IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Criminal Writ Jurisdiction)

W. P. (Cr.) 68 of 2024

Hemant Soren, aged about 48 years, s/o Shri Shibu Soren, r/o Chief Minister House, PS-Gonda, PO-Gonda, District-Ranchi ..... **Petitioner**

-Versus-

1. Directorate of Enforcement, Government of India, having its office at Room No. 202, A-Block, Pravartan Bhawan, Dr. A.P.J. Abdul Kalam Road, PO & PS-Tuglak Road, New Delhi-110011
2. Assistant Director, Directorate of Enforcement, having its Zonal Office at Airport Road, Plot No. 1502/B, Hinoo, PO & PS-Hinoo, District-Ranchi, Jharkhand-834002 ....**Respondents**

CORAM: HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioner : Mr. Kapil Sibal, Sr. Advocate (through V.C)
Mr. Rajiv Ranjan, Sr. Advocate
Mr. Piyush Chitresh, Advocate

For the Respondents : Mr. S. V. Raju, (A.S.G) (through V.C)
Mr. Zoheb Hossain, Advocate
Mr. Amit Kumar Das, Advocate
Mr. Saurav Kumar, Advocate
Mr. Rishabh Dubey, Advocate

J U D G M E N T

CAV on 28th February 2024 Pronounced on 3rd May 2024

Per, Shree Chandrashekhar, A.C.J.

After traveling a little topsy-turvy course, this writ petition comes up with the following amended prayers:

> "1a. For appropriate writ(s), order(s) and direction(s) to read Down and/or Read Into, consider, determine and expound the scope and ambit of Section 50 (2) of The Prevention of Money-Laundering Act, 2002 in consonance with the law declared by the Supreme Court inter alia, in Vijay Madanlal Chowdhury vs Union of India (Cr. Appeal nos. 4634/2014) and Pankaj Bansal vs Union of India (Cr. Appeal nos. 3051 and 3052 of 2023) and declare that:-
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> (i) The authorised person issuing Summon under Section 50(2) must record in writing the reasons why he considers necessary the attendance of person to whom Summon is issued:
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> (ii) The writing recording the reason to belief that attendance is necessary before issuance of Summon under Section 50(2) must be dated, sealed and preserved so that the same be made available to the competent Court when called for;
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> 1AA. Declare the arrest and consequent detention of the Petitioner as unwarranted, arbitrary, illegal and violative of the fundamental right of the petitioner guaranteed and protected under Article 21 of the

Constitution of India and direct the Respondent to forthwith set the Petitioner free.

1AB. Declare the order dated 02.02.2024 passed by PMLA Court in the said proceeding sending the Petitioner for remand is arbitrary and illegal.

b. Issue appropriate writ, order or direction to hold and declare the action of the respondents in issuing summons dated 7.8.23, 18.8.2023, 31.8.2023, 11.09.2023, 25.09.2023, 10.12.2023, 29.12.2023, 16.1.12024, 22.1.2024, 25.1.2024 in relation to ECIR/RNZO/25/2023 as grossly illegal, null and void and wholly without jurisdiction and to accordingly quash all action/ consequential action taken in respect of the above summons in ECIR/RNZO/25/2023.

c. To further Hold and declare that the respondents have exceeded their jurisdiction under the provisions of Prevention of Money Laundering Act, 2002 and have exercised jurisdiction which is not vested to them in law and they are indulging in a vindictive and capricious and motivated action and indulging in roving and fishing enquiry which is impermissible under the provisions of PMLA.

d. To further hold and declare that the action of the respondents in issuing summons to the petitioner in ECIR/RNZO/25/2023 although relatable to and in relation to predicate offence being Sadar P.S. Case 272/23 in District Ranchi although the petitioner is not an accused in the above case nor are the questions and summons being served upon the petitioner is relatable to any Proceeds of Crime connecting the petitioner to the predicate offence and apparently the respondents are indulging in witch hunting in colorable exercise of power.

e. Issue a writ of mandamus or any other appropriate writ(s), order(s) or direction(s) in the nature of mandamus restraining the Respondents, their officers, employees, servants etc.to forbear from acting and from giving any or further effect to the summons dated 7.8.23, 18.8.2023, 31.8.2023, 11.09.2023, 25.09.2023, 10.12.2023, 29.12.2023, 16.1.12024, 22.1.2024, 25.1.2024 in relation to ECIR/RNZO/25/2023 by issuing further summons to the Petitioner in the nature of the summons impugned herein;

f. Issue an order directing the respondents not to issue any further summons to the petitioner in connection with ECIR/RNZO/ 25/2023 and stay the operation and execution of the summons and all consequential action taken / issued in F. No. ECIR/RNZO/25/2023.

AA. Direct the immediate release of the Petitioner from illegal arrest and custody of the Respondent.

g. Issue rule nisi in terms of prayers (a) to (c) above;

h. Direction restraining the Respondent no.2 from giving any or further effect to or acting pursuant to or issuing any further summons or initiating any coercive steps against the Petitioner till the disposal of the present writ petition;

i. Interim and ad interim orders in terms of prayers above;

j. Pass such other and further order or reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioner, a 2-time Chief Minister of Jharkhand, was arrested on the evening of 31st January 2024 by the Enforcement Directorate[1]. He has challenged the remand order dated 2nd February 2024 and, in connection thereto, questions the summons that does not provide any details of a predicate offence or any other information regarding his

[1] in short, ED

involvement with the proceeds of crime. He has pleaded that the ED is acting beyond its jurisdiction and summons are issued to him out of malice and to harass, humiliate and intimidate him. The ED started its expedition in October 2022 and issued a summons on 31st October 2022 seeking his explanation in the illegal mining case. That was followed by another summons dated 9th November 2022 on a similar allegation. In compliance thereof, he attended the office of the ED on 17th November 2022 for the recording of his statement. On that day, he was questioned about his assets for over nine hours and as required by the ED furnished complete details of the assets owned by him and his family members and provided certified copies of the title deeds thereof through a letter dated 30th November 2022. The ED again issued a summons dated 7th August 2023 to him for (i) recording of his statement concerning the properties owned, possessed and occupied by him and (ii) sources of acquisition of the properties under his possession. The petitioner, in turn, by a letter dated 14th August 2023 informed the ED about furnishing the details of his assets on 30th November 2022 and filing of the returns with the Income Tax Department. However, fresh summons were issued to him on 18th August 2023, 31st August 2023, 11th September 2023, 25th September 2023, 10th December 2023, 29th December 2023, 16th January 2024 and 25th January 2024 for the same purpose of the recording of his statement regarding the properties. On 20th January 2024, his statement was recorded between 1:30 PM and 6:30 PM. On that day, only 17-18 questions were put to him out of which 3-4 questions related to a plot of land at Bargai which the ED alleged to be owned and possessed by him and the other questions were about inaccuracies in the affidavit filed with the Election Commission.

3. The petitioner further pleaded that an inquiry was made from him regarding cash deposit of about Rupees One Crore between 2018 and 2022 in the Bank accounts of Sohrai Bhawan and Sohrai Events that are independently managed by his wife. He endeavored to explain that the money so deposited over the years was received in installments from letting out of the marriage hall and by providing event management services and all such receipts had been the subject matter of the assessment for Income

Tax and Service Tax. He has raised a grievance also against the Central Bureau of Investigation which conducted an inquiry and submitted reports dated 6th January 2021, 1st July 2021 and 29th June 2022 wherein certain properties which do not belong to him and his family are wrongly included.

4. The petitioner alleges that repeated summons issued by the ED were actuated with malice and part of the political conspiracy to destabilize the elected Government in the State of Jharkhand. The summons issued by the ED ignored his reply through letters dated 30th November 2022, 14th August 2023, 24th August 2023, 9th September 2023, 23rd September 2023, 12th December 2023, 2nd January 2024 and 15th January 2024 and furnishing of the details of movable and immovable properties, details of Bank accounts and PAN number. The petitioner raises a question also to the jurisdiction of the ED to investigate the offence of money-laundering by starting a fresh inquiry into the assets acquired by him more than 15 years ago which were duly reported to and accepted by the Income Tax Authority as legally acquired property. The petitioner apprehends that this is part of the game plan of the BJP to wreck political vendetta against the Opposition leaders who have united to form INDIA Alliance in which he and his party are vocal participants.

5. In its affidavit-in-opposition, the ED referred to the raids conducted at several places on 13th April 2023 and 26th April 2023 in the course of which seventeen Register-II and eleven trunks full of tampered deeds and documents were seized. Several persons thereafter came forward and gave statements under section 50 of the Prevention of Money-Laundering Act, 2002[2] claiming themselves owners of the properties that were illegally grabbed by others. According to the ED, there are at least three persons who produced documents in support of their claim over a part of the property at Bargai measuring about 8.46 acres (hereinafter referred to as subject property) and claimed that the lands belonging to them and other adjacent lands are forcefully possessed by the petitioner. One of such persons, namely, Baijnath Munda gave a complaint that a piece of land measuring about 8.50 acres at Bariatu Thana No. 184 originally owned by

[2] in short, "PMLA"

his ancestors was forcefully acquired by the petitioner and his father. After recording the statement of Baijnath Munda, a survey under section 16 of the PMLA was conducted on 20th April 2023 in the presence of Baijnath Munda, Shyam Lal Pahan and Bhanu Pratap Prasad. At that time, the Circle Officer, Circle Inspector and Circle Amins were also present with the officials of the ED and it became clear during the survey that the subject property was in illegal possession of the petitioner. Santosh Munda who was found residing with his family in a temporary settlement inside the subject property stated before the ED that the subject property is in the occupation, use and possession of the petitioner. In the affidavit-in-opposition, the survey conducted on 20th April 2023 has been narrated in the following manner:

> 41. Conclusion of the Survey conducted on 20.04.2023 under section 16 of PMLA, 2002 and Statements which indicate that the property admeasuring 8.5 acres (approx.) is illegally possessed and used by Petitioner:
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> - On reaching the premise, it was seen that it was a very big land bounded by stone walls. There was one temporary settlement in which a family consisting of five person (including 2 kids) were residing. On enquiry about the ownership of the land, one lady (name withheld) residing and available there stated that the land owner of the said land is Shri Hemant Soren.
> - It was further enquired about any male person who was residing there and can come for the enquiry at the spot. Accordingly, one Santosh Munda, son of Dibru Pahan was called. On enquiry, he also stated that the land belongs to Mantri Ji, i.e., the Petitioner herein.
> - On further enquiry, Santosh Munda stated that the land is in custody of Shri Hemant Soren, the present C.M. of Jharkhand which was noted by all.
> - It was verified and reported that the total land was distributed in several plots and khatas and as per online information and available information in their domain, the entire land had been shown amongst several owners.
> - It was further stated by Shri Bhanu Pratap Prasad that the concerned original register II had been seized from his premises during searches dated 13.04.2023.
> - It was seen that the total land was distributed in several plots and khatas and as per online information and available information in their domain, the entire land has been shown amongst several owners. The online records available with circle officer appears contradictory. The plot was shown to be registered in name of following different persons, but all the plots are located inside a common boundary which clearly shows the control and occupation of a single person.

Khata	Plot	Area	Khatiyan	Register II	Page No.	Geo-graphical status

221	983	0.21 acres	Gair Bhuinhari	Not available		Inside the boundary
	985	1.16 acres	Gair Bhuinhari	Not available		Inside the boundary
	987	0.96 acres	Gair Bhuinhari	1. Kush Kumar Bhagat and other 80 decimals (338 R 27 /87-88/17.3.88) 2. Budhan Ram, Jageshwar Ram 16 decimals (419R27 /78-79/24.04.78)		Inside the boundary
210	984	0.30 acres	Bakaast Bhuinhari	Not available		Inside the boundary
109	986	1.09 acres	Lodha Pahan, s/o Birsa Pahan	Lodha Pahan, s/o Birsa Pahan	110/1	Inside the boundary
210	988	2.06 acres	Bakaast Bhuinhari	Shashi Bhushan Singh 84 decimals (325/88-89/ 23.01.89) Bhawani Shankar Lal 84 decimals (324/88-89/23.01.89) Budhu Ram and others 38 decimals (419/78-79/ 24.04.78)	88/V 89/V 159/I	Inside the boundary
210	990	0.48 acres	Bakaast Bhuinhari	Budhan Ram and others 38 decimals (419/78-79/ 24.04.78)	159/I	Inside the boundary
234	989	0.84 acres	Bakaast Bhuinhari	Bharat Ram, Jagdish Ram 12 decimals (418R27/ 78-79/24.07.78) Sudhir Jaiswal 24.5 Kattha (200R 27/86-87/06.08. 86) Anil Jaiswal 23 Kattha(201R27/ 86 - 87/ 06.08.86)	160/I 117/IV 118/IV	Inside the boundary
223	992	0.61 acres	Bakaast Bhuinhari Pahnaai	Maheshwar Das Gupta 16.05 Kattha (323/88-89/ 23.01.89) Moti Sahu 20 Kattha (322/88-89/ 23.01.89) Neel Ratan Rai 10 Decimals(537R27/ 78-79/21.08.78)	86/V 87/V 183/I	Inside the boundary
227	993	0.41 acres	Bakaast Bhuinhari	Jamabandi not available		Inside the boundary
234	996	0.32 acres	Bakaast Bhuinhari	Uma Shankar Jaiswal 17 Katta (202R27/86-87/ 06.08.86)	119/IV	Inside the boundary
210	980	42 deci-mals	Bakaast Bhuinhari	Vanivrat Rai s/o Yamini Mohan Rai, Shri Narayan Chaudhary s/o-Vashaam Chaudhary 220R 27/ 87-88	14/V	Inside the boundary

6. According to the ED, the Register-II containing details of several plots were not available and Online records available in the Circle Office were found to contain contradictory details. The ED seized the

WhatsApp chats of Binod Singh who is being investigated in ECIR/ RNZO/07/2023 and then it was revealed that there was a proposal to construct a Banquet Hall over the subject property, and the proposed plan/map of the Banquet Hall was shared by Binod Singh to the petitioner on 6th April 2021. The ED has criticized the conduct of the petitioner in not cooperating during the inquiry and recording of his statement. On 20th January 2024, while recording his statement under section 50 of the PMLA the petitioner was confronted with the property details, such as, khata number, plot number, mouza etc. but he did not disclose the true facts and concealed his possession over the subject property. He was also confronted with a property measuring one acre in the name of his family members and out of that about 17 decimals of land is recorded in his name. Finally, the ED obtained a search warrant under section 17 of the PMLA and searched his official residence at Shanti Niketan, New Delhi around 7:00 PM on 29th January 2024. However, the petitioner was not found there and it was learned that he had secretly left the premises around 2:00 AM at midnight and therefore the search was conducted in the presence of his staff and other persons present there. The conduct of the petitioner is also criticized for lodging a criminal case on 31st January 2024 vide FIR No. 6 of 2024 under section 3(1)(p)(r)(s)(u) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the officers of the ED who had searched his Delhi residence. He also made a complaint against the officials of the Central Reserve Police Force who were providing support to the ED officials during the recording of his statement on 20th January 2024. In course of the search at New Delhi, the following articles/items were recovered and sealed by the ED on 29th January 2024:

a. cash amounting to Rs. 36,34,500/-.
b. the information shared to the State of Jharkhand under section 66(2) of PMLA, 2002 for taking necessary actions in the matter of recovery of the duplicate seals and stamps of various offices including Registrar of Assurances which were used to manufacture fake forged deeds.
c. The relied upon documents of the prosecution complaint filed in ECIR: RNZO/18/2022 which contain the statement of Bhanu Pratap Prasad recorded in respect of the property admeasuring 8.5 acres which is the subject matter of the instant investigation.
d. From his residence, two keys of BMW car having registration no. HR26EM2836, were also found inside the house. On further investigation, it has revealed that the said Car has been purchased on the instruction of

> Harshit Sahu S/o Dheeraj Sahu in the name of Bhagwandas Holdings Pvt. Ltd. This car was exclusively used by Hemant Soren whenever he visits Delhi.

7. A preliminary objection is taken on the ground that the summons dated 7th August 2023, 18th August 2023, 31st August 2023, 11th September 2023, 25th September 2023, 10th December 2023, 29th December 2023, 16th January 2024, 22nd January 2024 and 25th January 2024 had lapsed by the time this writ petition came to be filed and therefore no relief can be granted to the petitioner and the present proceeding must terminate; and, the writ petition should meet with the same fate as W.P.(Cr.) No.787 of 2023.

8. On a previous occasion, W.P (Cr.) No. 787 of 2023 was filed by the petitioner with the following prayers:

> "a. Declare Section 50 and Section 63 of the Prevention of Money Laundering Act, 2002 as ultra vires to the Constitution of India; and
> b. Issue a writ of mandamus and/or other appropriate writ(s), order(s) or direction(s) in the nature of mandamus to declare the summons bearing Nos. PMLA/SUMMON/RNZO/2023/450 dated 07.08.2023, PMLA/ SUMMON/ RNZO/ 2023/ 458 dated 18.08.2023, PMLA/ SUMMON/ RNZO/ 2023/ 506/1957 dated 31.08.2023 and PMLA/SUMMON/RNZO/ 2023/545 dated 11.09.2023 issued by the Respondent No.2 illegal and null and void and accordingly quash the impugned summons and all steps taken and proceedings emanating therefrom;
> c. Issue a writ of mandamus or any other appropriate writ(s), order(s) or direction(s) in the nature of mandamus restraining the Respondents, their officers, employees, servants etc.to forbear from acting and from giving any or further effect to the summons bearing Nos. PMLA/ SUMMON/ RNZO/2023/450 dated 07.08.2023, PMLA/ SUMMON/ RNZO/ 2023/ 458 dated 18.08.2023, PMLA/ SUMMON/ RNZO/ 2023/ 506/1957 dated 31.08.2023 and PMLA/SUMMON/RNZO/2023/545 dated 11.09.2023 and issuing further summons to the Petitioner in the nature of the summons impugned herein;
> d. Issue rule nisi in terms of prayers (a) to (c) above;
> e. Direction restraining the Respondent no.2 from giving any or further effect to or acting pursuant to or issuing any further summons to the Petitioner in the nature of the summons impugned herein till the disposal of the present writ petition;
> f. Interim and ad interim orders in terms of prayers above;
> g. Pass such other and further order or reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

9. The summons dated 7th August 2023, 18th August 2023, 31st August 2023 and 11th September 2023 were challenged in W.P.(Cr.) No.787 of 2023; these are also challenged in this writ petition. The petitioner put forth a ground that for good reasons he could not appear before the ED.

However, before a decision was rendered in the writ petition the date of his appearance indicated in the summons had passed and the writ petition was dismissed observing that it had been rendered infructuous.

10. By an order dated 13th October 2023, a co-ordinate Bench of this Court dismissed W.P (Cr.) No. 787 of 2023 observing as under:

> "5) Mr. Kapil Sibal, Senior Advocate representing the petitioner, virtually, submitted that the summons dated 07.08.2023 asking the petitioner to appear on 18.08.2023 is bad in law, as there is no predicate offence against the petitioner and no case has been registered. He also drew attention of this Court to paragraph 187 of the judgment rendered in the case of Vijay Madanlal Choudhary and others Vs. Union of India, 2022 SCC OnLine SC 929. However, in the course of hearing, the learned Senior Advocate for the petitioner would submit that their prayer as far as declaring the provisions of Sections 50 and 63 of the Prevention of Money Laundering Act, 2002 has already been settled by the Hon'ble Supreme Court in the aforesaid judgment of Vijay Madanlal Choudhary (supra) and, therefore, this Court does not have any jurisdiction to entertain the writ petition on that ground.
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> 6) Learned Senior Advocate Cum Additional Solicitor General Mr. S.V. Raju would submit that the Writ Petition (Criminal) challenging the summons has become infructuous by efflux of time as the date of appearance of the petitioner has already elapsed and, therefore, at present this Court should not interfere in the matter, because no substantial relief can be granted to the petitioner. Only an academic discussion is not to be resonated to in by the Court so that valuable time of the Court is not wasted.
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> 7) In view of aforesaid submissions and the settled position of law that the Hon'ble Supreme Court in Vijay Madanlal Choudhary's case (supra) has already ruled that the two provisions, referred to above, are not ultra vires of the Constitution and that the summons, which have been issued to the petitioner, have become infructuous because of efflux of time, we are of the opinion that the writ application is not maintainable. Hence, we do not entertain the writ application and consider that it is not a fit case to rule nisi the respondents. Hence, the writ petition is dismissed in limine."

11. Even going by the order passed by the co-ordinate Bench of this Court, the summons issued on 25th January 2024 survived as of 31st January 2024 when the present writ petition was filed. This writ petition cannot be held not maintainable because there are other issues involved therein, such as, the legality of arrest and remand of the petitioner and the jurisdiction of the ED to register ECIR and make inquiries against him. Mr. S. V. Raju, the learned Additional Solicitor General next contended that after the amendment the writ petition had been transformed into a Habeas Corpus petition which is not entertainable by the writ Court in the face of the remand orders dated 2nd February 2024, 7th February 2024 and 12th February 2024. The learned ASG submitted that the remand orders dated

7th February 2024 and 12th February 2024 are not under challenge and no relief can be granted to the petitioner in the present proceeding. The ED maintained that the petitioner can avail the remedy under section 45 of the PMLA read with section 439 of the Code of Criminal Procedure by filing a petition for regular bail in the Special Court (PMLA) at Ranchi and cannot move this Court under Article 226 of the Constitution of India by short-circuiting the statutory regime. The learned ASG referred to *"Rahul Modi"* [3] and other judgments to submit that the petitioner who was remanded to police/judicial custody by a judicial order cannot maintain a Habeas Corpus petition in the High Court. In *"Rahul Modi"*[3], the Hon'ble Supreme Court held as under:

> "21. The act of directing remand of an accused is thus held to be a judicial function and the challenge to the order of remand is not to be entertained in a habeas corpus petition. The first question posed by the High Court, thus, stands answered. In the present case, as on the date when the matter was considered by the High Court and the order was passed by it, not only were there orders of remand passed by the Judicial Magistrate as well as the Special Court, Gurugram but there was also an order of extension passed by the Central Government on 14-12-2018. The legality, validity and correctness of the order or remand could have been challenged by the original writ petitioners by filing appropriate proceedings. However, they did not raise such challenge before the competent appellate or revisional forum. The orders of remand passed by the Judicial Magistrate and the Special Court, Gurugram had dealt with merits of the matter and whether continued detention of the accused was justified or not. After going into the relevant issues on merits, the accused were remanded to further police custody. These orders were not put in challenge before the High Court. It was, therefore, not open to the High Court to entertain challenge with regard to correctness of those orders. The High Court, however, considered the matter from the standpoint whether the initial order of arrest itself was valid or not and found that such legality could not be sanctified by subsequent order of remand. Principally, the issue which was raised before the High Court was whether the arrest could be effected after period of investigation, as stipulated in the said order dated 20-6-2018 had come to an end. The supplementary issue was the effect of extension of time as granted on 14-12-2018. It is true that the arrest was effected when the period had expired but by the time the High Court entertained the petition, there was an order of extension passed by the Central Government on 14-12-2018. Additionally, there were judicial orders passed by the Judicial Magistrate as well as the Special Court, Gurugram, remanding the accused to custody. If we go purely by the law laid down by this Court with regard to exercise of jurisdiction in respect of habeas corpus petition, the High Court was not justified in entertaining the petition and passing the order."

12. A Habeas Corpus proceeding is laid on the foundation of

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[3] Serious Fraud Investigation Office v. Rahul Modi : (2019) 5 SCC 266

illegal detention. In *"Tasneem Rizwan Siddiquee"*[4] the Hon'ble Supreme Court held that a plea of illegal detention loses its sting when the person goes to police or judicial custody under an order passed by the jurisdictional Magistrate and no writ of Habeas Corpus can be issued. In *"Manubhai Ratilal Patel"*[5] the Hon'ble Supreme Court held 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 nor passed in an absolute mechanical manner nor is wholly illegal. Later, the law on the subject was elucidated by the Hon'ble Supreme Court in *"V. Senthil Balaji"*[6] as under:

> "28. A writ of habeas corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by a judicial officer, culminating into a judicial function cannot be challenged by way of a writ of habeas corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is a non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of habeas corpus and that too by way of a challenge.
> 29. In a case where the mandate of Section 167 CrPC, 1973 and Section 19 of the PMLA, 2002 are totally ignored by a cryptic order, a writ of habeas corpus may be entertained, provided a challenge is specifically made. However, an order passed by a Magistrate giving reasons for a remand can only be tested in the manner provided under the statute and not by invoking Article 226 of the Constitution of India. There is a difference between a detention becoming illegal for not following the statutory mandate and wrong or inadequate reasons provided in a judicial order. While in the former case a writ of habeas corpus may be entertained, in the latter the only remedy available is to seek a relief statutorily given. In other words, a challenge to an order of remand on merit has to be made in tune with the statute, while non-compliance of a provision may entitle a party to invoke the extraordinary jurisdiction. In an arrest under Section 19 of the PMLA, 2002 a writ would lie only when a person is not produced before the court as mandated under sub-section (3), since it becomes a judicial custody thereafter and the court concerned would be in a better position to consider due compliance.
> 30. Suffice it is to state that when reasons are found, a remedy over an order of remand lies elsewhere. Similarly, no such writ would be maintainable when there is no express challenge to a remand order passed in exercise of a judicial function by a Magistrate. State of Maharashtra v. Tasneem Rizwan Siddiquee: (SCC p. 751, para 10)
> "10. The question as to whether a writ of habeas corpus could be maintained in respect of a person who is in police custody pursuant to a remand order passed by the jurisdictional Magistrate in connection with the offence under investigation, this issue has been considered in Saurabh Kumar v. Jailor, Koneila Jail and Manubhai Ratilal Patel v. State of Gujarat. It is no more res integra. In the present case, admittedly, when the writ petition for issuance of a writ of habeas corpus was filed by the respondent on 18-3-2018/19-3-2018 and decided by the High Court on

[4] State of Maharashtra v. Tasneem Rizwan Siddiquee: (2018) 9 SCC 745
[5] Manubhai Ratilal Patel v. State of Gujarat: (2013) 1 SCC 314
[6] V. Senthil Balaji v. State: (2024) 3 SCC 51

> 21-3-2018 her husband Rizwan Alam Siddiquee was in police custody pursuant to an order passed by the Magistrate granting his police custody in connection with FIR No. I-31 vide order dated 17-3-2018 and which police remand was to enure till 23-3-2018. Further, without challenging the stated order of the Magistrate, a writ petition was filed limited to the relief of habeas corpus. In that view of the matter, it was not a case of continued illegal detention but the incumbent was in judicial custody by virtue of an order passed by the jurisdictional Magistrate, which was in force, granting police remand during investigation of a criminal case. Resultantly, no writ of habeas corpus could be issued."
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> (emphasis supplied)"

13. Summarily put, there is no absolute taboo[7] against an order of remand being challenged in a Habeas Corpus petition. Even so, the prayer seeking a declaration that the arrest of the petitioner is illegal shall not convert the writ petition into a Habeas Corpus proceeding. This writ petition is not reduced to a Habeas Corpus petition merely because the remand order dated 2nd February 2024 is challenged by the petitioner. The High Court cannot refuse to examine the issues touching upon the validity of the arrest and remand of the accused who set up the plea of illegality and infringement of the Constitutional safeguards. This is too well settled that the High Court cannot afford to be hyper-technical being oblivious of the plenary power it exercises under Article 226 of the Constitution.

14. Mr. Kapil Sibal, the learned senior counsel for the petitioner contended that illegal possession of the subject property at Bargai is not the proceeds of crime generated from the predicate offence and the summons issued to the petitioner is without jurisdiction and therefore the entire proceeding taken thereunder is vitiated. A roving and fishing inquiry into the assets of a person is not contemplated under the PMLA and the ED cannot issue summons under section 50(2) compelling a person to give a statement unless it has reasons to believe that any assets was acquired with the proceeds of crime generated from a predicate offence. The learned senior counsel further submitted that the summons issued to the petitioner were quite cryptic and did not provide any information as regards the commission of scheduled offence leading to the proceeds of crime, and it was for the first time that in the summons dated 29th December 2023 the

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[7] Gautam Navlakha v. NIA: (2022) 13 SCC 542

ED disclosed about the ongoing investigation in connection with the tampering/falsification of the Government records by Bhanu Pratap Prasad and others. The nature of the subject land at Bargai is 'bhuinhari land' which cannot be transferred or sold to any person in any manner and the allegation against the petitioner regarding the said property is wrong and misconceived. It is submitted that a complaint made 14 years after the alleged forceful acquisition of the subject property and that too without any documentary evidence as to transfer of the subject property in favor of the petitioner shall not provide any valid ground to the ED to issue summons to him in connection therewith and start a motivated inquiry to clip his wings.

15. The provisions under section 50 of the PMLA which vest powers in the Director etc. to summon any person to give evidence or produce any record are extracted as under:

> **50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—**(1) The Director shall, for the purposes of Section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—
> (a) discovery and inspection;
> (b) enforcing the attendance of any person, including any officer of a reporting entity, and examining him on oath;
> (c) compelling the production of records;
> (d) receiving evidence on affidavits;
> (e) issuing commissions for examination of witnesses and documents; and
> (f) any other matter which may be prescribed.
> (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
> (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
> (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).
> (5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:
> Provided that an Assistant Director or a Deputy Director shall not—
> (a) impound any records without recording his reasons for so doing; or
> (b) retain in his custody any such records for a period exceeding three

months, without obtaining the previous approval of the Joint Director.

16. The contention, that the exercise of power under section 50 is a serious invasion of the rights and freedom of the petitioner and the impugned summons are ex-facie illegal, null and void and a glaring example of brazen abuse of the power for extraneous and *malafide* reasons, is not based on any legal and factual foundation. The law enjoins every person to speak the truth. This is not something alien to the criminal jurisprudence that a person is bound to answer a question if the fact is within his exclusive knowledge. Just to indicate, section 132 of the Indian Evidence Act provides that a witness cannot take an excuse not to answer any question upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate him, or that it will expose or tend directly or indirectly to expose him to a penalty or forfeiture of any kind. A person is not excused from answering any question as to any matter relevant to the matter in issue in any civil or criminal proceeding. The right to remain silent is a Constitutional guarantee against self-incrimination but the exercise of this right does not provide immunity from prosecution of the person in a criminal case. The use of confessions in law had started with the Tudors and Stuarts. At least since middle of 17th century confessions were used as evidence without scruple[8]. The Latin phrase *"habemus optimum testem confitentem reum"* which means "we have the best witness, a confessing defendant" was the guiding thought in earlier times. Lord Sumner said that the common law rules relating to confessions were "as old as Lord Hale"[9].

17. The stand taken by the ED is that in the ongoing investigation divulging every material before filing of the prosecution complaint may create difficulties and hindrances in further investigation. The basis for raising this ground seems to be "*Vijay Madanlal Choudhary*"[10] wherein the Hon'ble Supreme Court held that the ECIR is an internal document and a copy of the ECIR may not be furnished to the person concerned apprehending arrest or even after his arrest and so long as the person has

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[8] Wigmore in Wigmore on Evidence (2nd Ed.), Vol. 2, p. 131
[9] Ibrahim v. The King : (1914) A.C 599
[10] Vijay Madanlal Choudhary v. Union of India : 2022 SCC OnLine SC 929

been informed about the grounds of his arrest that is sufficient compliance of the mandate under Article 22(1) of the Constitution. The Hon'ble Supreme Court held that there may be details of materials in possession of the Authority and such details cannot be revealed before the inquiry into the proceeds of crime and concerning the persons involved in the process or activity connected therewith are concluded. The Hon'ble Supreme Court held as under;

> "458. The next issue is : whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the Authority and recording satisfaction of reason to believe that the person is guilty of money-laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering. In any case, upon filing of the complaint before the statutory period provided in 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the Authority under Section 44(1)(b) of the 2002 Act before the Special Court.
>
> 459. Viewed thus, supply of ECIR in every case to person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution. It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as unknown accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite

> that, the accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the concerned Court. On the same analogy, the argument of prejudice pressed into service by the petitioners for non-supply of ECIR deserves to be answered against the petitioners. For, the arrested person for offence of money-laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it is open to the Special Court to call upon the representative of ED to produce relevant record concerning the case of the accused before him and look into the same for answering the need for his continued detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further."

18. The power vested in the Director, etc. under sub-section (2) of section 50 is of wide amplitude and is intended to give effect to the object behind the PMLA. In our opinion, the summons issued to the petitioner cannot be faulted on the ground that a few summons did not contain specific details of the crime and the petitioner was asked to give a statement about his possession of the subject property. There is no real force in the challenge to the summons issued to the petitioner under section 50(2) of the PMLA.

19. Mr. Kapil Sibal, the learned senior counsel submitted that the offence of conspiracy included in Part-A to the Schedule is not a standalone offence and to rope in the petitioner who is not an accused in Sadar PS Case No. 272 of 2023 with the aid of section 120-B of the Indian Penal Code, the ED must show that there was a criminal conspiracy among the accused persons to commit one or the other offences included in Parts A, B and C of the Schedule. It is contended that the petitioner not being accused of committing a scheduled offence and not connected with any proceeds of crime cannot be prosecuted. We do not find any substance in this submission. In a series of pronouncements, the Hon'ble Supreme Court held that it is not necessary that the person accused of the offence of money-laundering was made an accused in the First Information Report lodged for the commission of a predicate offence. A decision on the point is found in *"Y. Balaji"*[11] where the issue contested was whether mere registration of a First Information Report for a predicate offence which may be a scheduled offence is sufficient for the ED to register an ECIR and summon a person under section 50 of the PMLA. On behalf of the accused,

[11] Y. Balaji v. Karthik Desari: 2023 SCC OnLine SC 645

it was contended that unless the commission of the scheduled offence generated proceeds of crime which was laundered by someone the ED cannot issue summons under section 50(2) by registering an ECIR even before identifying some property as representing the proceeds of crime. The Hon'ble Supreme Court held that: "these contentions, in our opinion, if accepted, would amount to putting the cart before the horse. Unfortunately for the accused, this is not the scheme of the Act".

20. The purpose of registering a First Information Report is to set the machinery of law in motion. A First Information Report as its literal meaning would suggest is registered based on information to the police about the commission of a cognizable offence. At this juncture, a prosecution complaint is yet to be filed and the result of the investigation in Sadar P.S Case No. 272 of 2023 is awaited. In its official communication to the Chief Secretary, the ED stated that by falsification of the records and tampering with the documents valuable landed properties are acquired in furtherance of a criminal conspiracy. We may only indicate that section 120-B of the Indian Penal Code starts with the expression "whoever is a party to a criminal conspiracy" and any direct evidence of the criminal conspiracy is hard to find. At this point in time, it is not necessary rather not possible to name all the persons who might have been involved in the crime. This is also a possibility that in course of the investigation further information about the commission of other crimes is gathered. This is therefore too early to assume or predict the persons who shall be sent up for trial in Sadar P.S Case No.272 of 2023. Indeed, the Legislature could not have intended that a person cannot be prosecuted for the offence of money-laundering if he is not made an accused in the First Information Report. A person gets out of the net of the PMLA if the prosecution for the scheduled offence fails either by the quashing of FIR or chargesheet or he is discharged by the criminal Court. In the communication dated 4th May 2023, the ED specifically referred to a conspiracy by several persons in the commission of scheduled offences under sections 420, 467 and 471 of the Indian Penal Code. However, the Form under section 154 of the Code of Criminal Procedure was manipulated by the local police and the offence

under section 120-B of the Indian Penal Code was subsequently struck off.

21. The communication dated 04th May 2023 of the ED to the Chief Secretary reads as under:

> F.No. ECIR/RNZO/18/2022/904 Dated: 04.05.2023
> To,
> The Chief Secretary,
> Project Bhawan, Dhurwa
> Government of Jharkhand
> Ranchi, Jharkhand.
>
> Subject: Investigation under the provisions of the Prevention of Money Laundering Act, 2002-reg.
>
> Sir,
>
> This office is investigating a case pertaining to illegal acquisition/disposal of land by a few private persons in conspiracy with brokers and certain officials of land revenue department. During the course of investigation, searches have been conducted on 13.04.2023 and 26.04.2023 at several premises linked to the above persons and several incriminating evidences have been seized. During investigation, seven persons have been arrested in this case including Bhanu Pratap Prasad, Revenue Sub-Inspector, Baragai, Ranchi. A report in this matter has also been forwarded to your good office.
>
> 2. During searches on 13.04.2023, the following 17 original registers were seized from the premises under use and occupation of Bhanu Pratap Prasad and 11 trunks of records/documents related to landed properties including several deeds:

Sl. No.	Particulars	Page No.	Name appearing on register
1.	Register I	Register is badly mutilated and couldn't be paginated	पुराना बड़ागाई– I
2.	Register II	01 to 364	बड़ागाई भोलूम II
3.	Register III	01 to 390	184 बड़ागाई– III
4.	Register IV	01 to 201	बड़ागाई– IV
5.	Register V	01 to 385	बड़ागाई भोलूम I, V
6.	Register VI	01 to 132	मौजा–बड़ागाई, भोलूम VI (खाता 134 से 153)
7.	Register VII	01 to 200	ग्राम–बड़ागाई, थाना न0 184, भोलूम VII
8.	Register VIII	01 to 198	बड़ागाई 184, VOL VIII
9.	Register IX	Register is badly mutilated and couldn't be page numbered	बड़ागाई नया बड़ागाई– I
10.	Register X	01 to 298	बड़ागाई, थाना न0 184, X
11.	Register XI	01 to 197	XI बड़ागाई
12.	Register XII	01 to 299	बड़ागाई– XII
13.	Register XIII	01 to 297	184 बड़ागाई– XIII
14.	Register XIV	01 to 292	बड़ागाई– XIV, 184
15.	Register XV	01 to 253	बड़ागाई– 184 XV
16.	Register XVI	01 to 295	बड़ागाई–184 शहर रॉची
17.	Register XVII	01 to 114	जिला–भू–अर्जन कार्यालय रॉची। परियोजना– बरियातु मुख्य मार्ग से बड़ागाई वाला लेम से बोरिया तक पथ का चौ0 एवं मजबुतीकरण खेसरा पंजी थाना न. 184, 162 अंचल–बड़ागाई, रॉची।

3. Investigation conducted by this office has revealed that several entries/pages of the above registers (पंजी–II) have been tampered and original records have been falsified. Investigation has also revealed that names of several persons have been erased from the said registers and fresh entries have been made to extend undue favours to some private persons.

4. In some of the registers, certain pages are seen blank but online entries have been made in name of some persons and some specific properties for facilitating some brokers and private parties to acquire big pieces of land. However, since searches were conducted and the registers were recovered and seized, the physical entries could not be completed in those registers.

5. In several cases, the nature of lands has been changed by manufacturing false and back dated deeds. During course of investigation, hand written notes/diaries, mobile phones have also been seized which contain entries corroborating cash payment to the accused Bhanu Pratap Prasad and other officials. Tainted cash amounting to Rs 3,97,800/-lac was also seized from the premise of Bhanu Pratap Prasad. Investigation has revealed that one Bipin Singh s/o Nagina Singh is a close accomplice of accused Bhanu Pratap Prasad. Bipin Singh is one of the associates of Shekhar Prasad Mahto @ Shekhar Kushwaha and Priya Ranjan Sahay, Saddam Hussain, Afsar Ali and others. This group has conspired and falsified original records of several genuine land owners and has also created bogus records in lieu of obtaining illegal benefit out of their criminal activities.

6. During course of searches, 10 numbers of counterfeited government stamps were also seized from possession of one Faiyaz Khan, a driver of Afsar Ali, a government servant at RIMS. Investigation has revealed that Afsar Ali was one of the masterminds behind the above stated fraud. He is involved in preparing several fake deeds of properties situated at Ranchi and its suburbs from the office of the Registrar of Assurances, Kolkata in order to acquire and dispose lands in an illegal manner.

7. Although several victims have come forward to submit their complaints with supporting documents, it also appears that several persons are still unaware of the forgeries committed by these persons in their original property records. The above criminal activities amount to cheating, forgery, corruption and criminal conspiracy on part of accused Bhanu Pratap Prasad, Afsar All and his above-named accomplices for obtaining illegal benefits and causing corresponding gain to other persons.

8. The act of the above-mentioned accused persons prima facie appears to be offences under section(s) 465, 467, 468, 469, 471, 472, 473, 475, 476 and 120(B) of IPC, 1860, Offences under the Information Technology Act, 2000 as well as the offences under section 7 and section 13 of the Prevention of Corruption Act, 1988. Hence, it is proper to share the information under section 66(2) of PMLA. The provisions of section 66(2) of PMLA are as under:

> "..If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.."

The legal sanctity of the said provision is further explained by Hon'ble Supreme Court of India in para 282 and para 290 in case of Vijay Madanlal Chaudhary & others (2022 SCC Online SC 929)

9. The Hon'ble Supreme Court of India in its order dated 12.11.2013 in the case of Lalita Kumari Vs. Govt. of Uttar Pradesh and others in W.P (Crl.) No. 68 of 2008 and others has categorically asserted on the significance and compelling reasons for registration of FIR at the earliest. The Hon'ble court has stated as under;

> 93. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice-delivery system but also to ensure "judicial oversight". Section 157(1) deploys the word "forthwith", Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary.
>
> 105. Therefore, reading Section 154 in any other form would not only be detrimental to the scheme of the Code but also to the society as a whole. It is thus seen that this Court has repeatedly held in various decided cases that registration of FIR is mandatory if the information given to the police under Section 154 of the Code discloses the commission of a cognizable offence.

10. In view of the above, the above information is shared with you under section 66(2) of PMLA for taking necessary action under provisions of IPC, Information Technology Act and Prevention of Corruption Act as deemed fit.

11. This issues with the approval of competent authority.

Yours Sincerely
Sd/-
(Kapil Raj)
Joint Director

22. In Sadar PS Case No. 272 of 2023, the allegations of commission of the offences under sections 420, 467 and 471 of the Indian Penal Code shall necessarily involve many persons committing such offences. Bhanu Pratap Prasad was acting in league with the petitioner and they were in constant touch with each other regarding the subject property which is the proceeds of crime. The hand-written diaries seized from other accused persons revealed cash payments to Bhanu Pratap Prasad, and there are at least 36 property documents seized from their possession that were forged for illegal acquisition and disposal of the lands comprised thereunder. One of the seized original registers contained the ownership details of the subject property measuring about 8.5 acres at Bargai which was allegedly illegally acquired and possessed by the petitioner. The information retrieved from the seized mobile phone of Bhanu Pratap Prasad also contained the details of the subject property, and he admitted that the subject property belonged to the petitioner. The ED claimed that the value of this property is about 30 crores as per the existing government rate and

the prevailing fair market value of this property is much higher. In the circumstances of the case, *"Pavana Dibbur"*[12] does not come in aid to the petitioner.

23. The main plank of the petitioner is that mere forceful possession of the subject property cannot be the proceeds of crime covered under section 2(1)(u) of the PMLA. Mr. Kapil Sibal, the learned senior counsel contended that the whole basis of the proceedings against the petitioner is the statement of a few persons recorded under section 50 of the PMLA and the ED had no other material before it based on which the arresting officer could have reason to believe that the petitioner is guilty of the offence under the PMLA. The learned senior counsel endeavored to show how the ED started sending summons to the petitioner for recording his statement under section 50 and in hot haste the statement of witnesses was recorded within two days. In simple words, the submission is that the present proceeding against the petitioner is part of a political vendetta and lacks bonafide. Per contra, the learned ASG referred to the search and seizure proceedings and the order passed by the SAR Court to demonstrate that there was illegal tampering in the official records. It is submitted that the Register-II itself is a property derived from the commission of scheduled offences and covered under the definition of the proceeds of crime. The continued illegal occupation, use and possession of the petitioner over the subject property is a continuing offence and it is immaterial that a complaint by the aggrieved party came to be filed several years after the subject property was forcefully grabbed by him. According to the learned ASG, the relevant date shall be the date on which the petitioner was found in illegal possession, occupation and use of the subject property. In the affidavit-in-opposition, the ED took the following stand:

> "Offence of Money Laundering committed by Shri Hemant Soren
>
> 48. In this case, Petitioner has indulged in the process connected with acquisition, possession and the use of proceeds of crime. Petitioner is knowingly a party with Bhanu Pratap Prasad in the activities connected with concealment of the original records for projecting the property admeasuring 8.5 acres acquired by him in an illegal manner as an

[12] Pavana Dibbur v. The Directorate of Enforcement : Criminal Appeal No.2779 of 2023

untainted property is a continuing activity and it is continuing as on day of arrest as he is still enjoying the said proceeds of crime by its possession, occupation and use by claiming it as legal and untainted property.
49. Considering the facts and circumstances as stated above, and the activities and processes in which Petitioner is directly involved in the offence of money laundering there were sufficient reasons to believe that Shri Hemant Soren has acquired proceeds of crime and he was guilty of the offence of money laundering, Hence, he was arrested on 31.01.2024 under section 19 of PMLA after observing the statutory compliances at the time of arrest as provided under section 19 of PMLA, 2002.
50. That, the Grounds of Arrest, Arrest Memo, Arrest Order, and Personal Search Memo were duly furnished to the accused in writing and the compliances under section 19 (2) of the IML Act, 2002 were also fulfilled and placed before the Learned Special Court (PMLA), Ranchi.
51. That the Learned Court was pleased to remand the accused person into the custody of the Directorate of Enforcement for five days vide order dated 02.02.2024, subsequently, remand was extended for another five days and then for three days vide order dated 07.02.2024 and 12.02.2024 respectively, after perusing the records and materials relating to the case and the arrest of the accused.
52. That, during the custody, the Petitioner was confronted with the materials available with this office. The accused has been showing acute non- cooperation and is reluctant to divulge true facts regarding the properties acquired by him and other persons connected to him.
53. That, the accused was also confronted with his chats over WhatsApp with his close associate Binod Singh which are highly incriminating and contain details of several properties, However, the accused person refused to oven sign and acknowledge the printout of the WhatsApp chats, although, he has admitted that there are conversations between them.
54. That, the above stated WhatsApp chat not only include the exchange of confidential information regarding several properties but other incriminating information relating to transfer posting, sharing of government records etc. out of which huge amount of money appears to have been generated and transacted, In addition to this, Binod Singh have Whatsapp Chats with several other persons in relation to transfer posting of officials, possession and sharing of several admit cards of students appearing for competitive exams held by Jharkhand Staff Selection Commission etc."

24. The points canvassed on behalf of the petitioner were debated before the Hon'ble Supreme Court and are conclusively answered in "*Vijay Madanlal Choudhary*"[10]. This is hardly necessary to indicate that our judicial system is founded on judicial discipline, propriety and decorum. For, it is really necessary to instill faith in the judicial system and ensure that consistency and certainty in the judicial decisions are maintained. The doctrine of binding precedent which promotes certainty and consistency in judicial decisions is of utmost importance in the administration of judicial system. Article 141 of the Constitution mandates that the law declared by the Supreme Court shall be binding on all Courts within the territory of

India. In *"All India Reporter Karamchari Sangh"*[13] the Hon'ble Supreme Court held that the decision of the Supreme Court which is a Court of record constitutes a source of law apart from being a binding precedent under Article 141 of the Constitution of India. In *"Nand Kishore"*[14] the Hon'ble Supreme Court reiterated that the law laid down by the Supreme Court shall have a binding character and as commandful as the law made by the Legislative body. The validity of section 3 of the PMLA was under challenge in "*Vijay Madanlal Choudhary*"[10]. The Hon'ble Supreme Court held that this provision confirms to the Constitutional safeguards and is intra-vires the Constitution of India. In "*Vijay Madanlal Choudhary"*[10] the Hon'ble Supreme Court held as under:

> "269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.
> 270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in

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13 All India Reporter Karamchari Sangh v. All India Reporter Ltd. : 1988 Supp SCC 472

14 Nand Kishore v. State of Punjab : (1995) 6 SCC 614

> Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.
> 271. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:
> (a) Placement : which is to move the funds from direct association of the crime.
> (b) Layering : which is disguising the trail to foil pursuit.
> (c) Integration : which is making the money available to the criminal from what seem to be legitimate sources.
> 272. It is common experience world over that money-laundering can be a threat to the good functioning of a financial system. However, it is also the most suitable mode for the criminals deal in such money. It is the means of livelihood of drug dealers, terrorist, white collar criminals and so on. Tainted money breeds discontent in any society and in turn leads to more crime and civil unrest. Thus, the onus on the Government and the people to identify and seize such money is heavy. If there are any proactive steps towards such a cause, we cannot but facilitate the good steps. However, passions aside we must first balance the law to be able to save the basic tenets of the fundamental rights and laws of this country. After all, condemning an innocent man is a bigger misfortune than letting a criminal go.
> 273. On a bare reading of Section 3, we find no difficulty in encapsulating the true ambit, given the various arguments advanced. Thus, in the conspectus of things it must follow that the interpretation put forth by the respondent will further the purposes and objectives behind the 2002 Act and also adequately address the recommendations and doubts of the international body whilst keeping in mind the constitutional limits. It would, therefore, be just to sustain the argument that the amendment by way of the Explanation has been brought about only to clarify the already present words, "any" and "including" which manifests the true meaning of the definition and clarifies the mist around its true nature."

25. In "*Vijay Madanlal Choudhary*"[10] the Hon'ble Supreme Court held that the continued possession or concealment of the proceeds of crime whether fully or in part shall attract the offence of money-laundering under the PMLA. In paragraph no. 270 of the reported judgment, the Hon'ble Supreme Court held that it would be an offence of money-laundering to indulge in or to assist or be a party to the process or activity connected with the proceeds of crime; and such process and activity in a given fact-situation may be a continuing offence irrespective of the date and time of the commission of the scheduled offence. By way of an example, it has been clarified that the criminal activity committed even before the same was notified as the scheduled offence for the PMLA may still attract the offence of money-laundering if the person has indulged in or continued to indulge directly or indirectly in dealing with the proceeds of crime, derived or obtained from such criminal activity even after the same was notified as

a scheduled offence. Completely in tune with this decision, "*Tarun Kumar*"[15] holds that the relevant date for examining the involvement of the person in money-laundering is the date on which the person indulges in the process or activity connected with the proceeds of crime and the offence of money-laundering is not dependent or linked to the date on which the scheduled offence or predicate offence has been committed. However, the basis for the argument made on behalf of the petitioner is that he is not accused of committing any scheduled offence and the subject property is not registered in his name. On the other hand, the ED took a stand that the illegally acquired subject property is in possession and use of the petitioner and temporary settlements have been erected and a caretaker is put there to keep a guard over the property. The acts of the petitioner and Bhanu Pratap Prasad who was the Revenue Officer in connection to the acquisition and possession of the properties are scheduled offences and the illegally acquired property shall be the proceeds of the crime under section 2(1)(u) of the PMLA because the petitioner is enjoying the said property.

26. A provision in the penal law should normally receive a literal and strict interpretation. At the same time, looking at the legislative intendment all enactments concerning socio-economic offence must be considered "ongoing statute". Lord Thring, a great draftsman of his time made the first exhortation of "ongoing statute". Lord Thring said; "An Act of Parliament should be deemed to be always speaking". In "*R. v. Ireland"*[16] the House of Lords rendered its opinion that the Courts must interpret and apply a statute of any vintage to the world as it exists today. That was a case where the offence of "assault" in a Victorian statute hitherto understood as "bodily harm" was interpreted to cover "psychiatry injuries". Oliver Wendell Homes Jr., an American Jurist and a Judge of the Supreme Court of the United States once said: "a word is not a crystal, transparent and unchanged, it is the skin of the living thought and may vary greatly in color and content according to the circumstances and time in which it is used". In *"Maganlal Chhaganlal (P) Ltd."* [17] the Hon'ble Supreme Court

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[15] Tarun Kumar v. Assistant Director Directorate of Enforcement : 2023 SCC OnLine SC 1486
[16] R. v. Ireland : (1998) AC 147
[17] Maganlal Chhaganlal (P) Ltd. v. Municipal Corpn. of Greater Bombay : (1974) 2 SCC 402

advancing a pragmatic approach made the following significant observations;

> "22…… As in life so in law things are not static. Fresh vistas and horizons may reveal themselves as a result of the impact of new ideas and developments in different fields of life. Law, if it has to satisfy human needs and to meet the problems of life, must adapt itself to cope with new situations. Nobody is so gifted with foresight that he can divine all possible human events in advance and prescribe proper rules for each of them. There are, however, certain verities which are of the essence of the rule of law and no law can afford to do away with them. At the same time it has to be recognized that there is a continuing process of the growth of law and one can retard it only at the risk of alienating law from life itself. …"

27. But the choice is difficult and the problem is perennial. The choice in choosing between a literal interpretation and a purposive interpretation of a statutory provision brings to the fore the basic task of the Court. The primary duty of the Court is to creatively interpret the law and resolve the conflict in the legislative intention and the difficulty in the working of law by taking into account the object and real intention of the Legislature. In doing so, the Court may sometimes be required to adopt a functional approach and look into the intention of the Legislature by going beyond and behind the words and phrases used thereunder. The PMLA is a relatively new enactment. Till date, there is just one concluded trial and the other cases seem to be stuck in the legal wrangle. In the matter of interpretation of the provisions in the PMLA, we are of the view that the provisions thereunder have to be interpreted, expounded and expanded whenever the need arises keeping in mind the object and purpose behind the legislation.

28. The gist of the offence of money-laundering as defined under section 3 of the PMLA is involvement in any process or activity connected with the proceeds of crime derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. Concerning a scheduled offence, the definition of money-laundering under section 3 encompasses every possible manner of involvement of the person with the proceeds of crime derived or obtained as a result of that crime. Section 3

incorporates “every attempt” whether directly or indirectly to conceal, possess, acquire, or use the proceeds of crime. Even “an attempt” to project the proceeds of crime as untainted property or attempting to claim the same to be an untainted property shall come within the sweep of section 3. The use of the expression “including” in section 3 clearly indicates that the process and activity connected with the proceeds of crime can be “every conceivable situation” and cannot be restricted to “six situations” provided thereunder. That the subject property is not registered in the name of the petitioner and the revenue or other official records concerning the subject property are not found forged are such facts that are inconsequential and irrelevant, having regard to his possession over the subject property.

29. In legal parlance, the expression “possession” has a definite meaning and connotation and illegal possession of a person over an immovable property is protected in law to a certain extent. The word “property” within the meaning under clause (v) to section 2(1) of the PMLA includes any property or assets of every description and it can be tangible or intangible. There is a crime registered for forging the revenue records, falsification of the official records and other scheduled offences. This is the case pleaded by the ED that by its timely action the intended acts of forgery and manipulation in the revenue records of the subject property were foiled. The Register-II and other revenue records pertaining to the subject property were found missing in the Circle Office. Those documents were seized by the ED in the course of a search conducted at the premises/rented premises of Bhanu Pratap Prasad whose association with the petitioner has been brought on record. In our opinion, any attempt to commit a scheduled offence has to be read in section 2(1)(u) of the PMLA as the expression “any criminal activity relating to a scheduled offence” shall encompass an attempt to commit a scheduled offence. We are fortified in our view by the Explanation to section 2(1)(u) of the PMLA which clarifies that the proceeds of crime shall include any property which may directly or indirectly be derived or obtained as a result of “any criminal activity relatable to” the scheduled offence. Simply said, there is a property in possession of the petitioner and there was an attempt to forge the revenue

records to give the subject property a color of licit acquisition. An attempt to commit a crime may be a single act or a series of acts but not necessarily the act which immediately leads to the commission of that crime. The act of Bhanu Pratap Prasad and others in intentionally removing the revenue records of the subject property from the Circle Office, concealment of those records in the premises of Bhanu Pratap Prasad, preserving the details of the subject property in the mobile phones, sharing of the property details with the petitioner and others, etc. were the acts towards the commission of the scheduled offences. The proposal for the construction of a Banquet Hall over the subject property the plan for which was shared with the petitioner is also a relevant fact. Therefore, the subject property must be considered the proceeds of crime which is in forceful possession of the petitioner and there is prima facie evidence of an attempt to commit the scheduled offences for legalizing the subject property. To constitute the offence of money-laundering under section 3 of the PMLA, this is not necessary to establish that first a crime was committed which included the scheduled offence. It may so happen, as has happened in this case, that the property was first grabbed and then the attempt was made to make it lawfully acquired through illegal acts which shall constitute the scheduled offence or an attempt to commit the scheduled offence. The interpretation to section 2(1)(u) of the PMLA that we have put is in tune with the intention of the Parliament and further advances the object and purpose behind the legislation.

30. In Sadar PS Case No. 272 of 2023, there are serious allegations of forgery of valuable security, forgery for cheating, using a forged document as genuine and possession of forged documents such as public register or valuable security and intending the same to use as genuine. At the core of these offences is the offence of forgery which is defined under section 463. The essential ingredient of the offence of forgery is the making of any written instrument for fraud or deceit. This is implicit in the alleged commission of the scheduled offence under sections 420, 467 and 471 of the Indian Penal Code which are included in Part-A to the Schedule that there were acts and omissions towards wrongful gains by forging valuable

security. The term "wrongful gain" as defined under section 23 of the Indian Penal Code refers to any gain by unlawful means of the property to which the person gaining is not legally entitled. Similarly, the expression "wrongful loss" means the loss by unlawful means of property to which the person losing it is legally entitled. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability or, has not a certain legal right. This is the prosecution case that the petitioner is in continuing possession, use, and concealment of the properties and there are strong reasons to believe that he knowingly indulged in such processes and activities to acquire several landed properties in his name and in the name of his family members. Section 110 of the Indian Evidence Act provides that when the question is whether any person is the owner of anything of which he is shown to be in possession the burden of proving that he is not the owner is on the person who affirms that he is not the owner. The ED puts forth a stand that the survey conducted on 20th April 2023 established that the subject property is in illegal possession and use of the petitioner. The WhatsApp chats between Binod Singh and the petitioner contained the details of several other properties and transactions of huge amounts of money for transfer and posting of the government officials. Under section 24 of the PMLA, the Court shall presume that the person charged with the offence of money-laundering is involved with such proceeds of crime. The presumption under section 24 of the PMLA is a rebuttable presumption and the accused shall get an opportunity in the trial to demonstrate before the Court with a reasonable degree of preponderance of probability that he is not involved in the offence of money-laundering, if the case goes for trial. In "*Rohit Tandon*" [18] the Hon'ble Supreme Court observed that the possession of a huge quantity of demonetized currency and new currency without disclosing the source from where it was received and the purpose for which it was received, the accused had failed to dispel the legal

[18] Rohit Tandon v. Directorate of Enforcement : (2018) 11 SCC 46

presumption that he was involved in money-laundering and the property was the proceeds of crime. The petitioner is believed to be the beneficial owner of those properties which are kept secreted, undeclared and acquired out of corrupt practices.

31. The remand order dated 2nd February 2024 is challenged on similar grounds as aforementioned; that the petitioner is not an accused in a case for the commission of predicate offence and he is not related to or connected with any proceeds of crime in any manner whatsoever. The details of 12 landed properties retrieved from the mobile phone of Bhanu Pratap Prasad are not admissible in evidence, and any portion of the property mentioned therein is not registered in the name of the petitioner. The remand order dated 2nd February 2024 is challenged also on the ground that the PMLA Court failed to appreciate that above mentioned 12 properties identified by the ED are not the proceeds of crime and the story concocted by the ED is false and based on surmises and conjectures. In reply thereto, the ED contended that the petitioner is a party to the activities connected with the concealment of the original records for projecting the subject property as an untainted acquisition. The petitioner in league with Bhanu Pratap Prasad who is accused of committing a predicate offence has been involved in concealment and falsification of the records.

32. The validity of section 19 of the PMLA was under challenge in *"Vijay Madanlal Choudhary"*[10]. The Hon'ble Supreme Court held that this provision has reasonable nexus with the purposes and objects of prevention of money-laundering and confiscation of the proceeds of crime involved in money-laundering and prosecution of the persons involved in the processes or activities connected with the proceeds of crime under the PMLA Act; the Constitutional validity of section 19 was upheld. Section 167 of the Code of Criminal Procedure empowers the Judicial Magistrate to authorize the detention of an accused in the custody of the police and, until the accused is committed the Court of Sessions, the Magistrate is vested with the power under section 209 of the Code of Criminal Procedure to remand an accused to custody. However, even where

an order of remand is found to be illegal the accused does not get acquitted and the proceedings do not terminate. The arrest of the petitioner has to be seen in the context of the power under section 19(1) of the PMLA which can be exercised during the investigation. In *"Adri Dharan Das"*[19] the Hon'ble Supreme Court indicated that there may be circumstances in which the accused may provide information leading to the discovery of material facts. In the context of the PMLA, in *"V. Senthil Balaji"*[6] the Hon'ble Supreme Court held that the investigation is a process that might require an accused's custody from time to time as authorized by the competent Court and no other Court is expected to act as supervisory authority in that process. The Hon'ble Supreme Court further pointed out that it is for the Magistrate concerned to decide the question of custody, either being judicial or to an investigating agency or any other entity in a given case. In paragraph nos. 57 and 58 of the reported judgment[6], the Hon'ble Supreme Court held as under:

> "57. While authorising the detention of an accused, the Magistrate has got a very wide discretion. Such an act is a judicial function and, therefore, a reasoned order indicating application of mind is certainly warranted. He may or may not authorise the detention while exercising his judicial discretion. Investigation is a process which might require an accused's custody from time to time as authorised by the competent court. Generally, no other court is expected to act as a supervisory authority in that process. An act of authorisation pre-supposes the need for custody. Such a need for a police custody has to be by an order of a Magistrate rendering his authorisation.
>
> 58. The words "such custody as such Magistrate thinks fit" would reiterate the extent of discretion available to him. It is for the Magistrate concerned to decide the question of custody, either be it judicial or to an investigating agency or to any other entity in a given case."

33. Section 19 of the PMLA provides as under:

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

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[19] Adri Dharan Das v. State of W.B. : (2005) 4 SCC 303

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

34. The provisions under section 19 of the PMLA are clear and unambiguous. The power of the arresting officer is well defined and his duties are prescribed under sub-sections (2) and (3). This is a fundamental rule of interpretation that if the words of a statute are themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense as the words themselves shall best declare the intention of the Legislature. The expression "reason to believe" essentially turns to subjective satisfaction on the part of the arresting authority under section 19. If there are some reasonable grounds for the arresting authority to form a belief in good faith and not a mere pretense that the person is guilty of the offence that would be sufficient to give jurisdiction under section 19 and whether such grounds are adequate or not are not the matters for the Court to examine. In *"Dr. Partap Singh"*[20] the Hon'ble Supreme Court observed that the material on which the belief is grounded may be secret, may be obtained through intelligence, or occasionally may be conveyed orally by the informant(s).

35. The ED has pleaded that the petitioner was informed about his arrest at around 5:00 PM on 31st January 2024 and he left for the Governor's house without consent and without completing the ongoing proceedings and therefore the written grounds of arrest could be served on him at 10:00 PM. The grounds of arrest served to the petitioner on 31st January 2024 read as under:

> "Grounds of arrest of Shri Hemant Soren under section 19 of the Prevention of Money Laundering Act, 2002
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> Case ECIR/No. RNZO/25/2023 dated 26.06.2023
>
> 1. On 13.04.2023, searches were conducted at several premises (in ECIR/RNZO/18/2022) including the premises of Bhanu Pratap Prasad, Revenue Sub Inspector, Bargain, Ranchi and 11 trunks of voluminous property documents along with seventeen original registers (पंजी II) were

[20] Dr. Partap Singh v. Director of Enforcement : (1985) 3 SCC 72

seized from his possession. Bhanu Pratap Prasad was custodian of many original registers (पंजी II) in which the land records (ownership details) are maintained. Bhanu Pratap Prasad was involved in the corrupt practices which included falsification of original records and had been a party with several other persons in their activities linked to the acquisition of landed properties in fraudulent manners.

2. On the basis of this information, shared with Jharkhand Government under section 66(2) of PMLA, an FIR bearing no 272/23 dated 01/06/23 was registered by PS Sadar, Ranchi against one Bhanu Pratap Prasad, Revenue Sub Inspector under section 465/467/468/469/476/466/420/379/474 of IPC. Further, on the basis of the FIR no. 272/2023 registered by Sadar P. S, Ranchi, ECIR bearing no RNZO/25/2023 was recorded by Directorate of Enforcement, Ranchi Zonal office on 26.06.2023. The information shared under section 66(2) by ED is integral part of the FIR lodged by the Ranchi Police under section 465/467/468/469/471/466/420/379/474 of IPC out of which section 420, 467 and 471 are schedule offences.

3. The investigation into the above matter has revealed Bhanu Pratap Prasad (Revenue Sub-Inspector, Circle Office, Baragai, Ranchi) and others are a part of a very large syndicate, involved in corrupt practices of acquiring properties forcefully as well as on the basis of false deeds, falsification of government records, tampering with original revenue documents etc.

4. It is revealed that the said Bhanu Pratap Prasad was actively involved in hatching conspiracies with other persons to acquire and conceal various properties in illegal manner including the properties which are illegally acquired and possessed by Shri Hemant Soren. The details of the properties, which are illegally acquired and possessed by Shri Hemant Soren have also been recovered from the mobile phone of Bhanu Pratap Prasad. The said list of 12 landed properties which are adjacently situated and all- together make make up a very big property of an area of about 850 decimals (8.5 acres) (Details attatched as Annexure-A) have been recovered from the mobile phone of Bhanu Pratap Prasad. The photo of the above-mentioned list of landed properties also bears certain hand-written remarks made by Bhanu Pratap Prasad, after he had made verification of those parcels of land. Investigation has revealed that this property is and has been illegally acquired and possessed by Shri Hemant Soren.

5. That statement of several persons have been recorded under section 50 of PMLA, 2002 which also establishes that property is under illegal acquisition, possession and use of Shri Hemant Soren and it has been kept concealed by him.

6. A Survey was conducted under section 16 of the PMLA, 2002 on the said property which established that the land is in illegal possession, occupation and use of Shri Hemant Soren.

7. That searches were conducted at the residential premises of Shri Hemant Soren at 5/1 Shantiniketan, New Delhi-110021. Huge cash amounting to Rs 36,34,500/- was seized from the cupboard of the room under his use and occupation along with other documents linked to the investigation being conducted into the matter of acquisition of landed properties by fraudulent means.

8. In the instant case, the property as discussed above admeasuring approximately 8.5 Acres is proceeds of crime which has been in unauthorised and illegal possession and use of Shri Hemant Soren.

> 9. That as per Section 3 of PMLA, 2002, Shri Hemant Soren has directly indulged in the process connected with acquisition, possession and the use of proceeds of crime. Shri Hemant Soren is knowingly a party along with Bhanu Pratap Prasad and others in the activities connected with concealment of the original records for projecting the property acquired by him in an illegal manner as an untainted property. Further, the process or the activity connected with the acquisition, possession and use of proceeds of crime by projecting it as untainted property is continuing as on day as he is still enjoying the said proceeds of crime by its possession, occupation and use by claiming it as an untainted property.
>
> 10. Considering the facts and circumstances as stated above, and taking into consideration the activities and processes of money laundering in which Shri Hemant Soren is directly involved and is also a party with the said Bhanu Pratap Prasad and others, there are sufficient reasons to believe that Shri Hemant Soren is guilty of the offence of money laundering as per section 3 of PMLA.
>
> 11. Hence as discussed above, Shri Hemant Soren is actually and knowingly involved in the processes and activities connected with the acquisition, concealment, possession and use of proceeds of crime and projecting the said proceeds of crime as untainted property. As such, he is guilty of the offence of money laundering as defined under section 3 of PMLA and he is liable to be arrested under section 19 of PMLA, 2002.
>
> Accordingly, I Deovrat Jha, Assistant Director, on the reasons as stated above, have reasonable grounds to arrest Shri Hemant Soren and as such I am invoking the powers of arrest conferred upon me under section 19 of the PMLA, 2002 in the interest of ongoing investigation."

36. In the context of the plea that the arrest of the petitioner is arbitrary and illegal and the ED abused its power for extraneous considerations, this is well remembered that the allegation of *malafide* exercise of power in the criminal prosecution must be supported by extraneous considerations or for unauthorized purposes. This is implicit in the allegation of *malafide* that certain acts have been done in bad faith and to drive home this allegation this is necessary to indicate that there is a personal bias or the exercise of power is contrary to the object, requirement and conditions of a valid exercise of power. The allegation of *malafide* must therefore be demonstrated either by admitted or proved facts or the circumstances in the case which amply demonstrate the exercise of powers for oblique motive. *"Bhajan Lal"*[21] is an authority for the proposition that the existence of deep-rooted political vendetta is not a ground to quash the First Information Report. In *"J.A.C. Saldanha"*[22] the Hon'ble Supreme

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21 State of Haryana v. Bhajan Lal : 1992 Supp (1) SCC 335
22 State of Bihar v. J.A.C. Saldanha : (1980) 1 SCC 554

Court held that *malafide* of the informant would be of secondary importance when information about the commission of a cognizable offence is lodged because it is the material collected during the investigation that has to pass through the judicial scrutiny when a report is submitted in the Court. This is also well settled that unless an extraordinary case of gross abuse of power is made out against the investigating agency the Court should be quite slow to take note of technical pleas and unsubstantiated facts stated in the petition. The allegation of *malafide* against the arresting officer for exercising the power supposedly with malice in his mind can only be made by laying a factual foundation in the pleadings. This also shall bear in the mind of the Court that there is a presumption in law that the power has been exercised *bonafide* and in good faith and the Courts are forbidden from drawing inferences of *malafide* or bad faith based on bald allegations. In the present case, the question of *malafides* pales into insignificance in the face of the abundance of materials collected by the ED which prima facie show the involvement of the petitioner with the proceeds of crime and money-laundering. In *"Chandra Prakash Singh"*[23] the Hon'ble Supreme Court elucidated the law on the subject as under:

> "34. Thus, as a proposition of law, the burden of proving mala fides is very heavy on the person who alleges it. Mere allegation is not enough. Party making such allegations is under the legal obligation to place specific materials before the court to substantiate the said allegations. There has to be very strong and convincing evidence to establish the allegations of mala fides specifically and definitely alleged in the petition as the same cannot merely be presumed. The presumption under law is in favour of the bona fides of the order unless contradicted by acceptable material."

37. The discussions in the order dated 2nd February 2024 passed by the Spl. Judge under PMLA in ECIR- 6 of 2023, Ranchi read as under:

> " In view of the rival argument forwarded by the parties and on perusal of the case record, it transpires that the official complaint vide Enforcement Case Information Report (ECIR) No. RNZO/25/2023 has been lodged and now it is alleged that the accused has illegally possessed 8.45 acres of immovable assets in his favour and that assets has been termed as "proceeds of crime" defined u/s 2(1)(u) of PML Act 2002 that is tainted property by commissioning of Schedule Offences under PMLA, 2002 and projecting the same as untainted property, which is an offence u/s 3 and

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[23] Chandra Prakash Singh v. Purvanchal Gramin Bank: (2008) 12 SCC 292

punishable u/s 4 of PMLA, 2002 (as amended).

The accused, namely Hemant Soren is remanded in this case on 01.02.2024 and he is presently under judicial custody. The authorities of the Hon'ble Court relied upon by the defence while opposing the E.D. remand are related to the different facts and circumstances of the respective cases. There is a cardinal principle of the criminal justice system is that an individual/ accused must cooperate with the investigation of a case and the investigating agency and while dealing with such petition, the court has to consider the nature and gravity of the accusation and the role of the accused as to whether by taking such excuses/objections, he is not trying to flee from the fair investigation of the case. In view of the facts and circumstances of the instant case, in my considered opinion, remand of accused Hemant Soren sought by the Enforcement Directorate is necessary and justified for fair and complete investigation of the matter and there is sufficient reasons for remanding the accused to the custody of the Agency. The petition filed on behalf of the 1.O. (ED) is within first 15 days from the date of remand of accused hence well within time. The investigating agency has also succeeded to make out a strong case that without the custodial interrogation, further investigation is not possible. Therefore, considering the aforesaid facts for proper and just investigation of this case, the accused namely Hemant Soren is given in custody of E.D. for total period of 5 days i.e. the time period will be started when the accused handed over to custody in ED by the Jail authority.

It is hereby made clear that he will be medically examined and further will not be subjected to physical/mental torture and before returning the above named accused to judicial custody, he will be again medically examined. Investigating officer of this case is further directed to intimate this court about medical examination of accused at the time of sending him to judicial custody. Further, the above named accused may be permitted to meet his lawyer as well as his wife/a family member for half an hour each day if he so wishes during interrogation.

Accordingly, in the light of discussion made hereinabove, the petition filed on behalf of I.O. (ED) is hereby allowed. Let a copy of this order be given to Investigating Officer (ED) and Jail Superintendent, BMC, Jail Hotwar, Ranchi for information and needful."

38. The requirement in section 19 that the arresting officer must have reason to believe before he may arrest a person is not that of strict proof. The test which shall be employed to examine the materials pertaining to reason to believe must necessarily be the preponderance of probability. While examining the petitioner's stand that there is no material even remotely suggesting his involvement in the commission of the offence under section 3, this must be remembered that the only requirement in law is that the decision to arrest the accused should prima facie reflect the application of mind. The word "prima facie" is a Latin expression that means "at first sight". The literal translation of the Latin prima facie would be "at first phase" or "at first appearance". In legal parlance, the term

“prima facie” is used to convey that there exists corroborative evidence to support a case. The role of Bhanu Pratap Prasad who was posted at Bargai Circle Office as part of a land-grabbing syndicate came into the light in the course of inquiry in ECIR No. RNZO/18/2022 which was registered for the fraudulent acquisition of 4.55 acres of defense land. On 9th February 2023, when an inquiry was conducted at Bargai Circle Office it became clear that several persons were involved in making false deeds, falsification of government records and tampering with the original revenue records to facilitate the acquisition of landed properties in a fraudulent manner. The ED has laid details of 12 properties under Khata Nos. 109, 210, 221, 223, 227 and 234 which are inside the boundary of a big chunk of plot measuring about 8.5 acres. The Register-II containing the details of Plot Nos. 983 and 985 in Khata No. 221, Plot No. 984 in Khata No. 210 and Plot No. 993 within Khata No. 227 have been found missing and the other properties which according to Register-II belong to Khush Kumar, Budhan Ram, Lodha Pahan, Shashi Bhushan Singh, Bhawani Shankar Lal, Bharat Ram, Maheshwar Das, Uma Shankar Singh and Vanivrat Rai are entered in Volume-I, IV and V of Register-II. The information shared by the ED on 4th May 2023 with the Chief Secretary under section 66(2) of the PMLA contained the details of Register-II, Volume-I, IV and V in which the properties acquired by the petitioner are entered and these records have been seized by the ED from the premises of Bhanu Pratap Prasad. There is no goof-ups in the ED’s case and the statements made in the affidavit-in-opposition have to be read with reference to the documents appended therewith and the mere use of some inconsistent or contradictory expressions in the affidavit cannot be a ground to hold that the materials in possession of the ED were insufficient or that the arresting officer himself was confused.

39. This is not a case pleaded by the petitioner that the witnesses were forced or compelled to give their statement under section 50 of the PMLA; not even argued. This is also not the case of the petitioner that the materials produced by the ED are not real. The fabrication and falsification of the property deeds and revenue records are the matters of record, and

there is prima facie evidence of the petitioner's association with Bhanu Pratap Prasad. At the relevant time, the petitioner was the Chief Minister and there was manipulation in registering the report in Sadar PS Case No. 272 of 2023. The recovery of huge cash from his Delhi residence is not denied by the petitioner and the excuse of the illness of his parents for keeping more than 36 lacs in cash prima facie looks untenable. In this state of affairs, by raising a technical plea the petitioner cannot wriggle out of the mess he created for himself. Like the last resort to a losing litigant, an anxious petitioner has raised the bogey of political vendetta. The case set up by the ED against the petitioner is not based only on the statements recorded under section 50 of the PMLA including of those who claimed themselves real owners of the properties in question, there is an abundance of documents that lay a foundation for the arrest and remand of the petitioner to police and judicial custody. At this stage, this is not possible to hold that the ED has proceeded against the petitioner for no reasons. The admissibility or otherwise of the materials collected by the ED can be examined by the Special Court if a prosecution report is filed against the petitioner. The learned ASG rightly contended that the scheme under the PMLA does not contemplate a mini-trial at this stage.

40. Lastly, there is no challenge by the petitioner that the grounds of arrest, memo of arrest and personal search memo were not duly furnished to him in writing and the compliances under section 19(2) & (3) of the PMLA were not observed. The Special Court gave police remand of the petitioner vide orders dated 2nd February 2024, 7th February 2024 and 12th February 2024 and except the remand order dated 2nd February 2024 the other two police remand orders and the order of judicial remand dated 15th February 2024 are not put to challenge by the petitioner. The maxim *"sublato fundamento cadit opus"* which means when the foundation goes the superstructure falls shall not be applied in case of subsequent remand(s). Every remand order is a separate order and without laying a challenge to the subsequent remand order(s), the accused must fail in his attempt to seek a declaration that his custody is bad in law. The challenge to the remand order dated 2nd February 2024 is of no consequence and it is

not demonstrated that the arrest of the petitioner was illegal.

41. For the foregoing reasons, we do not see any substance in W.P.(Cr.) No.68 of 2024 which is, accordingly, dismissed. However, we make it clear that the observations made in this order are prima facie opinion of the Court, except interpretation of the provisions of the PMLA, and that shall not cause any prejudice to the petitioner in future proceeding, if any, taken out by him.

(Shree Chandrashekhar, A.C.J.)

I agree

(Navneet Kumar, J.)

(Navneet Kumar, J.)

Jharkhand High Court, Ranchi
Dated: 3rd May 2024
R.K/Amit
A.F.R.