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Prevention of Money Laundering Act S. 19 – Duty of court – ED's role and functioning – recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power – Arrest cannot be sustained – Constitutional and statutory mandate of informing the arrested person of the grounds of arrest. 2023 SCeJ 639 = PLRonline 446685 (SC) = (2023-4)212 PLR 535 (SC)

SUPREME COURT OF INDIA

Before : Justice A.S. Bopanna and Justice Sanjay Kumar.

PANKAJ BANSAL – Appellant

Versus

UNION OF INDIA & Ors. – Respondents

Criminal Appeal Nos 3051-3052 of 2023 (@ Special Leave Petition (Crl.) Nos. 9220-21 of 2023) With Criminal Appeal Nos. 3053-3054 of 2023 (@ Special Leave Petition (Crl.) Nos. 9275-76 of 2023).

(i) Prevention of Money Laundering Act, 2002, S. 19 – Duty of court – In terms of Section 19(3) of the Act of 2002, Section 167 Cr.P.C., 1973 would necessarily have to be complied with once an arrest is made under Section 19 of the Act of 2002 – Court seized of the exercise under Section 167 Cr.P.C., 1973 of remanding the person arrested by the ED under Section 19(1) of the Act of 2002 has a duty to verify and ensure that the conditions in Section 19 are duly satisfied and that the arrest is valid and lawful – In the event the Court fails to discharge this duty in right earnest and with the proper perspective, as pointed out herein, the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination, validate an unlawful arrest made under Section 19 of the Act of 2002 – Cr.P.C., 1973 S. 167. [Para 16]

Held, viewed in this context, the remand order dated 15.06.2023 passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, reflects total failure on his part in discharging his duty as per the expected standard. The learned Judge did not even record a finding that he perused the grounds of arrest to ascertain whether the ED had recorded reasons to believe that the appellants were guilty of an offence under the Act of 2002 and that there was proper compliance with the mandate of Section 19 of the Act of 2002. He merely stated that, keeping in view the seriousness of the offences and the stage of the investigation, he was convinced that custodial interrogation of the accused persons was required in the present case and remanded them to the custody of the ED! The sentence – `It is further (sic) that all the necessary mandates of law have been complied with' follows – `It is the case of the prosecution....' and appears to be a continuation thereof, as indicated by the word `further', and is not a recording by the learned Judge of his own satisfaction to that effect. [Para 18]

(ii) Prevention of Money Laundering Act, 2002, S. 19 – ED's role and functioning – Chronology of events speaks volumes and reflects rather poorly, if not negatively, on the ED's style of functioning – Being a premier investigating agency, charged with the onerous responsibility of curbing the debilitating economic offence of money laundering in our country, every action of the ED in the course of such exercise is expected to be transparent, above board and conforming to pristine standards of fair play in action – The ED, mantled with far-reaching powers under the stringent Act of 2002, is not expected to be vindictive in its conduct and must be seen to be acting with utmost probity and with the highest degree of dispassion and fairness – In the case on hand, the facts demonstrate that the ED failed to discharge its functions and exercise its powers as per these parameters. [Para 20]

The clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power – Arrest cannot be sustained.

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[Para 35]

Held, In consequence, it would be necessary for us to examine how the appellants were arrested and verify whether it was in keeping with the safeguards in Section 19 of the Act of 2002. In this context, the sequence of events makes for an interesting reading. The first ECIR was registered by the ED on 15.06.2021 and Roop Bansal was arrested in connection therewith on 08.06.2023. Neither of the appellants was shown as an accused therein. However, it is the case of the ED that investigation in relation to the first ECIR is still ongoing. In any event, after the arrest of Roop Bansal, both the appellants secured interim protection by way of anticipatory bail on 09.06.2023, albeit till the next day of hearing, viz., 05.07.2023, from the Delhi High Court. However, both the appellants were summoned on 14.06.2023 for interrogation in connection with the first ECIR, in which they had interim protection. Summons in that regard were served upon them on 13.06.2023 at 06.15 pm. Significantly, the second ECIR was recorded only on that day, i.e., on 13.06.2023, in connection with fir No. 0006 which was registered on 17.04.2023. Therein also, neither of the appellants was shown as an accused and it was only Roop Bansal who stood named as an accused. In compliance with the summons received by them vis-a-vis the first ECIR, both the appellants presented themselves at the ED's office at Rajokri, New Delhi, at 11.00 am on 14.06.2023. While they were there, Pankaj Bansal was served with summons at 04.52 pm, requiring him to appear before another Investigating Officer at 05.00 pm in relation to the second ECIR. As already noted, there is ambiguity as to when Basant Bansal was served with such summons. It is the case of the ED that he refused to receive the summons in relation to the second ECIR and he was arrested at 06.00 pm on 14.06.2023. Pankaj Bansal received the summons and appeared but as he did not divulge relevant information, the Investigating Officer arrested him at 10.30 pm on 14.06.2023. [Para 19]

The way in which the ED recorded the second ECIR immediately after the appellants secured anticipatory bail in relation to the first ECIR, though the foundational FIR dated back to 17.04.2023, and then went about summoning them on one pretext and arresting them on another, within a short span of 24 hours or so, manifests complete and utter lack of bonafides. Significantly, when the appellants were before the Delhi High Court seeking anticipatory bail in connection with the first ECIR, the ED did not even bring it to the notice of the High Court that there was another FIR in relation to which there was an ongoing investigation, wherein the appellants stood implicated. The second ECIR was recorded 4 days after the grant of bail and it is not possible that the ED would have been unaware of the existence of FIR No. 0006 dated 17.04.2023 at that time.[Para 22]

Surprisingly, in its `Written Submissions', the ED stated that it started its inquiries in respect of this FIR in May, 2023, itself, but strangely, the replies filed by the ED do not state so! It is in this **background that this suppression before the Delhi High Court demonstrates complete lack of probity on the part of the ED**. Its prompt retaliatory move, upon grant of interim protection to the appellants, by recording the second ECIR and acting upon it, all within the span of a day, so as to arrest the appellants, speaks for itself and we need elaborate no more on that aspect. [Para 23]

Further, when the second ECIR was recorded on 13.06.2023 `after preliminary investigations', as stated in the ED's replies, it is not clear as to when the ED's Investigating Officer had the time to properly inquire into the matter so as to form a clear opinion about the appellants' involvement in an offence under the Act of 2002, warranting their arrest within 24 hours.

(iii) Prevention of Money Laundering Act, 2002 S. 19 – This is a sine qua non in terms of Section 19(1) of the Act of 2002 – Needless to state, authorities must act within the four corners of the statute, as pointed out by this Court in *Devinder Singh v. State of Punjab (2008) 1 SCC 728*, and a statutory authority is bound by the procedure laid down in the statute and must act within the four corners thereof. [Para 24]

(iv) Practice and procedure – Though the appellants did not allege colourable exercise of power or malafides or malice on the part of the ED officials, they did assert in categorical terms that their arrests were a wanton abuse of power, authority and process by the ED – Would tantamount to the same thing. [Para 21]

(v) Prevention of Money Laundering Act, 2002, S. 19 – Failure of the appellants to respond to the questions put to them by the ED would not be sufficient in itself for the Investigating Officer to opine that they were liable to be arrested under Section 19, as that provision specifically requires him to find reason to believe that they were guilty of an offence under the Act of 2002 – Mere non-cooperation of a witness in response to the summons issued under Section 50 of the Act of 2002 would not be enough to render him/her liable to be arrested under Section 19 – Evasive replies – It is the claim of the ED that accused was evasive in providing relevant information – It was however not brought out as to why the replies were categorized as `evasive' – In any event, it is not open to the ED to expect an admission of guilt from the person summoned for interrogation and assert that anything short of such admission would be an `evasive reply'. [Para 25, 26]

Absence of either or both of the accused during the search operations, when their presence was not insisted upon, cannot be held against them. [Para 26]

(vi) Constitution of India, Article 22(1) – Provides, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest – Being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose. [Para 29]

(vii) Prevention of Money Laundering Act, 2002, S. 19, 45 – Bail – Section 45 requires the twin conditions prescribed thereunder are satisfied to grant of bail – Firstly, the Court must be satisfied, after giving an opportunity to the public prosecutor to oppose the application for release, that there are reasonable grounds to believe that the arrested person is not guilty of the offence and, secondly, that he is not likely to commit any offence while on bail – To meet this requirement, it would be essential for the arrested person to be aware of the grounds on which the authorized officer arrested him/her under Section 19 and the basis for the officer's `reason to believe' that he/she is guilty of an offence punishable under the Act of 2002 – It is only if the arrested person has knowledge of these facts that he/she would be in a position to plead and prove before the Special Court that there are grounds to believe that he/she is not guilty of such offence, so as to avail the relief of bail – Therefore, communication of the grounds of arrest, as mandated by Article 22(1) of the Constitution and Section 19 of the Act of 2002, is meant to serve this higher purpose and must be given due importance – Though it is not necessary for the arrested person to be supplied with all the material that is forwarded to the Adjudicating Authority under Section 19(2), he/she has a constitutional and statutory right to be `informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002 – Constitution of India, Article 22(1). [Para 29, 30]

(viii) Constitution of India, Article 22(1) – Prevention of Money Laundering Act, 2002, S. 19(1) – Accused has a constitutional and statutory right to be `informed' of the grounds of arrest, which are compulsorily recorded in writing by the authorized officer in keeping with the mandate of Section 19(1) of the Act of 2002 – There is no valid reason as to why a copy of such written grounds of arrest should not be furnished to the arrested person as a matter of course and without exception – Why this would be the proper course to adopt is the constitutional objective underlying such information being given to the arrested person – Conveyance of this information is not only to apprise the

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arrested person of why he/she is being arrested but also to enable such person to seek legal counsel and, thereafter, present a case before the Court under Section 45 to seek release on bail, if he/she so chooses – Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* – The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002. [Para 30, 32, 33]

Held, it seems that the mode of informing this to the persons arrested is left to the option of the ED's authorized officers in different parts of the country, i.e., to either furnish such grounds of arrest in writing or to allow such grounds to be read by the arrested person or be read over and explained to such person.

Held, Rule 6 of the Prevention of Money Laundering (The Forms and the Manner of Forwarding a Copy of Order of Arrest of a Person along with the Material to the Adjudicating Authority and its Period of Retention) Rules, 2005, titled `Forms of records', provides to the effect that the arresting officer while exercising powers under Section 19(1) of the Act of 2002, shall sign the Arrest Order in Form III appended to those Rules. Needless to state, this format would be followed all over the country by the authorized officers who exercise the power of arrest under Section 19(1) of the Act of 2002 but, in certain parts of the country, the authorized officer would inform the arrested person of the grounds of arrest by furnishing the same in writing, while in other parts of the country, on the basis of the very same prescribed format, the authorized officer would only read out or permit reading of the contents of the grounds of arrest. This dual and disparate procedure to convey the grounds of arrest to the arrested person cannot be countenanced on the strength of the very same arrest order, in the aforestated prescribed format. [Para 31]

Held, there are two primary reasons as to why this would be the advisable course of action to be followed as a matter of principle. Firstly, in the event such grounds of arrest are orally read out to the arrested person or read by such person with nothing further and this fact is disputed in a given case, it may boil down to the word of the arrested person against the word of the authorized officer as to whether or not there is due and proper compliance in this regard.

*Held,*In the case on hand, though the ED claims that witnesses were present and certified that the grounds of arrest were read out and explained to him in Hindi, that is neither here nor there as he did not sign the document. Non-compliance in this regard would entail release of the arrested person straightaway, as held in *V. Senthil Balaji* . Such a precarious situation is easily avoided and the consequence thereof can be obviated very simply by furnishing the written grounds of arrest, as recorded by the authorized officer in terms of Section 19(1) of the Act of 2002, to the arrested person under due acknowledgment, instead of leaving it to the debatable ipse dixit of the authorized officer.

[Para 30, 32]

Held, the grounds of arrest recorded in the case on hand have not been produced before this Court, but it was contended that they were produced at the time of remand. However, this did not serve the intended purpose.

Held, further, in the event their grounds of arrest were equally voluminous, it would be well-nigh impossible to record and remember all that they had read or heard being read out for future recall so as to avail legal remedies.

*Held,*More so, as a person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her.

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Held, The very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1) and the statutory mandate under Section 19(1) of the Act of 2002. [Para 33]

Sensitive information : Grounds of arrest recorded by the authorized officer, in terms of Section 19(1) of the Act of 2002, would be personal to the person who is arrested and there should, ordinarily, be no risk of sensitive material being divulged therefrom, compromising the sanctity and integrity of the investigation. In the event any such sensitive material finds mention in such grounds of arrest recorded by the authorized officer, it would always be open to him to redact such sensitive portions in the document and furnish the edited copy of the grounds of arrest to the arrested person, so as to safeguard the sanctity of the investigation. [Para 34]

(ix) Prevention of Money Laundering Act, 2002, S. 19(1) – Constitutional and statutory mandate of informing the arrested person of the grounds of arrest – It would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception – Admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that – This form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002 – We have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) . [Para 35]

The decisions of the Delhi High Court in *Moin Akhtar Qureshi* and the Bombay High Court in *Chhagan Chandrakant Bhujbal*, which hold to the contrary, do not lay down the correct law.

Tags: COI Art. 22(1), CrPC S. 167, Prevention of Money Laundering Act S. 19, Prevention of Money Laundering Act S. 45