *"henceforth"* used in ***Pankaj Bansal (supra)*** was only to mean prospective application of the direction, then there was no requirement for the Supreme Court to make the same applicable to the case of Pankaj Bansal and ultimately release him on the ground that no grounds of arrest were communicated in writing to Bansal. On that basis, he submits that the law as declared by the Supreme Court in ***Pankaj Bansal (supra)*** would be applicable retrospectively.

24.2 In addition thereto, learned Senior Counsel submits that the Supreme Court has not laid down any new law but has only clarified what the law already enunciated and was in existence which was to be scrupulously followed. Thus, the ratio in ***Pankaj Bansal (supra)*** would be applicable with retrospective effect.

24.3 That the Supreme Court had pronounced the judgement in ***Pankaj Bansal (supra)*** in open court on 03.10.2023 and as such, the respondent cannot feign ignorance of law declared by the Supreme Court. According to him, the argument that the respondent was not a party in ***Pankaj Bansal (supra)*** is irrelevant, in as much as, no

one can be excused on the ground of ignorance of law.

24.4 Learned Senior Counsel vehemently contended that so far as the time as mentioned of 6:00 A.M. in the order of the remand dated 04.10.2023 is concerned, it is indicative of the time when the remand order was passed and not the time when the petitioner was produced before the learned Special Judge. For this, he draws attention to Rule 12(a) of Part B of Chapter 11 of DHC Rules, to submit that the said rule mandates that the Magistrate enters the time when the said remand order is passed and does not even remotely refer to the time when the petitioner is produced. As such, the remand order having been passed at 6:00 A.M., vitiates the order of remand itself.

24.5 Learned Senior Counsel categorically submits that even on facts, not a single penny was received by the petitioner from any source in China and thus, the entire bogey of the prosecution's case is based on irrelevant factors.

24.6 Additionally, Mr. Dayan Krishnan, learned Senior Counsel again referred to the judgement of the Supreme Court in ***In Re Madhu Limaye (supra)*** particularly to para 14, to submit that the violation of the provisions of Article 22(1) of the Constitution would entail immediate release of the petitioner. To the same extent, learned Senior Counsel also relies upon the judgment of ***V.***

Senthil Balaji (supra) to submit that in the said case too, the Supreme Court had ordered immediate release of the petitioner therein while quashing and setting aside arrest order, arrest memos along with the orders of remand.

FACTUAL ANALYSIS AND CONCLUSION:-

25. This Court has minutely scrutinized the pleadings and the various documents annexed therewith and considered the extensive arguments addressed by learned Senior Counsel as also the learned Solicitor General of India on behalf of the parties.

26. At the outset, it would be relevant to consider the facts as stated in the present petition by the petitioner. It is stated that the raid was conducted at the residential and official premises of the petitioner on 03.10.2023 at around 6-6:30 A.M. It is stated that the said raid continued throughout the day and it was only at 5:45 P.M. (as per Memo of Arrest) on 03.10.2023, that the petitioner was arrested. However, as per the averments in the petition, the petitioner himself states that he was informed of having been arrested at 7 P.M. on 03.10.2023. The petitioner also admits that he was briefly shown certain documents at the time of arrest, which were informed to be the Memo of Arrest and a Personal Search Memo, and was made to sign the same without giving him any opportunity to read the contents.

27. The petitioner also admits that he was permitted to meet his counsel briefly on 03.10.2023 at the Special Cell Office at Lodhi Road but was not permitted to sign any Vakalatnama nor was the counsel provided the copy of the FIR.

28. According to the petitioner, on the wee hours of 04.10.2023, the

petitioner was woken up and taken to the residential premises of learned Special Judge at around 6-6:30 A.M. It is contended by the petitioner that his counsel or family members were not informed about the remand proceedings and it was only at around 7 A.M. when the remand proceedings were getting concluded that he made a request to the learned Special Judge for the presence of his counsel to consult and make submissions on his behalf. It is the contention of the petitioner that at around 7 A.M., his family member was apprised of the remand proceedings on his mobile phone with a request to inform the petitioner's counsel. It is stated that upon receiving such information, the counsel immediately contacted the IO and on being told about the remand proceedings, he immediately objected to the same and requested that he be permitted to reach the residence of learned Special Judge and take part in the remand proceedings physically.

29. The petitioner admits that the remand application was received by his counsel through WhatsApp whereupon the counsel responded that the petitioner would be filing an application for opposing the remand of the petitioner which was sent around 8 A.M. on 04.10.2023 on the IO's phone. Upon the direction of the IO, the said applications were provided to the Naib Court around 8:12 A.M.

30. It is then contended that shockingly, the petitioner's counsel was informed that the impugned order was already passed remanding the petitioner to 7 days police custody. It is also further contended that permission was obtained from the learned Special Judge by the counsel to meet the petitioner on 04.10.2023, and had met his counsel on the same evening when he informed his counsel about the events that

transpired during the remand proceedings. In the same breath, petitioner also contended that the counsel for the petitioner who wished to appear physically to oppose the remand application had to join the remand proceedings through telephone call on such short notice.

31. Adverting to the aforesaid admitted facts as averred in the petition, the entire arguments on facts in respect of the arrest and the subsequent remand proceedings appear to be clearly at variance. So much so, they are at times, contradictory. The petitioner was at pains to demonstrate as to how the arrest itself was illegal, in that, the grounds of arrest were not informed or conveyed to him at the time of arrest. Whereas, it is the categoric stand of the respondent that not only the grounds of arrest were informed to the petitioner orally, the same was virtually conveyed in writing *vide* the Memo of Arrest. This fact has been asserted by the respondent in the counter affidavit signed and executed by an officer of the rank of Deputy Commissioner of Police.

32. This Court has also considered the contents of the remand application and it appears that the substratum of the allegations which would comprise the reasons for arrest is indeed contained in the said application. It is also beyond dispute that the said application in writing was furnished to the counsel for the petitioner during the remand proceedings and within 24 hours of his arrest. It is not disputed from the above admitted facts that the counsel for the petitioner had also participated in the remand proceedings and had opposed the same, though telephonically directly to the learned Special Judge. This is also specifically noted in the impugned remand order.

33. The contention regarding the remand order already having been

passed at 6 A.M., the subsequent furnishing of the remand application and oral telephonic hearing provided to the counsel being an empty formality is also contradicted by the admissions of the petitioner in his petition. In that, the petitioner himself submits that he was produced before the learned Special Judge between 6-6:30 A.M. and that it was at around 7 A.M. when, according to the petitioner, the remand proceedings were getting concluded, that he sought and was granted permission to contact his counsel through a family member. That apart, as already observed above, the counsel was provided with the remand application as also was heard, though telephonically by the learned Special Judge before passing the remand order.

34. It is also intriguing to note that the petitioner had indeed met his counsel in the evening on 03.10.2023 after he was arrested, yet there is no averment to state that the petitioner or his counsel had objected to such arrest on the ground of not having been informed of the grounds of his arrest. It is intriguing that the petitioner admits to have met his counsel in the evening hours of 04.10.2023 also, albeit, after seeking permission from the learned Special Judge for such meeting, yet, there is no averment on record to demonstrate as to what effective steps were taken by the counsel for the petitioner even after that. This petition was filed on 06.10.2023, almost 3 days after the date of arrest and 2 days after the remand proceedings and there is no explanation forthcoming on that count.

35. What is even more intriguing is the fact that the petitioner contends that the copy of the FIR was furnished to him only after an application making such request was filed before the learned Special

Judge who allowed the same on 05.10.2023, yet, there is not a single whisper as to what transpired in respect of the application raising objections against the remand stated to have been filed on 04.10.2023. At this juncture, it would be relevant to extract Para 11 of the application on behalf of the petitioner opposing the remand which is annexed as Annexure P-5 of the paperbook which is as under:-

> *"11. That further, the allegations in the remand application are already being investigated by both EOW and ED since over 3 years and therefore a second FIR on the same allegations and the consequent arrest of the Applicant is completely illegal and is in violation of the principles repeatedly laid down by the Hon 'ble Supreme Court that a second FIR on same allegations/transaction is not maintainable in law."*

In case the argument of the petitioner about non-furnishing of grounds of arrest is taken to be true, then it is inexplicable as to how the petitioner had, on 04.10.2023, even before receiving the copy of the present FIR, gained the knowledge that the present FIR was in the nature of a second FIR registered on the basis of the same allegations and transactions which were leveled against him by the EOW/ECIR in the previous FIR regarding offences under PMLA.

36. That apart there is nothing placed on record to demonstrate that the timelines as averred in the petition are factually correct in nature or even to suggest otherwise.

37. That so far as the judgement in the case of in ***In Re Madhu Limaye (supra)*** is concerned, there are two distinguishing features which would make the ratio laid down therein inapplicable to the present case. Firstly, in the said case the grounds of arrest were never

conveyed to the arrestees and the same was not controverted by the prosecution. Secondly, in ***In Re Madhu Limaye (supra)*** the offence alleged against the petitioners therein was in respect of Section 188 of the Indian Penal Code, 1860, which contemplates two types of punishments which can be imposed on such violation which are one month or with fine which may extend to rupees two hundred, or with both and the other being imprisonment which may extend to six months or with which may extend to rupees one thousand, or with both. In ***Madhu Limaye's*** case it appears there were no orders of disobedience whereof would entail punishment under section 188 I.P.C. As such the case of the petitioner cannot be equated with the case of ***In Re Madhu Limaye (supra).***

38. Keeping in view the gravity and the seriousness of the offences as also considering the fact that the individual right of life and personal liberty and freedom guaranteed under the Constitution of India are affected, it appears appropriate to also consider as to where the Constitutional Courts are to lean, in such circumstances. On this aspect, the judgement of the Supreme Court in ***Ayya @ Ayub vs. State of U.P. & Another*** reported in **(1989) 1 SCC 374** needs to be appreciated. The relevant paragraph is extracted hereunder:-

> *"13. Personal liberty, is by every reckoning, the greatest of human freedoms and the laws of preventive detention are strictly construed and a meticulous compliance with the procedural safeguards, however technical, is strictly insisted upon by the courts. The law on the matter did not start on a clean slate. The power of courts against the harsh incongruities and unpredictabilities of preventive detention is not merely "a page of history" but a whole volume. The compulsions of the primordial need to maintain order in*

society, without which the enjoyment of all rights, including the right to personal liberty, would lose all their meaning are the true justifications for the laws of preventive detention. The pressures of the day in regard to the imperatives of the security of the State and of public order might, it is true, require the sacrifice of the personal liberty of individuals. Laws that provide for preventive detention posit that an individual's conduct prejudicial to the maintenance of public order or to the security of State provides grounds for a satisfaction for a reasonable prognostication of a possible future manifestations of similar propensities on the part of the offender. This jurisdiction has been called a jurisdiction of suspicion; but the compulsions of the very preservation of the values of freedom, or democratic society and of social order might compel a curtailment of individual liberty. "To lose our country by a scrupulous adherence to the written law" said Thomas Jefferson "would be to be lose the law itself, with life, liberty and all those who are enjoying with us; thus absurdly sacrificing the end to the means". This is, no doubt, the theoretical justification for the law enabling preventive detention."

In the present case too, the offences which are alleged, fall within the ambit of Unlawful Activities (Prevention) Act, 1967 and directly impact the stability, integrity and sovereignty of the country and are of utmost importance since they would affect the national security.

39. Thus, after examining the entire issue in the right perspective, it appears as of now that the grounds of arrest were indeed conveyed to the petitioner, as soon as may be, after the arrest and as such, there does not appear to be any procedural infirmity or violation of the provisions of the Section 43B of the UAPA or the Article 22(1) of the Constitution of India and as such, the arrest are in accordance with law.

40. Having regard to the admission of facts, contradictions between the pleadings and the arguments addressed before this Court in respect

of the impugned remand order, this Court is of the considered opinion that the remand order is sustainable in law in the given circumstances.

41. The petition, being devoid of any merit, along with pending applications, is dismissed.

CRL.M.C. 7277/2023

42. By way of the present petition, the Petitioner seeks the following reliefs:-

> *"(A) Issue an order or direction setting aside the order dated 04.10.2023 passed by the court of Dr. Hardeep Kaur, Ld. Additional Sessions Judge-02, Patiala House Court, New Delhi in FIR No. 224 of 223, remanding the Petitioner to police custody; AND*
>
> *(B) Issue an order or direction for immediate release of the Petitioner;……"*

40. Facts as culled out from the petition filed by the petitioner commencing from Para 15 of the petition and are germane to the present dispute, are as follows:-

> *"15. It is respectfully submitted that an FIR bearing No. 224/ 2023 was apparently registered on 17.08.2023 against, inter alia, the Petitioner under Sections 13, 16, 17, 18, and 22 of the Unlawful Activities Prevention Act, 1956, (hereinafter the "UAPA") and Sections 153A and 129B of the IPC, at the Police Station, Lodhi Road, Special Cell, Delhi. The registration of the said FIR was not within the knowledge of the Petitioner until his subsequent arrest.*
>
> *16. On 03.10.2023, at around 6:30 AM, around 10-15 police officials belonging to different branches, came to the house of the Petitioner. They did not provide any intimation as to why they were present, and merely informed that it is in relation to UAPA. The police officials questioned the Petitioner until around 3 PM at his house, and thereafter he was taken to P.S. Lodhi Road and subsequently arrested by the investigating agency. They also seized the phone, laptop, hard disk, and pen drives belonging to the Petitioner but did not provide any seizure memo regarding the same.*

17. Pertinently, despite the Petitioner's arrest and despite repeated requests, neither has a copy of the concerned FIR been uploaded on the website of the Delhi Police nor has he been supplied with a copy of the same till date, as is his right under law. Moreover, the Petitioner has never been informed of the grounds for arrest as is mandated under Article 22 of the Constitution of India read with Section 43 – B (1) of Unlawful Activities Prevention Act, 1967.

18. On 04.10.2023, at about 7 AM, the counsel for co-accused, Mr. Prabir Purkayastha received a telephone call informing that the co-accused and the Petitioner had been produced before the Ld. Special Judge at her residence, and that the counsel should immediately come to the residence. No such information was provided to any of the family members of the Petitioner.

19. The counsel for the co-accused requested the Ld. Special Judge to defer the proceedings till 9 AM to enable the accused persons to be properly represented by counsel, as is their constitutional right under Article 22 of the Constitution. However, the said request was declined, the counsel for the co-accused was provided a copy of application for remand through Whatsapp and the Petitioner was remanded to police custody for a period of 7 days, i.e., till 10.10.2023.

20. It is also pertinent to note that the remand Order was passed at around 6 AM, whereas, the counsel for the co-accused, Mr. Prabir Purkayastha, was only informed about the proceedings at about 7 AM, which clearly show that there was zero representation of the accused in the remand proceedings in clear violation of his Constitutional rights under Article 22 of the Constitution.

21. Pertinently, the order dated 04.10.2023 passed by the Ld. Sessions Judge erroneously notes that copy of the remand application had already been sent to the Petitioner's counsel. However, no copy of the application was shared with the Petitioner's counsel by the investigating agency. As a result, the Petitioner's counsel was unable to be present at the remand hearing, denying the Petitioner an opportunity to effectively oppose the remand.

22. Subsequently, on 04.10.2023, the Petitioner filed an application seeking directions to the investigating agency to

supply a copy of the FIR to the Petitioner, and to provide a copy of the grounds of arrest. The Ld. Special Judge was please to issue notice to the Respondent in the application, but deferred its hearing to 05.10.2023.

23. Thereafter, the counsel for the Petitioner has obtained a copy of the application for remand filed by the Respondent through the counsel of the co-accused."

CONTENTIONS ON BEHALF OF THE PARTIES

43. Mr. Rohit Sharma, learned Counsel appearing for the petitioner adopts the arguments of the learned Senior Counsel appearing for the petitioner in CRL.M.C. 7278/2023 and addresses the following arguments on merits:-

43.1 It is submitted that the petitioner is 56 years old and is suffering from a permanent physical disability to the tune of 59% on account of post-polio residual paralysis of both lower extremities as described in the disability certificate duly annexed with the present petition. It is further submitted that presently, the Petitioner only performs a limited administrative role, and has no involvement in financial decision making of PPK or any decisions regarding its journalistic content.

43.2 It is argued on behalf of the petitioner that earlier, he was being summoned and had duly appeared before the concerned authorities on several occasions but never had any apprehension, nor had moved any application for anticipatory bail seeking any interim protection.

43.3 Learned counsel argues that the petitioner has only been tagged along, clubbed together and roped in the present

FIR and arrested without providing any legal basis for the same by the prosecuting agency.

43.4 It is also submitted that the remand application filed by the police, had neither mentioned the case of physical disability of the present petitioner nor mentions the role attributed to the present petitioner, and was more so, pertaining only to the co-arrestee Prabir Purkayastha. Learned counsel further argued that the said remand application does not even specify the reasons for seeking remand of the present petitioner, and therefore, suffers from inherent defect which goes to the root of the matter.

43.5 Learned counsel further argues that even during remand proceedings, the courtesy information call which was extended to the family member and Mr. Arshdeep Singh Khurana, counsel for the co-arrestee, was not even made to the family member of the present petitioner or his counsel. Learned counsel submits that the present petitioner was therefore, deprived of the constitutional right of representation by a counsel of his own choice.

43.6 It is vehemently submitted that the remand order was passed at around 6 A.M., whereas the counsel for the co-arrestee, Prabir Purkayastha, was only informed about the proceedings at about 7 A.M., which clearly shows that there was zero representation of the present petitioner in the remand proceedings, which is in clear violation of his constitutional rights under Article 22 of

the Constitution.

43.7 Learned counsel in the same breath argues that, the remand order does not even mention the physical circumstances of the present petitioner, and relies upon the judgement of Division Bench of Madras High Court in ***L. Muruganantham vs. State of Tamil Nadu and Others*** reported in **2022 SCC OnLine Mad 5879**, to submit that the learned Special Judge did not apply his judicial mind to the remand application w.r.t. the specific case of the present petitioner in terms of role attributed to him, reasons for his remand and his physical circumstances being a differently abled person.

43.8 Learned counsel lastly submits that the arrest of the petitioner without supplying the grounds of arrest and the subsequent remand order passed thereof is violative of the constitutional mandate of Article 22(1) of the Constitution of India, and therefore is liable to be set aside and the petitioner is entitled for immediate release.

44. *Per Contra,* Mr. Tushar Mehta, learned Solicitor General, appearing for the respondent submits that his arguments in CRL.M.C. 7278/2023 on the issues of law and facts may be taken into consideration alongwith the contents of the counter affidavit filed in present case, while adjudicating the present petition.

ANALYSIS OF THE COURT

45. Keeping in view the fact that this Court in CRL.M.C. 7278/2023 titled *"Prabir Purkayastha Vs. State NCT of Delhi"* has already held

that the ratio laid down by the Supreme Court in ***Pankaj Bansal (supra)*** is not applicable to the facts and the law obtaining in that petition, the challenge to the arrest of the present petitioner on the grounds of non furnishing of grounds of arrest are, similarly, held to be untenable and is accordingly rejected.

46. The issue on challenge to the impugned order of remand as to whether the same was passed at 6:00 A.M. or subsequently has already been dealt with by this Court in the case of the co-arrestee, and as such is held not to be tenable since the order of the learned Special Judge records that the counsel had appeared for the *"accused persons"*. Even the remand application was also furnished to the counsel who, it appears from the said order itself, was representing both the present petitioner and co-arrestee Prabir Purkayastha.

47. Firstly, there are no details to the averments made by the petitioner in his pleading as to how the petitioner has been able to lay his hands on either the impugned order of remand or the remand application filed by the respondent before the learned Special Judge, in case the version of the petitioner that there was zero representation on his behalf, at the time of arrest or remand proceedings is to be believed.

48. Secondly, the petition is completely silent as to what steps were taken by him or any of his family members to assail or raise objections against the arrest, or the order of remand till the present petition was filed. It is also not palatable that the petitioner had filed an application before the learned Special Judge seeking a copy of the FIR on 04.10.2023, which is stated to have been taken up for consideration on 05.10.2023, yet there is not even a whisper in the said application in

respect of either the petitioner's alleged illegal arrest or alleged illegal remand order having been passed without any representation on his behalf. This creates a doubt in the mind of this Court as to whether the version of the petitioner is true at all.

49. Had there been any truthfulness in the version of the petitioner, it is unimaginable that no grievance at all would be made out of an illegal remand order while filing an application seeking a copy of FIR on the very same day when the remand order was passed i.e., 04.10.2023. It is also surprising to note that even at the time of addressing the arguments seeking copy of FIR, there is not even a single argument or a grievance placed by the counsel for the petitioner before the very same learned Special Judge who had passed the impugned remand order dated 04.10.2023, regarding any illegal arrest or illegal remand order.

50. Considering the lack of material particulars on facts it appears necessary to appreciate the law laid in such situations as per the judgements rendered by the Supreme Court which are as under:

Moti Lal Songara vs. Prem Prakash and Another reported in **(2013) 9 SCC 199**

> *"1. Leave Granted. The factual score of the case in hand frescoes a scenario and reflects the mindset of the first respondent which would justifiably invite the statement "court is not a laboratory where children come to play". The action of the respondent/accused depicts the attitude where one calculatedly conceives the concept that he is entitled to play a game of chess in a court of law and the propriety, expected norms from a litigant and the abhorrence of courts to the issues of suppression of facts can comfortably be kept at bay. Such a proclivity appears to have weighed uppermost in his mind on the base that he can play in aid of technicalities to his own advantage and the law, in its essential substance, and justice, with its divine attributes, can unceremoniously be buried in the grave……"*

K.D. Sharma vs. Steel Authority of India Limited & Others, reported in ***(2008) 12 SCC 481***

> *"**38**. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification . This is because "the court knows law but not facts" .*

Keeping in view the observations so made and the law as laid down, while considering the lack of facts and material particulars in the present petition, this Court is of the considered opinion that the present petitioner is not entitled to any relief as sought in the present petition.

51. So far as the arguments of the petitioner being a differently abled person and suffering from physical disability to the extent of 59% and being covered under the provisions of The Rights Of Persons With Disabilities Act, 2016 is concerned, keeping in view the fact that serious offences affecting the stability, integrity, sovereignty and national security have been alleged against the petitioner, this Court is not inclined to pass any favorable orders.

52. Accordingly, this Court does not find any merits in the present petition and the same is accordingly, dismissed.

TUSHAR RAO GEDELA, J.

OCTOBER 13, 2023/*rl*