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

Judgment reserved on: 13. 11.2017

% Judgment delivered on: 01.12.2017

\+ **W.P.(CRL) 2465/2017**

MOIN AKHTAR QURESHI ..... Petitioner

Through: Mr. R.K. Handoo, Mr. Yoginder Handoo, Mr. Aditya Chaudhary, Mr.Manish Shukla and Mr. Nishant Kumar, Adv.

versus

UOI & ORS. ..... Respondents

Through: Mr. Anil Soni and Mr. Amit Mahajan, CGSC for UOI

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE P.S.TEJI

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the petitioner Moin Akhtar Qureshi through his daughter to seek a writ of habeas corpus directing the respondent Enforcement Directorate (ED) to produce him before the Court and to set aside his illegal arrest vide the arrest memo dated 25.08.2017. He also seeks the quashing of the application dated 16.08.2017 moved by the respondent ED to seek his ED custody remand, and the order

dated 26.08.2017 passed by the learned Special Judge, CBI, Patiala House Courts, Delhi on the said remand application on 26.08.2017.

2. The case of the petitioner is that the ED searched his premises on 26.02.2015 in relation to a case involving alleged violation of Foreign Exchange Management Act (FEMA). The petitioner's statement was recorded in those proceedings on 05.01.2016. Thereafter, the petitioner was served summons dated 05.01.2016 in respect of the case registered under PMLA vide ECIR/18/DLZO/2015/AD requiring him to appear at 4:30 p.m. on the same day for recording his statement under Section 50 of the Prevention of Money Laundering Act, 2002 (PMLA). The petitioner states that he appeared in response to the summons issued in the PMLA case between November 2016 and 16.12.2016.

3. On 16.02.2017, the CBI registered FIR RC No.224/2017 under Section 8, 9, 13(2) read with 13(1)(d) of the Prevention of Corruption Act (PC Act) and Section 120B IPC against the petitioner, unknown persons and public servants for alleged offences committed during the period 2011-2013.

4. On 15.03.2017, the ED registered another ECIR being No. ECIR/02/DLZO/2017/AD under the PMLA on the basis of the FIR registered by the CBI. The petitioner was summoned to appear before the ED on 25.08.2017, and the petitioner appeared in response to the said summons. He claims that after having been detained for the whole day, he was subsequently arrested on the same day under Section 19 of the PMLA.

5. On 26.08.2017, the petitioner was produced before the learned Special Judge, CBI at 3:00 p.m. when the respondent sought his remand without

giving him either a copy of the ECIR, or the grounds of arrest, or even the remand application. Only on the directions of the learned Special Judge issued during the proceedings, he was provided with a copy of the remand application, but not the grounds of arrest, or copy of the ECIR. The learned Special Judge, CBI remanded the petitioner to the custody of the respondent ED till 31.08.2017.

6. Consequently, the petitioner preferred the present writ petition dated 29.08.2017. It was listed before the Court on 30.08.2017 when the respondents appeared through Mr. Anil Soni, CGSC and Mr. Amit Mahajan, CGSC for UOI. They were granted time for filing their reply within five working days, with advance copy to counsel for the petitioner. The petitioner was permitted to file the rejoinder within three working days thereafter. The matter was adjourned to 13.09.2017.

7. On 13.09.2017, the matter was further adjourned to 09.10.2017. The petitioner was permitted to file rejoinder to the counter-affidavit filed by the respondent. Counsel for the petitioner made a statement that, in the meantime, the application for regular bail instituted on behalf of the petitioner before the competent court shall not be pressed. The matter was adjourned from time to time thereafter for one or the other reason, and it was directed to be listed on 23.10.2017. Since the roster had changed by then and the matter was part heard, the same was directed to be listed before the same bench on 27.10.2017. On 23.10.2017, counsel for the petitioner also withdrew the statement made before the court on 13.09.2017 that the petitioner shall not apply for regular bail.

8. The matter was released from part heard by the erstwhile bench on 27.10.2017, and the matter was against listed before this court. The arguments in the petition commenced on 07.11.2017. The judgment was reserved on 13.11.2017.

9. The submission of Mr. Handoo, learned counsel for the petitioner is premised on Article 22(1) of the Constitution of India read with Section 19 of the PMLA. To appreciate the submission of Mr. Handoo, we reproduce herein below the aforesaid provisions. Article 22(1) of the Constitution of India reads:

> "*(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*". (emphasis supplied)
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> Section 19 of the PMLA reads:
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> "*19. Power to arrest.—*
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> *(1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession* ***reason to believe (the reason for such belief to be recorded in writing)*** *that any person has been guilty of an offence punishable under this Act,* ***he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.***
>
> *(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to*

the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court". (emphasis supplied)

10. For the sake of convenience, the expression "*Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order*" used in Section 19(1) aforesaid shall be referred to as "*the Competent Authority*".

11. Mr. Handoo submits that Article 22(1) obliges the arresting officer to inform the person arrested and detained in custody, as soon as may be, of the grounds for such arrest. The other two facets of Article 22(1) are that the person who is arrested shall not be denied the right to consult a legal practitioner of his choice, and to be defended by a legal practitioner of his choice. Mr. Handoo submits that the information of the grounds of arrest to the person detained in custody is an essential compliance guaranteed by the said Article, and the failure of the said obligation would render the arrest null and void. He further submits that the information of the grounds of arrest to the person arrested and detained in custody should be *actionable information* i.e. such information, on the basis of which the person arrested and detained in custody is able to effectively exercise his right to consult a legal practitioner of his choice, and to effectively pursue his remedy to seek bail in the proceedings in relation to which he has been arrested. If the

information furnished to the arrested person of the grounds of arrest does not enable such person to effectively undertake his remedies by way of consulting a legal practitioner of his choice, and to liberate himself from custody in the proceedings, the manner of furnishing the information would be of no avail. He further submits that the compliance of the obligation to inform the person arrested of the ground for arrest is not an empty formality, since the said obligation is a constitutional safeguard provided to the person whose personal liberty is sought to be curtailed by resort to arrest and detainment in custody. The fact that Article 22(1) begins with negative words i.e. "*no person who is arrested shall be detained in custody without being informed ... ...*" also point to the mandatory nature of the obligation cast by the said provision on the arresting officer, to inform the person arrested of the grounds for such arrest.

12. Mr. Handoo submits that in the facts of the present case, the petitioner was served with an arrest memo which disclosed the "*section of law*" under which, presumably, the petitioner was arrested as "*3 r/w 4 Prevention of Money Laundering Act of 2002*". By itself, the said information was wholly inadequate to enable the petitioner to brief his legal practitioner, or to enable the petitioner to effectively protect his liberty. He further submits that the petitioner was purportedly shown the grounds of arrest and his endorsement taken thereon at the time of his arrest on 25.08.2017, which reads "READ". However, the said grounds of arrest were not served on the petitioner. Similarly, on the arrest order, the signatures of the petitioner were obtained on 25.08.2017. Mr. Handoo submits that, as a matter of fact, the petitioner was not allowed to even read the grounds of arrest. In any event, merely

permitting the petitioner to read the said grounds is not sufficient compliance of Article 22(1) of the Constitution, as it does not tantamount to effective and actionable information, on the basis of which the petitioner could have consulted a legal practitioner or to effectively defend his liberty through his legal practitioner.

13. Mr. Handoo has referred to the petitioners pleadings contained in para 41 and 42 of the petition, wherein the petitioner has made a categorical averment that he was arrested without communicating to him, or giving him, a copy of the grounds of arrest and he was asked to append his initials as "READ", without allowing him to understand and comprehend the grounds formulated for his arrest.

14. Mr. Handoo submits that it was not even the case of ED before the learned Special Judge, CBI that a copy of the ground of arrest was served on the petitioner at the time of his arrest, or even soon thereafter. In this regard, he has drawn the attention of the Court to para 11 and 12 of the order dated 26.08.2017, which reads as follows:

> "*11. Sh. R.K. Handoo, ld. Counsel for the accused has opposed the application vehemently.* ***He has argued that the accused has not been informed of the grounds of his arrest.*** *Further, he has argued that ED has no power to seek custody of the accused. Further, he has also argued that the allegations of the ED are same as were raised by the IT department against the accused and he has been investigated by the IT department since then. He also argued that no scheduled offence is attracted in this case and the application itself is contradictory.*
>
> *12.* ***To rebut the allegations of non informing of the grounds of the arrest, the ED has shown from the records that***

the same were informed to the accused at the time of arrest which is evident from their records where the accused has signed after endorsement "READ". *To that extent, the Ld. Spl. PP or ED has argued that statute has been complied in letter and spirit*". (emphasis supplied)

15. Mr. Handoo has also drawn the attention of the Court to the counter-affidavit filed on behalf of the respondent/ UOI in the present proceedings. In para 6 of the said counter-affidavit, under the heading "*Preliminary Submissions*", the respondents have, inter alia, stated that in terms of the provisions of the PMLA, the petitioner was immediately informed about the grounds of such arrest, and a copy of the arrest order alongwith material was forwarded to the adjudicating authority in terms of section 19(2) of the Act.

16. Mr. Handoo has drawn the attention of the Court to "*Prevention of Money Laundering (the form and forms 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*" ("PML Arrest Rules") and, in particular, to the definition of the words "*material*" contained in Rule 2(g), and "*Order*" contained in Rule 2(h), which read as follows:

"2.(1) In these rules, unless the context otherwise requires –

xxx xxx xxx xxx xxx xxx xxx

*(g) "**material**" means any information or material in the possession of the Director or Deputy Director or Assistant Director or any authorised officer, as the case may be, on the basis of which he has recorded reasons under sub-section (1) of section 19 of the Act;*

*(h) "**order**" means the order of arrest of a person **and includes the grounds for such arrest under sub-section (1) of section***

19 of the Act;" (emphasis supplied)

17. Mr. Handoo submits that for exercise of power of arrest under Section 19 of the PMLA, it is essential that the Competent Authority should, firstly, have material in his possession on the basis of which he forms a reasonable belief; secondly, he should have reason to believe – which is recorded in writing, that the person has been guilty of an offence punishable under the Act; thirdly, he "may", and not "shall", arrest such person, and; fourthly, he shall, as soon as may be, inform him of the grounds for such arrest.

18. Mr. Handoo submits that the "order" of arrest, by virtue of Rule 2(h) of the PML Arrest Rules, includes the grounds for such arrest under section 19(1) of the Act. Therefore, it is imperative that the grounds of arrest, which form part of the order of arrest, are served on the person arrested under Section 19(1) of the PMLA along with the order of arrest. Without the ground of arrest, the order of arrest is incomplete. Without the grounds of arrest, the arrestee would not know what is that material, on the basis of which the Competent Authority has formed his belief that the arrestee is guilty of the offence under the Act. He would also not know the reasons which led the Competent Authority to form the belief on the basis of the materials in his possession.

19. Mr. Handoo submits that the petitioner was produced before the learned Special Judge, CBI on 26.08.2017 at 3:00 p.m. and his ED custody remand was sought by moving an application under Section 167 Cr PC read with Section 65 of PMLA. In the said application, the respondent ED, inter alia, stated:

"*15. It has been further believed that you Sh. Moin Akhtar Qureshi s/o Lt Sh. Abdul Majeed Qureshi R/o C-134 GF Defence Colony, New Delhi is in possession of more evidences in this case and he is withholding/ not divulging the same, thus will jeopardize the investigation under PMLA, 2002. Hence, Moin Akhtar Qureshi was arrested on 25.08.2017 at 8.00 PM as per the procedure laid down under the PMLA and the grounds of arrest have been informed to him. The intimation of arrest has been telephonically given to his wife Ms. Nasreen Akhtar Qureshi on her mobile phone. The copy of arrest memo has been delivered to him*".

20. Mr. Handoo submits that the arrest was, thus, not made on the basis of a reasonable belief that the petitioner was guilty of an offence punishable under the PMLA – formed on the basis of material in possession of the Competent Authority, but on the premise that the petitioner has evidences which he is not disclosing. He submits that even at the stage of moving the remand application, the petitioner was not served with the grounds of arrest. Only upon the directions of the learned Special Judge, CBI, the application to seek the petitioners remand was served upon the petitioners counsel.

21. Mr. Handoo further submits that the learned Special Judge, CBI while allowing the remand application preferred by the ED on 26.08.2017, passed the order mechanically and without application of mind, granting ED custody remand for a period of five days i.e. upto 31.08.2017. Mr. Handoo submits that the learned Special Judge, CBI further extended the ED custody remand of the petitioner on 31.08.2017 by four days i.e. till 04.09.2017 vide order dated 31.08.2017 and, on this occasion as well, the said order extending the petitioners ED custody remand was passed mechanically, without due application of mind.

22. Mr. Handoo has placed reliance on the decision of a Division Bench of the Allahabad High Court in ***Vimal Kishore Mehrotra v. State of U.P. & Anr.***, AIR 1956 All 56. The Division Bench referred to the decision of the Supreme Court in ***State of Bombay v. Atma Ram***, AIR 1951 SC 157 (C), wherein the Supreme Court had held that the test is, whether the communication is sufficient to enable the detained person to make a representation at the earliest opportunity. The Division Bench also referred to ***Magan Lal Jivabhai, in re***:, AIR 1951 Bom 33 (D), wherein it was held that the only possible and reasonable construction that can be put upon the language of Article 22(6), is that the detaining authority while furnishing grounds of detention is required to state the facts on account of which he is satisfied that the detention is necessary in the interest of the security of the State, maintenance of public order etc. The Division Bench further observed in para 30 to 32 of ***Vimal Kishore Mehrotra*** (supra), as follows:

> "***30. Under Cl. (1), the ground for arrest has to be communicated to the person arrested. Under Cl. (5) the grounds on which the order of detention has been made has to be communicated to the person detained. So decisions of Courts under Cl. (5) of Article 22 will be of much assistance in interpreting Cl. (1) of Article 22.***
>
> ***31. The object underlying the provision that the ground for arrest should be communicated to the person arrested appears to be this. On learning about the ground for arrest, the man will be in a position to make an application to the appropriate Court for bail, or move the High Court for a writ of habeas corpus. Further, the information will enable the arrested person to prepare his defence in time for purposes of his trial. For these reasons, it has been provided by the Constitution that, the ground for the arrest must be communicated to the person as soon as possible.*** *In the present case it was not*

contended on behalf of the respondents that, it was impracticable to give the information to the petitioner soon after the arrest. The contention on behalf of the respondents is that, the necessary information has already been supplied to the petitioner. The alleged occurrence described in annexure 'C' took place at Kanpur. The petitioner was arrested in Kanpur City. The jail is located at Kanpur. The necessary information could easily be supplied to the petitioner within a week of his arrest.

32. ***However, all that the petitioner was told that, he had been arrested under Section 7 of the Criminal Law Amendment Act, 1932. This information could not give the petitioner any idea about the offence, which he is supposed to have committed. We have seen that S. 7 of the Act prohibits a variety of acts. By merely learning that he has been arrested under S. 7 of the Act, the petitioner would not know what exactly he is alleged to have done. For purposes of Cl. (1) of Article 22, it is not necessary for the authorities to furnish full details of the offence. But the information should be sufficient to enable the arrested person to understand why he has been arrested. The ground to be communicated to the arrested person should be somewhat similar to the charge framed by the Court for the trial of a case.*** *In the present case the petitioner should have been told that the charge against him is that, on the morning of 18-5-1955 near J.K. Jute Mill, Kanpur he threatened Janardan Pande in order to dissuade him from going to work."* (emphasis supplied)

23. In para 42 and 43, the Division Bench observed:

"*42. It is the fundamental right of every person that on being arrested he must be "informed, as soon as may be, of the grounds for such arrest"; he cannot be detained in custody without being so informed.* ***It is the common case of the parties before us that the applicant on being arrested was informed merely that he had been arrested under Section 7 of the Act; there is no allegation that any other information was given to him. Section 7 is a wide section containing several provisions***

and he was not informed under which particular provision he was arrested. Nothing was said to him about the allegation made against him or the act alleged to have been done by him and amounting, to an offence punishable under Section 7.

43. The rule in Article 22(1) that a person on being arrested must be informed of the grounds for the arrest is similar to, though not exactly identical with, the rules prevailing in England and in United States of America. The rule prevailing in England is that

> *"in normal circumstances an arrest without warrant either by a policeman or by a private person can be justified only if it is an arrest on a charge made known to the person arrested"; (per Viscount Simon L.C. in — 'Christie v. Leachinsky (1947 AC 573 at p. 586(F).*" (emphasis supplied)

24. Mr. Handoo also refers to the decision of the Supreme Court in the matter of ***Madhu Limaye & Ors.***, 1969 (1) SCC 292. Two of the four submissions advanced by Madhu Limaye (as noted in para 6 of the decision) was that –

i) There was a violation of the mandatory provisions of Article 22(1) of the Constitution.

ii) The orders for remand were bad and vitiated.

25. The Supreme Court answered the submissions of Madhu Limaye in para 11 and 12 by holding as follows:

"*11. It remains to be seen whether any proper cause has been shown in the return for declining the prayer of Madhu Limaye and other arrested persons for releasing them on the ground that there was non-compliance with the provisions of Article 22(1) of the Constitution. In Ram Narayan Singh case it was*

laid down that the court must have regard to the legality or otherwise of the detention at the time of the return. In the present case the return, dated November 20, 1968, was filed before the date of the first hearing after the Rule nisi had been issued. The return, as already observed, does not contain any information as to when and by whom Madhu Limaye and other arrested persons were informed of the grounds for their arrest. It has not been contended on behalf of the State that the circumstances were such that the arrested persons must have known the general nature of the alleged offences for which they had been arrested; vide Proposition 3 in Christie v. Leachinsky [(1947) 1 All ELR 567] . Nor has it been suggested that the show-cause notices which were issued on November 11, 1968, satisfied the constitutional requirement. Madhu Limaye and others are, therefore, entitled to be released on this ground alone.

12. ***Once it is shown that the arrests made by the police officers were illegal, it was necessary for the State to establish that at the stage of remand the Magistrate directed detention in jail custody after applying his mind to all relevant matters. This the State has failed to do.*** *The remand orders are patently routine and appear to have been made mechanically. All that Mr Chagla has said is that if the arrested persons wanted to challenge their legality the High Court should have been moved under appropriate provisions of the Criminal Procedure Code. But it must be remembered that Madhu Limaye and others have, by moving this Court under Article 32 of the Constitution, complained of detention or confinement in jail without compliance with the constitutional and legal provisions.* ***If their detention in custody could not continue after their arrest because of the violation of Article 22(1) of the Constitution they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities.*** *This disposes of the third contention of Madhu Limaye.*" (emphasis supplied)

26. Mr. Handoo has also drawn our attention to ***Kanu Sanyal v. District***

Magistrate, Darjeeling & Ors., (1974) 4 SCC 141. The legality of the arrest and detention in this case was challenged on three grounds. The first two grounds taken note of in para 3 of the decision read as follows:

> *"3. The learned Counsel appearing on behalf of the petitioner put forward three grounds challenging the legality of the detention of the petitioner and they may be briefly summarised as follows:*
>
> *"**A. The initial detention of the petitioner in the District Jail, Darjeeling was illegal because he was detained without being informed of the grounds for his arrest as required by clause (1) of Article 22 of the Constitution.***
>
> *B. The Sub-Divisional Magistrate, Darjeeling had no jurisdiction to try the two Phansidewa, P.S. Cases against the petitioner and he could not, therefore, authorise the detention of the petitioner under Section 167 of the Code of Criminal Procedure for a term exceeding fifteen days in the whole**. It was only the Sub-Divisional Magistrate, Siliguri who had jurisdiction to try the two Phansidewa P.S. Cases and he alone could remand the petitioner to custody after the expiration of the initial period of fifteen days under Section 344 of the Code of Criminal Procedure. The orders of remand under which the petitioner was detained in the District Jail, Darjeeling were, however, made by the Sub-Divisional Magistrate, Darjeeling and the detention of the petitioner in the District Court, Darjeeling was, therefore, illegal.*** *... ..."* (emphasis supplied)

27. The Supreme Court while dealing with the aforesaid grounds of challenge observed as follows:

> *"Re: Grounds A and B.*
>
> *4. These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling.*

We think it unnecessary to decide them. ***It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court.*** *This Court speaking through Wanchoo, J., (as he then was) said in A.K. Gopalan v. Government of India: [AIR 1966 SC 816 : (1966) 2 SCR 427 : 1966 Cri LJ 602]*

> *"It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal,* ***if nothing more has intervened between the date of the application and the date of the hearing.****"*

In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab [AIR 1952 SC 106 : 1952 SCR 395 : 1952 Cri LJ 656] and Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 : 1953 Cri LJ 1113] a slightly different view was expressed and that view was reiterated by this Court in B.R. Rao v. State of Orissa [(1972) 3 SCC 256, 259 : 1972 SCC (Cri) 481] where it was said (at p. 259, para 7):

> ***"in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings".***

and yet in another decision of this Court in Talib Hussain v. State of Jammu & Kashmir [(1971) 3 SCC 118, 121] Mr Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at p. 121, para 6):

> ***"in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing."***

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus. *But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and* ***the Court is not, to quote the words of Mr Justice Dua in B.R. Rao v. State of Orissa, "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus". Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail, Vizakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Vizakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Vizakhapatnam.*** *See para 7 of the judgment of this Court in B.R. Rao v. State of Orissa. The legality of the detention of the petitioner in the Central Jail, Vizakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them."* (emphasis supplied)

28. Mr. Handoo has also placed reliance on the decision of the Orissa

High Court in ***N. Ratnakumari v. State of Odisha***, 2014 Cri LJ 4433 – a decision rendered by a Division Bench. The Division Bench was dealing with a writ of habeas corpus, wherein the arrest and detention was challenged on the ground of the same being illegal and unlawful. He has particularly placed reliance on para 47 of the said decision, which reads as follows:

> "*47. Now let us discuss at what stage the legality of an illegal detention can be challenged in a habeas corpus proceeding.*
>
> *In the case of A.K. Gopalan Vrs. Government of India reported in AIR 1966 SC 816, it is held that in dealing with the petition for habeas corpus, the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of application and the date of hearing.*
>
> *In the case of Col. Dr. B. Ramachandra Rao Vrs. State of Orissa reported in AIR 1971 SC 2197, it is held that in habeas corpus, the Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceeding.*
>
> *In the case of Talib Hussain Vrs. State of Jammu Kashmir reported in AIR 1971 SC 62 , it is held that in habeas corpus proceeding, the Court has to consider the legality of the detention on the date of hearing.*
>
> *All these three views were considered* ***in case of Kanu Sanyal Vrs. Dist. Magistrate reported in AIR 1974 SC 510 wherein it was held that the second view (i.e., detention at the time of return) appears to be more in consonance with the law and practice in England and has received largest measure of approval in India. The third view (i.e. on the date of hearing) cannot be discarded as incorrect because an inquiry whether the detention is legal or not at date of hearing of the application for habeas corpus could be quite relevant, for***

simple reason that if on that day the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus.

The learned Advocate General places reliance in case of Manubhai Ratilal Patel Vrs. State of Gujarat reported in (2013) 1 Supreme Court Cases 314 wherein it is held (para 31) that it is the well- accepted principle that ***a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent Court by an order which prime facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal.***

The learned counsel for the petitioner places reliance in case of Madhu Limaye reported in 1969 (1) Supreme Court case 292 wherein the Hon'ble Supreme Court has held (page 298) as follows:-

> ***"The two requirements of clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to known exactly what the accusation against him is so that he can exercise to know exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of Article 22 provides the next and most material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may without delay apply its mind to his case."***

It is further held in the decision page 299, para- 12 as follows:-

> ***"Once it is show that the arrests made by the police officers were illegal, it was necessary for***

> ***the State to establish that at the stage of remand the magistrate directed detention in jail custody after applying his mind to all relevant matters .....if there detention in custody could not continue after their arrest because of the violation of Art.22 (1) of constitution, they were entitled to be released forthwith. The orders of remand are not such as would cure the constitutional infirmities."***
>
> *It is further held that if the detention in custody could not continue after the arrest because of violation of Article 22 (1) of the Constitution, the arrested person detained in jail custody is entitled to be released forthwith. The orders of remand which are routine and passed in a mechanical manner would not cure the Constitutional infirmities.*
>
> *In view of the above discussion, we are of the view that once the arrest is illegal, unauthorized and is in violation of Article 22 (1) of the Constitution of India, the same cannot be cured by any action like remand etc., in the hands of a Judicial Magistrate."* (emphasis supplied)

29. Mr. Handoo also places reliance on ***Nawabkhan Abbaskhan v. The State of Gujarat***, (1974) 2 SCC 121. In this case, an externment order was passed against the appellant. He was alleged to be guilty of flouting the said order. The Supreme Court held that the externment order was an encroachment on the petitioners fundamental right under Article 19 of the Constitution of India, since the Commissioner of Police had passed the same without due hearing. Resultantly, the same had been quashed by the Court as unconstitutional and void. Consequently, the appellant was held never to have been guilty of flouting an order, which never legally existed. Mr. Handoo has placed reliance on this decision to submit that, similarly, the arrest of the petitioner was *void ab initio*, since the same did not comply

with Article 22(1) of the Constitution of India. Consequently, the arrest and consequent detention of the petitioner could not be validated by the subsequent order of remand passed by the learned Special Judge, CBI.

30. Mr. Handoo has also placed reliance on ***Narayan Dass Indurakhya v. State of Madhya Pradesh***, (1972) 3 SCC 676, and ***Atma Ram*** (supra) to submit that vague grounds of arrest would render the detention of the detenue illegal.

31. Mr. Handoo has also drawn the attention of the Court to Section 78 of the Code. Section 78(1) provides that when a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate, or District Superintendent, or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner provided in the Code. Section 78(2) reads:

> "78(2) *The Court issuing a warrant under sub-section (1) shall forward, along with the warrant**, the substance of the information against the person to be arrested together with such documents, if any**, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person."* (emphasis supplied)

Mr. Handoo submits that the necessity of forwarding, with the warrant, the substance of the information against the person to be arrested together with documents, if any, is to sufficiently enable the concerned court

to decide whether bail should, or should not, be granted to the person. Similarly, while arresting a person under Section 19 of the PMLA, the substance of the information, at least, ought to have been provided with documents, if any, to enable the learned Special Judge to decide whether, or not, to grant bail to the petitioner, and also take a decision on whether, or not, to send the petitioner in remand. Mr. Handoo has also referred to Section 60A of the Code which provides that *"no arrest shall be made except in accordance with the provisions of this Code or any law for the time being in force provided for arrest"*.

Section 50 of the Code obliges, "*every police officer or other person arresting any person without warrant ....."* to "*forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest."*

32. He submits that the ED has acted as a judge in its own cause. The ED had sent a communication to the CBI on 31.08.2016 informing the CBI that during the course of investigation under FEMA, inter alia, against the petitioner, he was found to have indulged as a middleman for several public servants, and that the analysis of the records disclosed the commission of cognizable offence. On the basis of the said communication, the CBI had registered the aforesaid FIR RC No.224/2017 dated 16.02.2017 under Section 8, 9, 13(2) read with 13(d) of the Prevention of Corruption Act (PC Act) and Section 120B IPC.

33. Mr. Handoo, lastly, submits that there was no justification for the petitioners arrest, since he had been cooperating and appearing in response

to the summons issued to him practically on all the dates.

34. On the other hand, Mr. Amit Mahajan, learned counsel representing the ED submits that Article 22(1) obliges the authority concerned – who is arresting a person and detaining him in custody, to "*inform*" such arrested person, as soon as may be, of the grounds of his arrest. He submits that Article 22 also deals with preventive detention of a person, other than by way of arrest, in sub-Articles (4) to (7) thereof. Article 22(5) reads as follows:

> *"(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be,* ***communicate to such person the grounds on which the order has been made*** *and shall afford him the earliest opportunity of making a representation against the order."* (emphasis supplied)

35. The expression used in sub-Article (5), casting an obligation on the State qua the detenue – who is detained preventively, is to "***communicate*** *to such person the grounds on which the order ... ...*" (emphasis supplied) of detention has been made. The purpose of communication of the grounds of detention is to afford to the detenue the earliest opportunity of making a representation against the order.

36. Mr. Mahajan submits that a detenue who is preventively detained, only has a right of making a representation and, consequently, the obligation cast on the State is to "*communicate*" the grounds of detention to him, as soon as it may be possible. However, in the case of arrest of a person, such person has to be produced before the nearest Magistrate within a period of

24 hours of such arrest by virtue of Article 22(2). Thus, there is an inbuilt safeguard of the rights of the person arrested, which is not available to a detenue who is preventively detained. For this reason, Mr. Mahajan submits, the obligation to "*inform*" the arrestee of the grounds of arrest, is not the same order as the obligation to "*communicate*" the grounds of detention to a person preventively detained.

37. In support of his above submission, Mr. Mahajan, firstly, places reliance on ***Chhagan Chandrakant Bhujbal v. Union of India***, 2016 SCC Online Bom 9938 – a decision rendered by a Division Bench of the Bombay High Court in a writ petition preferred to seek a writ of habeas corpus for release of the petitioner. In the said case, two Enforcement Case Information Report (ECIR) were registered by the ED. The petitioner was summoned in respect of those ECIRs and he appeared before the ED. The petitioner claimed that he had been restrained from moving out of the office – even for taking lunch and was, thus, illegally taken in custody by restraining his movement. An arrest order dated 14.03.2016 was made against the petitioner. The petitioner was, thereafter, produced on the following day before the Special Court under the PMLA. He was remanded to custody of ED for two days. When his ED remand custody ended, he was remanded to judicial custody, which was extended from time to time. At the time of filing of the writ petition, he was still in judicial custody. Subsequently, a criminal complaint was preferred against the petitioner and other accused persons before the Special Court alleging commission of offence under Section 3 read with Section 4 of the PMLA. The Special Court took cognisance of the offence under the PMLA and summoned the accused.

38. The petitioner Chhagan Chandrakant Bhujbal had advanced the submission before the Division Bench that the grounds of arrest were not communicated to him in writing and, therefore, his fundamental rights under Article 22(1) and Section 19 of the PMLA had been breached. The Division Bench rejected the said submissions by observing as follows:

> *"189. As regards the Petitioner's grievance that the grounds of arrest were not communicated to him in writing, this grievance also cannot be accepted to hold the breach of any statutory safeguard, because* ***neither Section 19(1) nor the definition of the word 'order' as given in Sub-Clause (h) of Rule 2, provides that the grounds for such arrest are to be provided in writing to the person arrested. It indicates that oral communication of the grounds of arrest is not only a substantial but proper compliance of the provision.***
>
> ***190. The provision of Section 19(1) also does not state that the grounds of arrest are to be informed to the person arrested, immediately. The use of the word in the said provision "as soon as may be****", makes it clear that grounds of arrest are not to be to be supplied at the time of arrest itself or immediately on arrest, but as soon as may be. If it was the intention of the Legislature that in the Arrest Order itself the grounds of arrest should be stated, that too in writing, the Legislature would have made strict provision to that effect by using the word 'immediately' or 'at the time of arrest'. The fact that Legislature has not done so but used the words 'as soon as may be', thereby indicating that there is no statutory requirement of grounds of arrest to be communicated in writing and that too at the time of arrest or immediately after the arrest. The use of the words 'as soon as may be' implies that such grounds of arrest should be communicated at the earliest"*. (Emphasis supplied)

39. Mr. Mahajan also places reliance on the decision of the Bombay High Court in ***Sunil Chainani and Others Vs. Inspector of Police, C.B. Control,***

Bombay and Another, (1987) SCC OnLine Bom 424 : 1988 Mah LJ 634. The accused under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) were arrested and produced before the Additional Chief Metropolitan Magistrate, before whom an application for remand to police custody was made to facilitate further investigation in the case. Simultaneously, the accused moved their applications for bail before the learned Magistrate. The submission of the accused was that their arrest was illegal inasmuch, as, the grounds of their arrest were not at all communicated to them. On the other hand, the respondent claimed that the accused were orally communicated the grounds of their arrest. The learned Magistrate observed that Section 50 of the Code was mandatory, and as there was no compliance therewith, the accused were entitled to grant of bail. However, on a subsequent application made by the prosecution to seek stay of the order granting bail, the learned Magistrate passed an order staying the execution of the order of bail. Since the endeavour of the accused to seek vacation of the said *ex-parte* order failed, they preferred the Criminal Application before the High Court.

40. The submission of the accused that under Section 50 of the Code, it was mandatory that the police officer should immediately communicate to the person arrested full particulars of the offence for which he is arrested, and of the grounds for such arrest, was rejected by the learned Single Judge of the Bombay High Court in the following manner:

> *"12. Now as far as the contention of Shri Merchant regarding the requirement of provisions of Section 50 of the Code of Criminal Procedure being interpreted in the light of provisions of Article 22(5) is concerned, I think the submission cannot be*

accepted. ***There is basic and fundamental difference between the person detained under the provisions of law providing for preventive detention and detention of person arrested on accusation of commission of an offence.*** *In the case of preventive detention the person is detained without trial and he has only the right to make a representation. The purpose of communication of the grounds to the detenu is to enable him to make a purposeful and effective representation. Therefore under Article 22(5) the basic facts constituting the "ground" have to be imparted effectively and fully to the detenu in writing in a language which he understands.* ***However, in the case of a person arrested on accusation, he is required to be produced before the Magistrate within 24 hours. He has the right to consult and to be defended by a legal practitioner of his choice. The purpose of communication of the grounds of arrest is to enable him to apply for release on bail when he is produced before the Magistrate. Therefore the principles laid down and decisions in cases of preventive detention and the provisions of Article 22(5) cannot be pressed into service for appreciating the ambit and scope of provisions of Section 50 of the Code of Criminal Procedure. However, provisions of Article 22(1) are relevant which lay down that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds of such arrest, nor shall he be denied the right to consult and to be defend by a legal practitioner of his choice.*** *Provisions of Section 50 of the Code of Criminal Procedure lay down that every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Now the provisions of the Code of Criminal Procedure contemplate that the accused person arrested on the accusation of non-bailable offences has to be produced before the nearest Magistrate within a period of 24 hours and his further detention in custody, whether police or judicial, beyond 24 hours has to be under the authorisation of the learned Magistrate which authorisation cannot be for more than 14 days at a time. Secondly depending upon the nature of the offence and the punishment prescribed*

therefor, such authorisation cannot go beyond 60 days or 90 days and thereafter whatever may be the offence if the accused offers bail and charge-sheet is not filed, the Code provides that such persons shall be released on bail. Provisions of Section 50 of the Code of Criminal Procedure will have to be appreciated, understood and interpreted in the light of all these provisions. ***In the light of these provisions, I do not think that the communication referred to in Section 50 of the Code of Criminal Procedure must be in every case in writing. What is important is communication or knowledge or information regarding the particulars of the offence for which the arrest is made or other grounds for such arrest.*** *Provisions in Section 50 of the Code of Criminal Procedure provide that the police officer shall "forthwith communicate to him full particulars of the offence for which he is arrested". An act can be said to be done forthwith if it is done with all reasonable dispatch and without avoidable delay. It can also be interpreted to mean as soon as possible without any delay. ... ...* ***Further in the remand application full particulars of the offence are disclosed and admittedly this remand application is made at about 11.00 a.m. on 27th of October 1987****. Copy of the panchanama disclosing further details was also admittedly served upon the accused within 24 hours. If these glaring facts are taken into consideration the plea of the accused on the next day before the learned Magistrate that they were not communicated the full particulars of the offence for which they were arrested or the other grounds for their arrest, appears to me palpably unreasonable.* ***Secondly, the words used in Article 22(1) are that no person arrested shall be detained in custody without informing as soon as may be of the grounds of such arrest. Thus if the person is not informed as soon as may be, his further detention may become invalid or unlawful. But it cannot be said that his initial arrest itself becomes illegal. If these facts are taken together with the plea of the police inspector that he had orally communicated the particulars of the offence to the accused*** *and with the further background that the accused in the present case were caught in possession of heroin weighing one kilogram,* ***I think that the provisions of***

> ***Section 50 of the Code of Criminal Procedure in this case were fully complied with and it would be unreasonable to hold, as unfortunately the learned Additional Chief Metropolitan Magistrate has held, that the provisions of Section 50 are not complied with and therefore the accused are entitled for bail****."* (emphasis supplied)

41. Mr. Mahajan points out that – like in the case of ***Sunil Chainani*** (supra), in the facts of the present case as well, the remand application contained ample particulars of the case made out against the petitioner. Thus, the petitioner was not only informed of the grounds of arrest, at the time of his arrest – by permitting him to read the same, but he and his counsel were, once again, informed of the said grounds by serving a copy of the remand application upon the petitioner by the learned Special Judge.

42. The further submission of Mr. Mahajan is that in the light of the decisions in ***Madhu Limaye*** (supra) and ***Kanu Sanyal*** (supra), to be able to succeed in the present petition, the petitioner would not only have to establish that his initial arrest was illegal, but also that his subsequent remand by the learned Special Judge was also illegal, and that the illegality existed on the date of return in the present petition. In fact, the detention should be illegal on the date of hearing of the writ petition.

43. For this proposition, Mr. Mahajan places reliance on a Full Bench decision of this Court in ***Rakesh Kumar Vs. State***, 53 (1994) DLT 609 (FB). The Full Bench considered a reference made to it on a difference of opinion arising between two learned Judges of this Court on the issue:

> *"as to whether in view of the provisions of Section 36-A to 36-D of the Narcotic Drugs & Psychotropic Substances Act 1985*

(hereinafter to be called N.D.P.S. Act), was the Metropolitan Magistrate entitled to remand the petitioner in judicial custody during the investigation of the case registered against the petitioner vide F.I.R. No. 532 of 1992 dated October 30, 1992 from time to time for 15 days at a time till the challan is filed and secondly, ***in case it were to be held that the Metropolitan Magistrate had no power to remand the petitioner in judicial custody for a period more than 15 days in all, whether the illegal detention of the petitioner under the remand orders made by the Metropolitan Magistrate from time to time entitles the petitioner to be released forthwith even though during the pendency of this writ petition, after the filing of the return, the petitioner is being remanded to judicial custody validly during the trial of the case by the Additional Sessions Judge. In other words, the question to be decided is whether the validity of the detention of the petitioner is to be determined on the day of the return or even on the date of the hearing of the matter on merits."*** (emphasis supplied)

44. The aforesaid issue arose in a petition preferred to seek a writ of Habeas Corpus filed by the petitioner on the ground that the Metropolitan Magistrate had no jurisdiction or power under the NDPS Act to remand him for more than 15 days in all and, consequently, the detention of the petitioner was illegal, and he was entitled to be released from custody forthwith. The petitioner was apprehended allegedly while carrying opium, which was recovered from his possession. He was arrested and a case registered against him under Sections 18, 61 & 81 of the NDPS Act. Thereafter, he was produced before the learned MM on the following day, who remanded him to judicial custody for 14 days initially, and thereafter, extended the remand of the petitioner in judicial custody successively for 14 days on each occasion. During pendency of the writ petition, challan had been filed and the petitioner was being tried by the Court of Sessions for

offences under the NDPS Act.

45. *Mahinder Narain, J.* (as His Lordship then was), had taken the view that in case the detention of a person is not valid before the date of filing of the return in a Habeas Corpus petition, the person is liable to be released, even though, by subsequent events the detention of such person may have become valid. The Full Bench, however, did not agree with the said view. The Full Bench also, after a detailed analysis of the case law, concluded that, if upto the date of hearing of the writ petition for a writ of Habeas Corpus, it is shown that the detention of the person concerned is valid, the mere fact that it was invalid earlier would not entitle such a petitioner to have any redress in the writ petition. The Full Bench, inter alia, observed as follows:

> *"35. Reference is made to the law appearing in England, as is culled but from Halsbury's Laws of England, Fourth Edition Volume II at page 791. Some quotation has also been taken from the Third Edition. At the outset, we may mention that the very perusal of the law with regard to the date of return, time of making of return and the contents of the return, as mentioned in Halsbury's Laws of England Fourth Edition Volume II at page 791 make it evident that a return can be modified later on with the permission of the Court even upto the date of the hearing of the habeas corpus petition. If a return can be allowed to be amended and filed, then it is not understandable as to how it can be said that in England, the legal position is that detention of a person is to be justified only upto the date of the filing of the return.*
>
> *36. In a book The Law of Habeas Corpus by R.J. Sharpe, 1976 Edition from pages 174 to 181, the legal position has been summarised by the learned author and he has opined as follows: -*

"It has been held consistently that the relevant time at which the detention of the prisoner must be justified is the time at which the court considers the return to the writ. This rule means that nothing which has happened before the present cause of detention took effect will be relevant to the issue before the court, *unless by reason of some special consideration arising from the particular proceedings……..****The general rule is that unless prior illegality vitiates the present cause of detention, it will not matter what has happened to the prisoner so long as his detention is now justified****…….A prisoner may apply for a writ from the very moment of his arrest and in that sense, he may challenge the legality of his arrest. However,* ***where there have been valid proceedings subsequent to the arrest, which are offered in justification of the detention, the prisoner will not usually be able to get redress.*** *The reason for this is twofold. First, there is the rule that habeas corpus only calls for justification of detention at present. The second is to be found in the law of criminal procedure.* ***It is a general principle that where an accused person has been illegally arrested and brought before a Court for trial, the Court will not lack jurisdiction to deal with him on account of the illegal arrest…….The rule that it is only the present circumstances of the restraint which are relevant has meant that the Courts are always prepared to allow for a substituted warrant which corrects a defect in the first committal.*** *It will be permissible for there to be a substituted warrant even after the writ is issued and served. Indeed, it has been held that it is possible to amend the return to the writ or to supply a new and better cause for the detention as the court commences the hearing.* ***It would seem that so long as the material proffered tends to***

show present justification, it will be accepted by the court at any stage of the proceedings*."*

37. The learned author has culled out these principles from various judgments of different countries. It is not necessary to burden this judgment with all those judgments because ***on carefully perusing the various Supreme Court judgments, we have come to the conclusion that even if detention of a particular person is not in accordance with law earlier but if by happening of subsequent events his detention presently is legally valid, then there does not arise any question of releasing such a person from custody.***

38. It is no doubt true that the Courts under the Constitution are jealously inclined to protect the liberty of a person keeping in view the mandate of Article 21 of the Constitution of India and the remedy of taking resort to habeas corpus is the most efficacious remedy available to any aggrieved person. A writ in the nature of habeas corpus is issued requiring the persons or the authorities detaining any person to show cause as to on what basis such a person is being detained and if no proper cause is shown for detaining the person in accordance with law, a command issues from the Court for releasing such a person forthwith.

39. In case of Naranjan Singh Nathawan (supra), the Supreme Court had observed that ***in habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the date of the institution of the proceedings****. Facts, in brief, were that the petitioner in that case was arrested on July 5, 1950 under an order issued by District Magistrate, Amritsar under Section 3 of the Preventive Detention Act 1950. The grounds of detention were served on him on July 10, 1950. The Act was amended in 1951 and fresh order dated May 17, 1951 was issued. The only question which arose for decision was that even if the detention of the petitioner was bad on the date of the institution of the proceedings against him, whether he could be released on that*

basis, even though his detention becomes valid by issuance of a subsequent order and in that context, ***the Court held that the validity of the detention is to be seen at the time of the return and not with reference to the date of the institution of the proceedings.***

40. The question which is posed before us had not come up for consideration before the learned Judges of the Supreme Court that if the detention becomes valid on the date of hearing of the writ petition, whether still such a person is entitled to be released even though his detention was invalid till before the date of hearing of the writ petition. It is the settled principle of legal interpretation that the ratio laid down by the Supreme Court must be examined in the context in which it has been laid down. The ratio of law cannot be stretched to a particular situation which was never considered by the Supreme Court and which never came up for consideration before the Supreme Court.

41. There is no dispute about the proposition of law that in case a particular ratio of law has been laid down, the same is binding on all the Courts and authorities in India and such a ratio of law cannot be whittled down on the plea that a particular point or argument was not raised before the Supreme Court. This particular principle of law is not applicable as far as the present legal issue arising for consideration before us is concerned because as mentioned above, the facts before the Supreme Court only were that first detention order passed was illegal but the second order of detention was valid, so the Supreme Court held that as the second order of detention has become valid before the date of the return, hence the detenue cannot be released on the ground that his detention was bad at the time of the initiation of the proceedings. The Supreme Court has not laid down the law that in case the detention had become valid after the date of the return, such valid order of detention is not to be taken notice of. As already mentioned, such a point of law did not arise for decision before the Supreme Court in this judgment.

42. ***In case of Ram Narayan Singh (supra), same ratio was laid down that in habeas corpus proceedings, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings.*** *In this case, the facts were simple. The habeas corpus petition was filed challenging the detention of some political leaders who were arrested on March 6, 1953. In the return, their detention was sought to be justified on the basis of two remand orders, one alleged to have been passed by the Additional District Magistrate at 8 P.M. on March 6, 1953 and the other by a Trial Magistrate at about 3 P.M. on March 9, 1953. The Supreme Court, on looking up the record, found that no valid order of remand had been made on March 9, 1953 at all and after the hearing was over in the case, certain documents were sought to be put on the record in order to show that in fact an order has been made remanding the said detenue to judicial custody till March 11, 1953. The Supreme Court held that they cannot take notice of the documents produced in such suspicious circumstances and they held that they were not satisfied that there was any order of remand. In p73 that situation, the Supreme Court held that the detenues were entitled to be released forthwith. So, it is evident that even upto the date of hearing the authorities had failed to satisfy the Supreme Court from the record that the detention of said persons was valid. So nothing said in this judgment supports the contention that the Supreme Court has categorically laid down a proposition of law that detention of a particular person is to be shown valid only upto the date of the filing of the return to the show cause notice issued in a habeas corpus petition.*

43. In A.K. Gopalan v. Government of India, A.I.R. 1966 Supreme Court 816, the Supreme Court has categorically laid down that it is well settled that in dealing with a petition of habeas corpus, the Court has to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of hearing. (emphasis supplied) The previous two judgments of the Supreme Court had not laid down any proposition of law which is in contradiction with or

at variance of the proposition of law laid down in this case of A.K. Gopalan (supra).

44. Another judgment relied upon by learned counsel for the petitioner is Pranab Chatterjee v. State of Bihar, 1970 (3) Supreme Court Cases 926. The petitioner in the said case had challenged his detention. He was arrested on 9th August 1970 and was not produced before the Magistrate within 24 hours nor was he informed of the grounds. A contention was raised before the Court that the petitioner was arrested not only under Section 151 but also under Sections 151, 107, 117(3) Criminal Procedure Code on August 9, 1970 on warrant issued by Sub-Divisional Magistrate followed by subsequent warrants of August 11, 1970. Those warrants were disputed as subsequently manufactured. ***The Court held that there has been no violation of Article 22 of the Constitution and also held that in a habeas corpus petition, the Court is to have regard to legality or otherwise of the detention of a person at the time of the return not with reference to the institution of the proceedings and it was held that the petitioner's detention on September 4, 1970 cannot be considered to be illegal because he was kept in detention under proper orders of remand as under trial prisoner.*** *This judgment also does not deal with the legal question arising for decision before us that if the detention of a particular person is justifiable even after a return is filed, could such a person be released even though his detention was illegal for any earlier period?*

45. ***In case of Talib Hussain (supra), a learned Single Hon'ble Judge sitting in a vacation has held that in a habeas corpus proceedings, the Court has to consider the legality of the detention on the date of hearing and no writ can be issued if detention on that date is lawful.*** *This judgment is not in conflict with the judgments of the Supreme Court which are referred above. So, it cannot be said that this judgment is per inquirium.*

46. In case of Col. Dr. B. Ramachandran Rao (supra), to which same learned Single Judge was also a party, ***it was held***

that in proceedings of a writ of habeas corpus, the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings. A fortiori the Court would not be concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus. *The earlier two Supreme Court judgments in cases of Ram Narayan Singh (supra) and Niranjan Singh Nathawan (supra) were followed. Again, this judgment does not deal with the legal proposition which has arisen for decision before us. So, we need not say anything more on this point.*

47. In Kanu Sayal v. District Magistrate, A.I.R. 1974 Supreme Court 510, the learned Judges did refer to the question whether detention can be justified upto the date of hearing or not but the question was left open for decision in any other appropriate case which may come for consideration. So, nothing said in this judgment supports the contention that even though the detention of a particular person becomes valid due to subsequent happenings even upto the date of hearing of the writ petition, still such a person is to be released by issuance of writ of habeas corpus if his detention was invalid upto the date of the filing of the return.

48. In case the contention of the learned counsel for the petitioner were to be accepted, it would lead to a very anomalous and drastic result. In the present case, assuming for the sake of argument, the petitioner who is facing regular trial before a competent Court in the same proceedings in which he had been arrested and remanded in custody from time to time is ultimately convicted of the charges and sentenced, could it be said that because his detention was invalid at the time of filing of the return, such a person is entitled to be released in a habeas corpus proceedings? Supposing he has been convicted and sentenced after the filing of the return and at the time of the hearing of the writ petition, this fact is brought to the notice of the Court, it is too much to say that the Court would not take note of such a future happening. ***So, we hold that if upto the date of the hearing of the writ petition, it is shown that the detention of a particular person is valid presently, mere fact***

that his detention had been invalid earlier would not entitle such a petitioner to have any redress in habeas corpus petition.*"* (emphasis supplied)

46. Mr. Mahajan has also referred to a decision of the Full Bench of the Allahabad High Court in ***Bal Mukund Jaiswal Vs. Superintendent, District Jail, Varanasi & Another***, 1997 SCC OnLine All 960 : 1998 All LJ 1428 (FB). The issue considered by the Full Bench was whether an accused person who is under judicial custody on the basis of a valid remand order passed under Section 209 or 309 Cr.P.C. by the Magistrate pending committal proceedings or trial, should be set at liberty by issuing a writ of Habeas Corpus on the ground that his initial detention was violative of the constitutional guarantee enshrined in Articles 21 and 22 of the Constitution of India. It was argued on behalf of the petitioner that when he was arrested, he was not informed the grounds of his arrest, and as such, his arrest was in contravention of his rights guaranteed under Article 22(1) of the Constitution of India. The petitioner, consequently, contended that since his initial arrest was bad, he was entitled to be released by issuance of a writ of Habeas Corpus. The petitioner placed reliance on an earlier decision of the Allahabad High Court in ***Vimal Kishore Mehrotra*** (supra) – which is also relied upon by the petitioner herein. In relation to ***Vimal Kishore Mehrotra*** (supra), the Full Bench observed:

"7. ... ... This case of Vimal Kishor was not dealing with the situation where a particular person's detention at a subsequent stage had been legalised by a valid order of remand. The Court only considered the question whether the grounds of arrest were communicate to the petitioner 'as soon as may be' and since it was found that the grounds were not communicated forthwith, hence the Bench found that the

detention of the petitioner was rendered illegal. The argument of the State that subsequent knowledge had cured the initial illegality was negatived by holding that the petitioner had the fundamental right to be informed of the grounds of his arrest as soon as could be possible. It may also be noted that Hon. Judges of the High Court also observed that although it was possible that the release of the petitioner in the said case could be very short lived because he might be arrested again after full compliance of the provisions of Article 22 but that could be no ground for the Court not to release him from the unlawful detention which continued at the time of hearing of the petition... ... ..."

47. The Full Bench considered the earlier decisions in ***Madhu Limaye*** (supra) and ***Kanu Sanyal*** (supra). In respect of ***Madhu Limaye*** (supra), the observations made by the Full Bench, read as follows:

"12. From this observation of their lordships of the Supreme Court in the case of Madhu Limaye ((1969) 1 SCC 292 : AIR 1969 SC 1014) (supra) it is clear that their lordships did not stop after holding in paragraph 13 that Madhu Limaye and others were entitled to be released on the ground of non-compliance of the provisions of Article 22(1) of the Constitution but they further examined the second point formulated in paragraph 7 of the said judgment to examine whether a valid order of remand existed or not. Once their lordships found that the remand order by the magistrate directing detention in jail custody was without application of mind to all relevant matters and were not such as could cure the constitutional infirmities, their lordships observed that the detention in custody being in violation of Article 22(1) of the Constitution Madu Limaye and other were entitled to be released forthwith. This observation negatives the contention of Sri D.S. Mishra that the Courts are not competent to examine in a case similarly placed where despite violation of the provisions of Article 27(1) of the Constitution rendering initial detention illegal that the custody at a subsequent stage had been validated by a valid order of

remand passed by the magistrate."

48. Similarly, in respect of ***Kanu Sanyal*** (supra), the Full Bench observed as follows:

> *"22. The above mentioned passage quoted from the judgment of Kanu Sanyal((1974) 4 SCC 141 : AIR 1974 SC 510) makes it clear that although before the Supreme Court the detention of Kanu Sanyal was challenged right from the time of its inception and it was specifically pleaded vide question formulated at A that initial detention of the petitioner was illegal for violating Article 22(1) of the Constitution, yet their lordships of the Supreme Court refuse to go into that question once they found that subsequently the petitioner Kanu Sanyal had been sent to Visakhapatnam Jail where it could be further judged whether his detention was in accordance with law or not. A perusal of the said judgment indicates that since the Supreme Court found that detention of Kanu Sanyal in Visakhapatnam jail was valid pursuance of the orders of the Special Judge hence the writ petition was dismissed by the Supreme Court. Accordingly in view of the judgment of the Supreme Court in Kanu Sanyal's case the contention of Sri B.S. Mishra learned counsel for the petitioner that if at all initial detention of the petitioner is rendered invalid for violation of some constitutional provision then in no circumstance can the detention of such person be validated even at a subsequent stage cannot be accepted."*

49. The petitioner's reliance on two other decisions of the Allahabad High Court in ***Hazari Lal Vs. State of U.P.***, 1991 Lucknow LJ 230; and ***Ashok Kumar Singh Vs. State of U.P.***, 1987 Lucknow LJ 273 – wherein the Court had held that non-fulfilment of the requirements of the provisions of Article 22(1) & 22(2) of the Constitution results in an incurable illegality to which the doctrine of curability cannot extend, was rejected and these decisions, and the decisions on which reliance had been placed in these decisions, were overruled.

50. Pertinently, ***Vimal Kishore Mehrotra*** (supra) was one of the decisions relied upon by the Court while deciding ***Ashok Kumar Singh*** (supra). Thus, the submission of Mr. Mahajan is that reliance placed on ***Vimal Kishore Mehrotra*** (supra) is misplaced, since the said decision has been overruled by the Full Bench of the Allahabad High Court in ***Bal Mukund Jaiswal*** (supra).

51. Mr. Mahajan has also placed reliance on the decision of the Supreme Court in ***Saurabh Kumar Vs. Jailor, Koneila Jail & Another***, (2014) 13 SCC 436. The Supreme Court was dealing with a Habeas Corpus petition of the petitioner. One FIR was registered under Sections 147, 148, 149, 323, 447, 504, 379, 386 IPC and under Section 27 of the Arms Act, wherein the petitioner was shown as an accused and arrested on 30.06.2013. He was thereafter produced in the Court of the learned Additional Chief Judicial Magistrate on 01.07.2013, who remanded him to judicial custody by an order passed on the same day. The writ petition was dismissed by the Supreme Court. In his supplementary judgment rendered by *T.S. Thakur, J.* (as His Lordship then was), the Supreme Court, inter alia, observed:

> *"22.* ***The only question with which we are concerned within the above backdrop is whether the petitioner can be said to be in the unlawful custody. Our answer to that question is in the negative. The record which we have carefully perused shows that the petitioner is an accused facing prosecution for the offences, cognizance whereof has already been taken by the competent court. He is presently in custody pursuant to the order of remand made by the said Court. A writ of habeas corpus is, in the circumstances, totally misplaced.*** *Having said that, we are of the view that the petitioner could and indeed ought to have filed an application for grant of bail which prayer could be allowed by the court below, having regard to the nature of the offences allegedly committed by the petitioner*

and the attendant circumstances. The petitioner has for whatever reasons chosen not to do so. He, instead, has been advised to file the present petition in this Court which is no substitute for his enlargement from custody.

23. We are also of the view that the Magistrate has acted rather mechanically in remanding the accused petitioner herein to judicial custody without so much as making sure that the remaining accused persons are quickly served with the process of the court and/or produced before the court for an early disposal of the matter. The Magistrate appears to have taken the process in a cavalier fashion that betrays his insensitivity towards denial of personal liberty of a citizen who is languishing in jail because the police have taken no action for the apprehension and production of the other accused persons. This kind of apathy is regrettable to say the least. We also find it difficult to accept the contention that the other accused persons who all belong to one family have absconded. The nature of the offences alleged to have been committed is also not so serious as to probabilise the version of the respondent that the accused have indeed absconded. Suffice it to say that the petitioner is free to make an application for the grant of bail to the court concerned who shall consider the same no sooner the same is filed and pass appropriate orders thereon expeditiously." (emphasis supplied)

52. The submission of Mr. Mahajan is that the Supreme Court, therefore, once again upheld the principle that a writ of Habeas Corpus would be misplaced, where the arrestee is an accused facing prosecution for offences, cognizance whereof has already been taken by the competent Court and the accused is in judicial custody. The Supreme Court dismissed the writ petition, despite the fact that it observed that the Magistrate had acted mechanically in remanding the accused to judicial custody. It was left open to the petitioner to apply for bail.

53. For this proposition, Mr. Mahajan also relies on ***Chhagan Chandrakant Bhujbal*** (supra). In the said case, the issue of maintainability of the writ petition for seeking a writ of habeas corpus was raised by the ED, on the ground that the petitioner being in judicial custody under orders of the competent court established under the PMLA, the said writ would not lie. On behalf of the respondent, reliance was placed on ***Kanu Sanyal*** (supra). By referring to ***Kanu Sanyal*** (supra), the Division Bench observed in para 42:

> "*42. While considering these grounds, it was held by the Hon'ble Apex Court that, so far as the first two grounds were concerned, as they relate exclusively to the legality of the initial alleged detention of the Petitioner in the District Jail, Darjeeling, it was not necessary to decide them in view of well settled position that the earliest date with reference to which the legality of the detention can be challenged in a habeas corpus proceeding is a date of filing of the application for habeas corpus and not any other date. As on the date of filing of Habeas Corpus application, the detention of the Petitioner Kanu Sanyal was in the District Jail at Vizakhapatnam, it was held that legality of his earlier detention need not be considered. As regards the third ground, it was held that the conditions laid down were clearly satisfied and hence there was no question of granting relief. While concluding, in last paragraph, it was categorically held that,*
>
> > *"a Writ of Habeas Corpus cannot be granted when a person is committed to jail custody by the competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal." (emphasis supplied)*"

54. The Supreme Court also considered the decision in ***Madhu Limaye*** (supra). The observation made by the Division Bench in relation to these

decisions read as under:

> *"47. ... . The bare perusal of these two Judgments; one in the case of Kanu Sanyal (supra) and the other in the matter of Madhu Limaye (supra), thus, make it clear that both the Judgments pertain to the preventive detention of the Petitioners therein under the provisions of Article 22 of the Constitution and not in respect of the arrest of a person accused of an offence punishable under IPC or under any other special law. Secondly, as per the Judgment in the case of Kanu Sanyal (supra), only when the detention of the Petitioner on the date of filing of the Writ Petition is illegal, it was held that the Writ of Habeas Corpus can lie and it cannot be granted where a person is committed to Jail custody by a competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal. Even the Judgment in the case of Madhu Limaye (supra) also makes it clear that it has to be shown that the arrest made by the Police Officer was illegal and further it has to be established that, at the stage of remand, the Magistrate directs detention in the custody without applying his mind to all the relevant matters. As held in the said authority, if the orders of remand are passed by the Magistrate without application of mind and they are patently routine and appear to have been made mechanically, then only, such orders of remand would not cure the Constitutional infirmities in effecting arrest.*
>
> *48. Thus, the necessary inference that can be drawn from the law laid down in both these authorities is that, in the first place, Petitioner has to show that his arrest is patently and manifestly illegal and null, being without jurisdiction. The Petitioner has to then further show that the Magistrate or the Special Court in this case, which has granted his remand, has not applied its mind to all the relevant matters and the remand orders are either patently routine or appear to have been made mechanically. Only when these essential two conditions are satisfied, the Petition for Habeas Corpus can lie, otherwise, as held in the above-said authority of Kanu Sanyal (supra), if the*

person is committed to Jail custody by a competent Court by an order, which, prima facie, does not appear to be without jurisdiction or wholly illegal, such Writ of Habeas Corpus can neither be asked for, nor can be granted."

55. The Division Bench also relied upon ***Manubhai R.P. Vs. State of Gujarat and Ors.***, (2013) 1 SCC 314, wherein the accused against whom the FIR was registered was arrested; produced before the Judicial Magistrate, and; remanded to custody. The bail application of the accused was rejected by the learned Judicial Magistrate as well as by the Court of Sessions. The accused then preferred the writ of habeas corpus, which too was rejected by the High Court. The Supreme Court in ***Manubhai R.P.*** (supra), inter alia, observed that the main objective of a writ of habeas corpus is to release persons illegally detained or confined; a writ of habeas corpus is not granted when a person is committed to jail custody by a competent court by an order which, *prima facie*, does not appear to be without jurisdiction or wholly illegal; infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the same has to be judged on its own merits; a petition seeking the writ of habeas corpus on the ground of absence of a valid order or remand or detention of the accused has to be dismissed, if on the date of the return of the rule, the custody or detention is on the basis of a valid order. The Supreme Court, in its conclusion, held as follows:

"It is well-accepted principle that a Writ of Habeas Corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in B. Ramachandra Rao and Kanu Sanyal, the court is required to scrutinize the legality or otherwise of

the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is opposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus, viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law."

56. The Division Bench in ***Chhagan Chandrakant Bhujbal*** (supra), after reviewing the aforesaid decisions, held in para 63 as follows:

"63. Therefore, as held in above referred authorities, for the sake of arguments, even assuming that the arrest of the Petitioner was illegal, once it is established that, at the stage of remand of the Petitioner, the Special Court has directed detention of the Petitioner after applying its mind to all the relevant factors, the orders of remand having thus cured the alleged Constitutional infirmities and such orders, prima facie, being not passed without jurisdiction or wholly illegal, then, as per the law laid down in the above cited authorities, the Writ for Habeas Corpus itself is not maintainable".

57. Mr. Mahajan submits that since the petitioner was remanded to the custody of the Enforcement Directorate on 26.08.2017 till 31.08.2017; his ED custody remand was further extended again on 31.08.2017, for another four days, i.e. till 04.09.2017; vide order dated 04.09.2017, it was further extended for another four days till 08.09.2017; vide order dated 08.09.2017, the judicial custody remand of the petitioner was granted for 14 days till

22.09.2017; vide order dated 22.09.2017, the judicial custody remand of the petitioner was extended till 06.10.2017; vide order dated 06.10.2017, the judicial custody remand of the petitioner was further extended till 17.10.2017; vide order dated 17.10.2017, the judicial custody remand of the petitioner was extended till 25.10.2017, and; thereafter on 23.10.2017, a complaint under Section 44/45 of the PMLA was filed by the Director of Enforcement Directorate, whereon cognizance of the offence under Section 3 punishable under Section 4 of the PMLA was taken against the accused persons, the present petition is not maintainable as not only on the date of filing of the petition, but even on the date of return, which was fixed as 13.09.2017, as also presently, the petitioner is in judicial custody and a writ of Habeas Corpus is not maintainable to assail the orders whereby the petitioner was, initially, remanded to the ED custody, and thereafter, placed in judicial custody.

58. Mr. Mahajan submits that the petitioner's application to seek bail is pending before the learned Special Judge, and the petitioner is pursuing the same. Though the petitioner's counsel had made his statement on 13.09.2017 that the application seeking regular bail shall not be pressed before the competent Court, subsequently, the said statement was withdrawn by the petitioner through counsel on 23.10.2017.

59. Mr. Anil Soni, learned Central Government Standing Counsel has adopted the submissions advanced by Mr. Mahajan. He further submits that the definition of the expression "*order*" in the PML Arrest Rules shows that the order is distinct from the grounds of arrest under sub-Section (1) of Section 19 of the Act. He submits that the obligation on the Competent

Authority is only to "*inform*" the arrestee of the grounds of arrest, and it is not essential that the "order" of arrest is served on the arrestee under Section 19 of PMLA.

60. We have considered the rival submissions of the parties. Mr. Handoo has placed reliance on ***Vimal Kishore Mehrotra*** (supra) – a Division Bench judgment of Allahabad High Court, and in particular on paragraph 30 of the said decision in support of his submission that decisions of Courts under clause (5) of Article 22 will be of much assistance in interpreting clause (1) of Article 22. However, this decision in ***Vimal Kishore Mehrotra*** (supra) stands overruled by the Full Bench decision of the same Court in ***Bal Mukund Jaiswal*** (supra).

61. At this stage, we may observe that since the decision in ***Vimal Kishore Mehrotra*** (supra) and ***Bal Mukund Jaiswal*** (supra) are both decisions of the Allahabad High Court, both of them have persuasive force and do not constitute binding precedent so far as this Court is concerned. Therefore, merely because the decision in ***Vimal Kishore Mehrotra*** (supra) has been overruled in ***Bal Mukund Jaiswal*** (supra), would not be a reason good enough for us to discard the view taken by the Division Bench in ***Vimal Kishore Mehrotra*** (supra). However, having considered both the decisions, and on an independent review of the legal position emerging from ***Limaye*** (supra) and ***Kanu Sanyal*** (supra) – both of which are decisions of the Supreme Court and binding on us, as well as the Full Bench decision of this Court in ***Rakesh Kumar*** (supra), we find ourselves in agreement with the Full Bench decision in ***Bal Mukund Jaiswal*** (supra) rather than the view taken by the Division Bench in ***Vimal Kishore Mehrotra*** (supra).

62. On consideration of the aforesaid decision relied upon by learned counsels, the position, in law, which emerges is as follows:

i. The procedural safeguards in clause (1) of Article 22 are meant to afford the earliest opportunity to the arrested person to remove any mistake, misapprehension or misunderstanding in the minds of the arresting authority and, also, to known exactly what the accusation against him is so that he can exercise the second right, namely, of consulting a legal practitioner of his choice and to be defended by him. Clause (2) of Article 22 provides the material safeguard that the arrested person must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers may, without delay, apply its mind to his case. See ***Madhu Limaye*** (Supra).

ii. Neither Section 19(1) of PMLA nor the definition of the expression 'order' as given in Sub-Clause (h) of Rule 2, of the PMLA Arrest Rules provide that the grounds for such arrest are mandatorily required to be provided in writing to the person arrested at the time of his arrest. Oral communication of the grounds of arrest is not only a substantial, but proper compliance of the provision. Section 19(1) also does not state that the grounds of arrest are to be informed to the person arrested, immediately. The use of the word in Section 19(1) *"as soon as may be"* makes it clear that grounds of arrest may not be supplied at the time of arrest itself or immediately on arrest, but as soon as may be. See ***Chhagan Chandrakant Bhujbal*** (Supra).

iii. There is basic and fundamental difference between detention of a person under the provisions of law providing for preventive detention, and detention of a person arrested, accused of commission of an offence. In the case of a person arrested on accusation of commission of an offence, he is required to be produced before the Magistrate within 24 hours. He has the right to consult and to be defended by a legal practitioner of his choice. The purpose of information of the grounds of arrest is to enable him to apply for his release on bail when he is produced before the Magistrate. Therefore, the principles laid down and decisions rendered in cases of preventive detention and under Article 22(5) of the Constitution of India cannot be pressed into service for appreciating the ambit and scope of provisions of Section 50 of the Code of Criminal Procedure. Communication referred to in Section 50 of the Code of Criminal Procedure need not be, in every case, in writing. What is important is communication, or knowledge, or information regarding the particulars of the offence for which the arrest is made, or the grounds for such arrest. The obligation to "forthwith communicate to him full particulars of the offence for which he is arrested" in Section 50 of the Code, can be said to be discharged if it is done with all reasonable dispatch and without avoidable delay. It can also be interpreted to mean, as soon as possible, without any delay. See ***Sunil Chainani*** (Supra)

iv. The words used in Article 22(1) are that no person arrested shall be detained in custody without informing him, as soon as may be, of the

grounds of such arrest. Thus if the person is not informed as soon as may be, his further detention may become invalid or unlawful. But it cannot be said that his initial arrest itself becomes illegal. See ***Sunil Chainani*** (Supra).

v. Once it has been shown that the arrest made by the police officer is illegal, it is necessary for the State to establish that, at the stage of remand, the magistrate directed detention in jail custody after applying his mind to all relevant matters. See ***Madhu Limaye*** (supra).

vi. A writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent Court by an order which *prima facie* does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. See ***N. Ratnakumari*** (Supra), ***Kanu Sanyal*** (Supra), ***Manubhai R.P.*** (Supra).

vii. Once it is established that, at the stage of remand of the Petitioner, the Special Court has directed detention of the Petitioner after applying its mind to all the relevant factors, the orders of remand having thus cured the Constitutional infirmities, if any and such orders, prima facie, being not passed without jurisdiction or in a wholly illegal manner, then, the Writ for Habeas Corpus itself is not maintainable. See **Chhagan *Chandrakant Bhujbal*** (Supra).

viii. If on the date of the hearing of the writ petition, it is shown that the detention of a particular person is valid, mere fact that his detention had been invalid earlier would not entitle such a petitioner to have any redress in a habeas corpus petition. Even if detention of a particular person is not in accordance with law earlier, but if by happening of subsequent events his detention presently is legally valid, then there does not arise any question of releasing such a person from custody. See ***Rakesh Kumar*** (Supra).

ix. A writ of habeas corpus would be totally misplaced where an accused is facing prosecution for the offences, cognizance whereof has already been taken by the competent court and he is in custody pursuant to the order of remand made by the said Court. See ***Saurabh Kumar*** (Supra).

63. Article 22 of the Constitution deals with the aspect "*Protection against arrest and detention in certain cases*". The scheme of Article 22 shows that, on the one hand, it deals with the aspect of arrest – which would, obviously, relate to a possible offence/ crime in which the arrestee may be suspected to be involved and, on the other hand, it deals with the aspect of preventive detention. Article 22 itself draws a distinction between the manner in which the aforesaid two situations would be dealt with. The safeguards provided to the arrestee/ detenue in the case of his arrest/ preventive detention are distinct, and it may not be advisable to interpret the scope and extent of the safeguards provided in respect of arrest, or

preventive detention – as the case may be, while interpreting the scope and extent of the safeguards provided for the other.

64. The Constitution consciously uses the expression "*informed*" in sub-Article (1) of Article 22 in contradistinction with the expression "*communicate*" used in sub-Article (5) of Article 22 of the Constitution. This distinction in the usage of the two expressions has to be viewed in the context in which they are so used. When a person is arrested and detained in custody, he is entitled to know as to why he is so arrested, so that he is able to remove any mistake, misapprehension or misunderstanding in the mind of the arresting authority and to know exactly what the accusation against him is. This right of the arrestee is enables him to exercise his right to consult a legal practitioner of his choice and his right to be defended by the legal practitioner of his choice.

65. Pertinently, it is also obligatory on the authority arresting the person, who is detained in custody, to produce him before the nearest Magistrate within 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of Magistrate.

66. A person can be provided with information, and the recipient can receive the information through one or the other modes of communication. Information may be derived either upon hearing the same, or upon viewing / reading / seeing the same. In either case, the transmission of the information would be complete to the person to whom the information is so transmitted. The arrested person – who is informed of the grounds of arrest verbally, or who is permitted to read the grounds of his arrest which are reduced to

writing, would still be able to hold consultations with his legal practitioner with regard to his rights and remedies against his arrest, and to defend himself through a legal practitioner of his choice. The obligation cast on the Arresting Authority to produce the arrestee before the nearest Magistrate within 24 hours of the arrest, with a further mandate that such person shall not be detained in custody beyond the said period of 24 hours without the authority of the Magistrate, ensures placement of the information/ justification for the arrest of the person before the Magistrate and his due application of mind to the issue whether the arrest should continue, or not.

67. The decision of the Division Bench of the Bombay High Court in ***Chhagan Chandrakant Bhujbal*** (supra) and that of the learned Single Judge of the same Court in ***Sunil Chainani*** (supra) appeal to us and we find ourselves in complete agreement with the reasoning adopted by the learned Judges in those decisions. The expression "*communicate to such person the grounds on which the order has been made ... ...*" used in Article 22(5) has to be interpreted in the context of the purpose for which the said obligation is cast on the State. The communication of the grounds of preventive detention is to afford to the detenue the earliest opportunity of making an effective representation against the order of detention. Unlike in the case of an arrest referable to Article 22(1), when a person is preventively detained under Article 22(5), there is no obligation on the State to produce the detenue before the nearest Magistrate within 24 hours of detention. The law does not mandate the obtainment of the sanction of the Magistrate, or any other judicial authority for continued detention of the detenue beyond the period of 24 hours. The only immediate right available to the detenue is

to make a representation against his preventive detention. To be able to effectively exercise that right, it is imperative that the detenue is communicated the grounds on which the order of detention has been made in writing, in a language that he understands, so that he is able to make his representation effectively.

68. The decision of the Division Bench of the Bombay High Court in ***Chhagan Chandrakant Bhujbal*** (supra) and that of the learned Single Judge of the same Court in ***Sunil Chainani*** (supra) appeal to us and we find ourselves in complete agreement with the reasoning adopted by the learned Judges in those decisions. The expression "*communicate to such person the grounds on which the order has been made ... ...*" used in Article 22(5) has to be interpreted in the context of the purpose for which the said obligation is cast on the State. The communication of the grounds of preventive detention is to afford to the detenue the earliest opportunity of making an effective representation against the order of detention. Unlike in the case of an arrest referable to Article 22(1), when a person is preventively detained under Article 22(5), there is no obligation on the State to produce the detenue before the nearest Magistrate within 24 hours of detention. The law does not mandate the obtainment of the sanction of the Magistrate, or any other judicial authority for continued detention of the detenue beyond the period of 24 hours. The only immediate right available to the detenue is to make a representation against his preventive detention. To be able to effectively exercise that right, it is imperative that the detenue is communicated the grounds on which the order of detention has been made in writing, in a language that he understands, so that he is able to make his

representation effectively.

69. We also find merit in the submission of Mr. Mahajan that, in the present case, the petitioner was informed of the grounds of his arrest when he was permitted to read the same, against which he also made his endorsement, in writing, as "*Read*". The submission of the petitioner that, as a matter of fact, the petitioner was not permitted to read the grounds of arrest, and merely his endorsement to that effect was taken by the respondent cannot be accepted, since in writ proceedings such disputed questions cannot be gone into and the Court has to proceed on the basis of the record. The record reflects the position that the petitioner had acknowledged having read the grounds of arrest. The petitioner need not have made the said endorsement if, as a matter of fact, he had not read the grounds of arrest. Pertinently, the order dated 26.08.2017 passed by the learned Special Judge, granting ED custody remand of the petitioner does not show that it was contended before him that the grounds of arrest were not even allowed to be read, and that the endorsement to that effect was falsely or coercively obtained. The relevant extract from the said order reads as follows:

> *"9. It is further stated in the application that grounds of arrest have been informed to him and intimation of arrest has been given to his wife on her mobile phone and the copy of arrest memo has been delivered to him.*
>
> *10. The application details grounds from a) to l) for ED custody remand of the said Moin Akhtar Qureshi for 14 days.*
>
> *11. Sh. R.K. Handoo, ld. Counsel for the accused opposed the application vehemently. He has argued that the accused*

has not been informed of the grounds of his arrest. Further, he has argued that ED has no power to seek custody of the accused. Further, he has also argued that the allegations of the ED are same as were raised by the IT department against the accused and he has been investigated by the IT department since then. He also argued that no scheduled offence is attracted in this case and the application itself is contradictory.

12. To rebut the allegations of non informing of the grounds of the arrest, the ED has shown from the records that the same were informed to the accused at the time of arrest which is evident from their records where the accused has signed after endorsement "READ". To that extent, the Ld. Spl. PP or ED has argued that statute has been complied in letter and spirit".

70. Pertinently, Section 19 of the PMLA also uses the expression "*informed of the grounds of such arrest*" – as used in Article 22(1), and does not use the expression "communicate the grounds of such arrest". The Legislature has consciously used the expression "*informed*", which is also used in Article 22(1), since Section 19 deals with the power of arrest. The Scheme of Section 19 engrafts an additional safeguard against misuse of the power of arrest by the Competent Authority, by stipulating in sub-Section (2) thereof, that the Competent Authority shall "*immediately after arrest of such person under sub-Section (1) ... ...*" forward a copy of the order of arrest, along with the material in his possession – on the basis of which the reasonable belief is formed that the person is guilty of an offence punishable under the Act, in a sealed envelope to the Adjudicating Authority, which the Adjudicating Authority is obliged to keep under his custody.

71. We may also observe that the obligation cast on the Competent Authority under Section 19(1) is to inform the arrestee, "*as soon as may be*" of the grounds of such arrest. Section 19(1) does not oblige the Competent

Authority to inform/serve the order of arrest, or the grounds for such arrest to the arrestee simultaneously with his arrest. In the present case, the petitioner was informed of the grounds of his arrest at the time of his arrest itself.

72. In the facts of the present case, the petitioner, in any event, came to be informed of the reasons for his arrest when a detailed application was moved before the learned Special Judge on 26.08.2017, i.e. the day following his arrest, setting out the materials which also virtually contain the grounds of his arrest. The said application was, admittedly, served upon the petitioner on 26.08.2017. The said application under Section 167 Cr.P.C. read with Section 65 PMLA seeking ED custody remand of the petitioner, inter alia, states that:

> *"2. During the course of investigation certain facts, which are based on records have emerged, which prima facie constitute omission and commission of certain acts on the part of certain public servants holding high positions in public office in collusion with Moin Akhtar Qureshi his associates thereby huge amount of illegal money was found to have been transacted.*
>
> *3. The various records collected from income tax department viz-a-viz BBM message details seized by them for the year 2011 to 2013, the scrutiny of which has revealed that Moin Akhtar Qureshi has taken huge amount of money from different persons for obtaining undue favours from public servants at the extant time after exercising his personal influence by using corrupt practices through illegal means, thereby influencing them.*
>
> *4. Also, various incriminating documents which have been recovered during our searches at various premises of Moin Akhtar Qureshi and his associates (under the FEMA) revealed*

as under:

a) Moin Akhtar Qureshi, through his company named as India Premier Services Pvt. Ltd. (IPSPL) applied for obtaining concessionaire agreement from Airport Operating company M/s DIAL (Delhi International Airport Limited) for running lounge services at Terminal-3 of IGI Airport, Delhi. The mandatory security permission required involvement of public servants of various Govt. agencies. The BBM messages and interception mobile call records indicate that the certain Govt. servants were in close touch with Moin Akhtar Qureshi and some other Govt. servants dealing with the case were providing confidential information to Moin Akhtar Qureshi about various details viz-a-viz movement of the file etc. In order to secure security clearance, other public servants not connected with the case were malafidely influencing the officers concerned to accord permission. Some conversations indicate money changing hands. However, the permission was not granted due to reservation of Intelligence Agencies.

b) There are many conversations and BBM messages exchanged between Moin Akhtar Qureshi and the accused persons involved in other criminal cases and also the persons who wanted to seek undue favors from the other investigating agencies of Govt. It is apparent that he was able to procure undue relief for such accused persons by getting them of the hook investigating agencies. In this way, he also obtained huge amount of money for providing influence. The money was obtained in the name of Govt. servants/ political persons holding public office and the said public servants illegally either obtained the money for themselves or through their kin. In support of this two public persons/ witnesses Satish Sana and Pradeep Koneru came forward and provided their statements that they had paid crores of rupees to Moin Qureshi to help them in getting relief from investigating agency, CBI.

c) There are conversations to the effect that he has been regularly sending gifts to various Govt. servants holding important and sensitive position who obtained the illegal gratification or pecuniary advantage either themselves or through their kith and kin.

5. The analysis of BBM messages retrieved from Mobile phones of Moin Qureshi and his associates revealed that the Hawala operators were also used to transfer bribe money (belonging to Government officials) to different foreign locations like Paris(France) and UK. The service provider M/s Black Berry, Canada has confirmed the authenticity of the BBM Messagee.

6. Further, in their statement the two witness have confirmed in their respective statements that that they have delivered crores of rupees for Moin Akhtar Qureshi and his associates through his employee Aditya Sharma.

7. One of the witness in his statement stated that approx. Rs.1.75 Crore have been extorted by Moin Qureshi from him and his friend in lieu of the help provided to him in a CBI Case.

8. Another witness in his statement stated that he had to pay more than 5 crores of rupees to Moin Qureshi as he was extorting money from him for providing help in his family case with CBI through his contact in CBI. These conversations of Moin Qureshi and his employee Aditya Sharma are evident to prove the exchange of Money transactions among themselves.

9. Further analysis of BBM messages revealed that Rajesh Sharma resident of Mumbai, involved in Loan-for- Bribery Scam unearthed by CBI in 2010 was also seeking favour of CBI through Moin Akhtar Qureshi.

10. Moin Qureshi was found involved in Hawala Transactions through Delhi Hawala Operators Parvez Ali of Turkman Gate and M/s South Delhi Money Changer (Damini) in GK-1 owned by D.S. Anand. From the search conducted at Parvez Ali's premises various documents have been seized, the analysis of which revealed entries of Huge amount of Hawala

transactions made by Parvez Ali for Moin Qureshi and his Wife Mrs. Nasreen Qureshi to various foreign Destinations. The Money was found transferred through hawala channels to Dubai and Hong Kong. From Dubai the money was further transferred via TT to the desired locations like Paris, London, USA, Hong Kong, Italy and Switzerland.

11. Further after search at another hawala operator M/s South Delhi Exchange and Damini Exchange owned by Dharmender Singh Anand at their premise in G.K-I, New Delhi, huge amount of unaccounted cash and links with Moin Qureshi was found. He is absconding from the country and has not joined investigation. NBW has been issued in this regard.

12. The money which was transferred to different foreign destinations were payments made for the various exorbitant expenses of Moin Qureshi's family and investments. The facts have been revealed from the documents found in the analysis of the technical data. In this way more than 4 crores of hawala transactions has been found recorded in the books of Parvez Ali.

13. Moin Qureshi has incorporated foreign entities M/s Barro Holdings, M/s Bulova Holdings at Seychelles a 100% beneficiary of these companies. Respective Bank accounts of these companies were opened in BSI, AG Bank in Singapore, Hong Kong and OCBC bank Singapore.

14. The existence of bank accounts has been established from account opening form of Barro Holding with BSI Bank Ltd. Singapore. Moin Qureshi have full authority to handle the proceeds and transactions and Purchase in the company. KYC document carries his Passport No.Z1929440. The email conversation of BSI, Bank's employee Tushar Sekhawat with Yeo Gabin (representative of Moin Qureshi's Company Bulova Holding) confirms its ownership."

73. Thus, the petitioner, in any event, became aware of the grounds of his arrest when he and his legal practitioner were provided with a copy of the application under Section 167 Cr.P.C. read with Section 65 PMLA dated

26.08.2017 to seek his ED custody remand. We may again observe that according to the respondents, he was informed of the same by permitting him to read the grounds of arrest against his acknowledgement at the time of his arrest.

74. The submission of Mr. Handoo, premised on the definition of the expression "*order*" contained in Rule 2(h) of the PML Arrest Rules, in our view, is of no avail for the reason that Section 19(1) nowhere states that the arrestee shall be served with the "*order*" of arrest, at the time of his arrest by the Competent Authority. Pertinently, the petitioner was served with the "*Arrest Memo*" at the time of his arrest and not the "*order of arrest*". Thus, even though the expression "*order*" may include the grounds of arrest under sub-Section (1) of Section 19 of the Act, the said aspect is of no relevance to the facts of the present case.

75. Thus, we reject the first submission of Mr. Handoo that the arrest of the petitioner under Section 19(1) of the PMLA itself was illegal. We are of the view that the grounds of arrest were duly informed to the petitioner at the time of his arrest, as well as soon thereafter i.e. on the following day, in the form of the remand application moved before the learned Special Judge.

76. The further submission of Mr. Handoo premised on paragraph 15 of the remand application under Section 167 Cr.P.C. read with Section 65 of the PMLA, is also misplaced. Paragraph 15 of this application, as extracted hereinabove, does not even purport to contain the grounds of arrest. Though Mr. Handoo is right in contending that the Competent Authority must have reason to believe, on the basis of the material in his possession, that the

person concerned is guilty of an offence punishable under the Act before he may proceed to arrest such person, we do not agree with his submission that paragraph 15 of the remand application under Section 167 Cr.P.C. read with Section 65 of the PMLA dated 26.08.2017 shows that the arrest has been made without formation of such belief, and on account of the apprehension that the petitioner "*is in possession of more evidences in this case and he is withholding/ not divulging the same, thus will jeopardise the investigation under PMLA, 2002*". As contended by Mr. Handoo, the power of arrest vested in the Competent Authority under Section 19 of the Act is a discretionary power since it uses the expression "*he may arrest such person ... ...*" and not "he shall arrest such person … … …". Paragraph 15 of the said application merely provides the justification for exercise of that discretion by the Competent Authority to arrest the petitioner. Paragraph 15 does not reflect on the reasons for belief that the petitioner is guilty of an offence under Section 3 punishable under Section 4 of the Act. The reasons for the said belief can be gathered from paragraphs 2 to 14 of the said application, which we have extracted hereinabove.

77. In the present case, as we have noticed hereinabove, after his arrest on 25.08.2017, the petitioner was produced before the learned Special Judge on 26.08.2017 when he was remanded to ED custody till 31.08.2017. The present petition was preferred after the said remand of the petitioner by the learned Special Judge under Section 167 Cr.P.C. read with Section 65 of the PMLA. We have also set out hereinabove the further developments which have taken place with regard to the petitioner's remand to ED custody and thereafter to judicial custody. Thus, it is the judicial remand/ custody of the

petitioner, which is sought to be assailed in the present writ petition.

78. We have set out in-extenso, the well-settled legal position with regard to maintainability of a writ petition under Article 226 of the Constitution of India to seek a writ of Habeas Corpus in respect of a person who is detained under the orders of a Competent Court. It is equally well-settled by a catena of decisions, taken note of hereinabove, that the earliest date with reference to which the illegality of detention may be examined in a Habeas Corpus proceeding, is the date on which the application for Habeas Corpus is made to the Court, if nothing more has intervened between the date of the application and the date of hearing. The decisions taken note of hereinabove show that, in some cases, it was the date of return in the writ proceedings which was considered as the relevant date to determine as to whether the detention of the arrestee was illegal, while in other cases, the Supreme Court also observed that the issue would have to be determined by reference to the position emerging on the date of hearing of the petition. The Full Bench of this Court in ***Rakesh Kumar*** (supra), after a detailed analysis of the earlier decisions, including the decisions in ***Madhu Limaye*** (supra), ***Kanu Sanyal*** (supra), ***Niranjan Singh Nathawan*** (supra), ***Ram Narayan Singh*** (supra), ***A.K. Gopalan*** (supra), ***Pranab Chatterjee*** (supra), ***Talib Hussain*** (supra) and ***Col. Dr. B. Ramachandra Rao*** (supra), held that if, up to the date of hearing of the writ petition, it is shown that the detention/ arrest of the person is valid, the mere fact that his detention had been invalid earlier, would not entitle such a person to have any redress in a Habeas Corpus petition.

79. Faced with the aforesaid position, the submission of Mr. Handoo is

that the remand of the petitioner - initially to ED custody remand, and thereafter to judicial custody, was mechanical and without due application of mind by the learned Special Judge. Here too, we do not find any merit in the submission of Mr. Handoo. The initial order of remand dated 26.08.2017 is a detailed order. It digests the submissions of the Enforcement Directorate, as set out in its application under Section 167 Cr.P.C. read with Section 65 PMLA, which shows that the learned Special Judge not only perused the said application, but also applied his mind to the contents thereof. The learned Special Judge takes note of the averment made in the application that the grounds of arrest have been informed to the petitioner, and intimation of his arrest has been given to his wife and a copy of the arrest memo has been delivered to him. The learned Special Judge also takes note of the grounds for seeking the ED custody remand of the petitioner, as set out in the said application. Thereafter, the order records the submissions advanced by learned counsel for the petitioner in paragraph 11 of the order. He also takes note of the submissions advanced on behalf of the ED in paragraphs 12 to 14 of the application. In paragraph 14 of the order, the learned Special Judge has also referred to the decisions relied upon on behalf of the ED. The learned Special Judge records that he has considered the rival submissions and gives his reasons for allowing the remand application by observing:

> *"17. Considering the seriousness of the allegations and to enable the ED to complete thorough investigation, ED custody remand of Moin Akhtar Qureshi for five days i.e. 31.08.2017 is granted."*

80. Pertinently, though the ED sought the ED custody remand for 14

days, the learned Special Judge granted the same, in the first instance, only till 31.08.2017, i.e. for about 5 days, which also betrays application of mind by the learned Special Judge while passing the order dated 26.08.2017.

81. Similarly, the learned Special Judge while passing the order dated 31.08.2017 allowing the second application under Section 167 Cr.P.C. read with Section 65 PMLA, and extending the ED custody remand of the petitioner till 04.09.2017, passed a detailed order. The order dated 31.08.2017 records the progress made in the investigation viz. "*during remand period, seven witnesses have been examined and trail of 12 Crore of quantified proceeds of crime trail has been found*". He also records the submission of the ED that:

> *"investigation with regard to properties outside India is also to be conducted and audio recording conversation is to be confronted to the accused and CERT-IN has also been requested with regard to e-mail server. He further submits that there is involvement of Shell Companies, it is not a case of single transaction and law provides fourteen days police custody"*

82. The reason given by the learned Special Judge while granting further ED custody remand till 04.09.2017, as found in the order dated 31.08.2017, reads as follows:

> *"7. At this stage, when the matter is at the stage of investigation only, the question raised by learned counsel for the accused on merits of prosecution cannot be a gone into.*
>
> *8. The grounds of further custody have been perused.*
>
> *9. The details of alleged Shell Companies with regard to which further investigation has to be conducted have also been shown to the court by the Enforcement Directorate.*

10. Under these circumstances, ED custody remand of accused Sh. Moin Akhtar Qureshi is extended to another four days i.e. till 04.09.2017."

83. Once again, when the order dated 04.09.2017 was passed on the third application moved by the ED under Section 167 of the Code read with Section 65 of the PMLA for ED custody remand of the petitioner, the learned Special Judge took into account the submissions advanced by the applicant/ ED and extended the ED custody remand of the petitioner till 08.09.2017. The relevant extract from this order reads as follows:

"2. It is stated that due to gazetted holidays coming in between and in the light of requests received from various witnesses including on the medical grounds, the investigation could not be completed.

3. It is further stated in the application that more government servants and details of more properties purchased from the proceeds of crime are yet to be confronted with.

4. It is also stated that more Hawala Dealers are to be questioned and there are lengthy statements of bank accounts which are to be further investigated from the parties with whom transactions were carried out by the accused.

5. Lastly, it is also stated that the accused is to be confronted with audio data obtained from the Income Tax Department.

6. Learned counsel for the accused reiterated his submissions made at the time of the first and second remand.

7. Considering the submissions of learned counsels, ED custody of accused Sh. Moin Akhtar Qureshi is extended for four days till 08.09.2017. Let the accused be produced on the said date at 2 pm."

84. On 08.09.2017, the petitioner was sent to judicial custody on 14 days remand. The considerations, which went into making this order, have been

recorded therein and the same reads as follows:

> *" The ED custody of the accused completes today.*
>
> *An application is filed requesting for Judicial Custody remand for 14 days mentioning that investigation is at initial stage and same is pending.*
>
> *Ld. Spl. PP for ED has stated that the statements of public servants, private persons are yet to be recorded and more properties have surfaced acquired from proceeds of crime.*
>
> *He further stated that statement of HAWALA operator is being recorded and release of accused at this stage shall hamper the investigation.*
>
> *On the other hand, ld. Counsel for accused strongly opposed the Judicial Custody remand. He submits that the application for Judicial Custody remand is concealing more facts than revealing.*
>
> *Considering the submissions of the Ld. Spl. PP for ED, Judicial Custody remand of the accused for 14 days is granted till 22.09.2017."*

85. On 22.09.2017, the judicial remand of the petitioner was extended by 14 days on the application of the ED. The relevant extract from this order reads as follows:

> *"An application is filed for JC remand of 14 days of accused.*
>
> *It is submitted by the Ld. Special PP that during investigation, the statement of witnesses have been recorded and they have been confronted with various bank records, mobile forensic reports and technical surveillances. Let us (sic- letters) have been issued to banks and different government agencies to provide records. The hard disk data in respect of e-mails for the transmission of documents two various countries are being investigated. Summons to witnesses have been issued and they are yet to be examined. The investigation is in progress.*

The application is strongly opposed by the Ld. Counsel for accused on the ground that the Custody is not required for further investigation.

Considering the submissions made, JC extended till 06.10.2017."

86. The same was again extended on 06.10.2017 since the investigation was in progress.

87. On 17.10.2017, the ED moved another application to seek extension of the petitioner's judicial custody. The order shows that, on that date, the petitioner did not press his bail application. The reason for the petitioner not pressing his bail application before the learned Special Judge was that on 13.09.2017, in the present proceedings the petitioner had made a statement through counsel that he shall not press his application for regular bail before the Competent Court till the next date of hearing, which got extended from 09.10.2017 to 16.10.2017; and from 16.10.2017 to 17.10.2017 and; from 17.10.2017 to 23.10.2017. On 23.10.2017, the complaint under Section 45 of the PMLA was filed by the Director of ED, whereon cognizance was taken by the learned Special Judge against the accused persons, including the petitioner herein, who was arrayed as accused No.1. The learned Special Judge observed that accused No.1 was already remanded to judicial custody till 25.10.2017 and that he be produced before the Court on 25.10.2017, the date already fixed. On 25.10.2017, the petitioner/ accused No.1 was produced from custody. He was directed to be produced from custody on the next date, which was fixed as 07.11.2017.

88. Thus, the petitioner continues to be in judicial custody and there

appears to be no illegality whatsoever in his continuing judicial custody. The petitioner has statutory remedy of seeking regular bail from the Competent Court under Section 45 of the PMLA. Thus, there was no question of this Court being called to issue a writ of Habeas Corpus for release of the petitioner when he is continuing in judicial custody. Not only his present judicial custody appears to be legal, but his initial arrest on 25.08.2017, and his subsequent remand to ED custody on successive occasions, and his eventual judicial remand also appears to be a result of application of judicial mind. The same cannot be described as mechanical.

89. Reliance placed by Mr. Handoo on ***Nawabkhan Abbaskhan*** (supra) is misplaced in view of the settled legal position, as we have taken note of hereinabove. Similarly, reliance placed on ***Narayan Dass Indurakhya*** (supra) and ***Atma Ram*** (supra) is also misplaced since, firstly, these decisions relate to cases of preventive detention, and not the case of arrest referable to Article 22(1) of the Constitution and, secondly, it cannot be, prima facie, said that the petitioner was arrested on the basis of vague grounds. We need say no more on this aspect, since these submissions are open to the petitioner to raise while pressing his bail application. There is no question of the ED acting as a judge in its own cause. The ED is the investigating and prosecuting agency. It does not function as the judicial authority. It is the Special Court which exercises the judicial functions. Thus, there is no question of the ED acting as a judge in its own cause.

90. Thus, we agree with Mr. Mahajan that, firstly, there was no illegality in the initial arrest of the petitioner. There was sufficient compliance of Article 22(1) of the Constitution of India, as the petitioner stood informed of

the grounds of his arrest when he was permitted to read the same. He was also informed of the same vide the remand application under Section 167 Cr PC read with Section 65 of the PMLA moved on 26.08.2017. We also agree with the submission of Mr. Mahajan that a writ of habeas corpus does not lie in the facts of the present case, since the petitioner was placed initially in ED custody remand, and thereafter in judicial custody by orders passed by a competent court with due application of mind.

91. For all the aforesaid reasons, we find no merit in the present writ petition and, accordingly, we dismiss the same.

92. We, however, make it clear that no observation made by us in the course of this decision shall prejudice the case of either party on any aspect before the Court dealing with the complaint preferred by the ED under Section 44/45 of the PMLA against the persons, including the petitioner herein.

(VIPIN SANGHI)
JUDGE

(P.S. TEJI)
JUDGE

DECEMBER 01, 2017
sr