2023 INSC 1082

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3865 OF 2023
(@ SLP (Crl.) No. 12863 of 2023)

RAM KISHOR ARORA …APPELLANT(S)

VERSUS

DIRECTORATE OF ENFORCEMENT …RESPONDENT(S)

J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order dated 22.09.2023 passed by the High Court of Delhi at New Delhi, in Writ Petition (Crl.) No. 2408/2023, whereby the High Court has dismissed the said petition seeking declaration that the arrest of the appellant on 27.06.2023 by the respondent Directorate of Enforcement (hereinafter referred to as the ED) was illegal and violative of the fundamental rights

guaranteed to the appellant under Articles 14, 20 and 21 of the Constitution of India, and seeking direction to release the appellant forthwith. The appellant had also sought direction to quash the order of remand dated 28.06.2023 passed by the ASJ/05, PMLA, Patiala House Courts, New Delhi (hereinafter referred to as the "Special Court"), in ECIR No. STF/21/2021.

3. Dehors the facts, a neat question of law that has been raised before this Court is, whether the action of the respondent ED in handing over the document containing the grounds of the arrest to arrestee and taking it back after obtaining the endorsement and his signature thereon, as a token of he having read the same, and in not furnishing a copy thereof to the arrestee at the time of arrest would render the arrest illegal under Section 19 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA)?

FACTUAL MATRIX: -

4. The bare minimum facts required to decide the above questions of law are as follows: -

(i) The appellant was the founder of M/s Supertech Limited, a real estate company which along with its group companies had

undertaken various projects in Delhi NCR and at other places in Uttar Pradesh during the period 1988-2015.

(ii) Due to various reasons, 26 FIRs came to be registered against the appellant in various jurisdictions.

(iii) On 09.09.2021, the respondent ED registered an ECIR bearing no. ECIR/21/STF/2021 against M/s Supertech Ltd. and others and started investigation under the PMLA. The appellant was also summoned under Section 50 of PMLA on various dates during which his statements were also recorded.

(iv) During March 2022, some insolvency proceedings came to be filed against the company M/s Supertech Ltd. before the NCLT, which passed some interlocutory orders. The matter was also taken up by the appellant before the NCLAT with settlement proposal, however during the pendency of the insolvency proceedings, the respondent ED passed a provisional attachment order on 11.04.2023, provisionally attaching certain personal properties of the appellant and filed an original complaint (OC No. 1974/2023) on 04.05.2023, before the Adjudicating Authority, PMLA, seeking confirmation of the provisional attachment order in terms of Section 8 of PMLA.

(v) On 12.05.2023, the Adjudicating Authority, PMLA, issued a notice to the appellant under Section 8(1) of the PMLA calling upon the appellant to show cause as to why the properties provisionally attached should not be confirmed as the properties involved in money laundering.

(vi) According to the appellant, before he could reply to the said show cause notice, on 27.06.2023 he was arrested by the respondent ED without serving to the appellant the ground of arrest.

(vii) On 28.06.2023, the appellant was produced before the Special Court, New Delhi, where the ED sought remand. The Special Court remanded the appellant to the ED custody till 10.07.2023 and thereafter the appellant was sent to judicial custody for 14 days till 24.07.2023.

(viii) The appellant had filed a bail application on 12.07.2023 before the Special Court, the same came to be dismissed by the Special Court on 22.07.2023. The appellant was sent to the judicial custody for further period of 14 days i.e till 07.08.2023, which subsequently came to be extended till 21.08.2023.

(ix) The appellant filed a Writ Petition being no. W.P. (Crl.) No.336/2023 before this Court challenging the order dated

22.07.2023 passed by the Special Court dismissing his bail application. The said writ petition came to be withdrawn by the appellant with liberty to approach the High Court.

(x) Thereafter, the appellant filed the writ petition being W.P. (Crl.) No. 2408/2023, which came to be dismissed by the High Court vide the impugned order dated 22.09.2023.

5. The respondent ED has filed an affidavit to counter the allegations made in the Appeal by the appellant, and asserted that the arrest was in accordance with Section 19 of the PMLA. Paragraph 16 of the counter-affidavit being relevant is reproduced herein below: -

> "16. The arrest was in accordance with Section 19 of PMLA in so far as the Grounds of Arrest in writing were handed over to the arrestee Ram Kishor Arora who after reading the same affixed his signature on each page of the Grounds of Arrest. Further, after going through the Grounds of Arrest the Arrestee Ram Kishor Arora on last page in his own handwriting wrote that –
> "I have been informed and have also read the above mention grounds of arrest"
> Therefore, the ratio of Pankaj Bansal judgement will not be applicable in the instant case.
> A copy of Grounds of arrest is annexed herewith and marked as Annexure R-1."

6. The appellant without specifically denying the said assertion made by the respondent ED in paragraph 16 of the counter-affidavit, filed the response by filing an affidavit in rejoinder. The response of the appellant in the rejoinder to paragraph 16 of the counter-affidavit reads as under:-

> "i. It is respectfully submitted that the very fact that the respondent has now annexed the copy of the grounds of arrest establishes the fact that the petitioner was not served the copy of the grounds of arrest. Rather it is an admission on the part of the respondent that the copy of the grounds of arrest were not served on the petitioner. This Hon'ble Court in V. Senthil Balaji Vs State and Ors. 2023 SCC OnLine SC 934 in Para 39 has held that the ground of arrest is to be "served" to the arrestee. The same was also reiterated and clarified by this Hon'ble Court in Pankaj Bansal Vs Union of India and Others, 2023 SCC OnLine SC 1244.
> ii. It is submitted that the compliance of serving the grounds of arrest must be at the time when the Petitioner's arrest was made and not thereafter.
> iii. The non-service of grounds of arrest is an illegality and not an irregularity that can be regularized later. If the law requires that something be done in a particular manner, then it must be done in that manner, and if not done in that manner, then the same has no existence in the eye of law at all.
> iv. Mere perusal of grounds of arrest for getting it signed, without serving the same by providing a copy thereof at the time of arrest, does not meet the requirements in law and the arrest of the petitioner is thus illegal."
> v. It is submitted that the filing the copy of the grounds of arrest at this stage (Annexure R-1 in counter affidavit, page no. 36), will not help Respondent to cure this illegality. This is an incurable illegality making the very arrest illegal."

LEGAL PROVISION: -

7. Since the entire controversy centres around the interpretation of Section 19 of PMLA which deals with the Power of the ED to arrest, the same is reproduced for ready reference.

> **"19. Power to arrest**.- (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
> (2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section *(1)*, forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.
> (3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a [1][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 [1][Special Court or] Magistrate's Court."

SUBMISSIONS BY THE LEARNED COUNSELS: -

8. The Learned Senior Counsel Mr. Abhishek Manu Singhvi placing heavy reliance on the recent decision of this Court in ***Pankaj Bansal vs. Union of India and Others***[1], submitted that mere informing the accused (the appellant herein) orally about the grounds of arrest and making him read the same and obtaining his signature thereon, and not furnishing in writing the grounds of arrest to the accused has been held to be not in consonance with the provisions contained in Section 19(1) of the PMLA. He further submitted that taking note of the inconsistent practice being followed by the officers of the respondent-ED, it has been directed that it would be necessary henceforth that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. According to him, the said direction was the reiteration of the principle or doctrine already existing and also stated in ***V. Senthil Balaji Vs. State represented by Deputy Director and Others***[2] and therefore the said decision in **Pankaj Bansal** case (supra) is required to be applied retrospectively though the word 'henceforth' has been used. To buttress his submission, Mr. Singhvi has relied upon

[1] **(2023) SCC Online SC 1244**
[2] **(2023) SCC Online SC 934**

the judgment in ***Assistant Commissioner, Income Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited***[3]***,*** in which it was opined that a judicial decision acts retrospectively.

9. *Per contra*, the learned ASG, Mr. S. V. Raju vehemently submitted that the decision in case of **Pankaj Bansal** (supra) was *per incuriam*, as the two-Judge Bench in the said case had deviated from the position of law settled by the prior three-Judge Bench judgment in ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***[4] with respect to the compliance of the provisions of Section 19 of PMLA. He also submitted that a bench of two judges cannot overlook or ignore a binding precedent of larger or even co-equal bench dealing with the issue, otherwise the two-judge bench decision would fall in the category of *per incuriam*, in view of the decision in case of ***Sundeep Kumar Bafna vs. State of Maharashtra and Another***[5]***.*** He further submitted that at the most the direction contained in paragraph 35 of the **Pankaj Bansal** case (supra) to furnish the grounds of arrest in writing, would be applicable "henceforth" as mentioned therein, meaning thereby it would have the

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[3] **(2008) 14 SCC 171**
[4] **(2022) SCC Online SC 929**
[5] **(2014) 16 SCC 623**

prospective and not retrospective effect as sought to be submitted on behalf of the appellant.

ANALYSIS: -

10. The validity of the various provisions including Section 19 of the PMLA was examined by the Three-Judge Bench in ***Vijay Madanlal Choudhary case*** (supra) in which the Bench while upholding the validity of Section 19 of the PMLA held that the said provision has reasonable nexus with the purposes and objects sought to be achieved by the PMLA. The relevant observations are reproduced herein below: -

> "**324**. ……..In other words, the role of the Authorities appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the 2002 Act before the Special Court, if the fact situation so warrant. It is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money-laundering. It is also not unusual to provide for arrest of a person during such inquiry before filing of a complaint for indulging in alleged criminal activity. The respondent has rightly adverted to somewhat similar provisions in other legislations, such as Section 35 of FERA and Section 102 of Customs Act including

the decisions of this Court upholding such power of arrest at the inquiry stage bestowed in the Authorities in the respective legislations. In Romesh Chandra Mehta532, the Constitution Bench of this Court enunciated that Section 104 of the Customs Act confers power to arrest upon the Custom Officer if he has reason to believe that any person in India or within the Indian Customs waters has been guilty of an offence punishable under Section 135 of that Act. Again, in the case of Padam Narain Aggarwal533, while dealing with the provisions of the Customs Act, it noted that the term "arrest" has neither been defined in the 1973 Code nor in the Penal Code, 1860 nor in any other enactment dealing with offences. This word has been derived from the French word "arrater" meaning "to stop or stay". It signifies a restraint of a person. It is, thus, obliging the person to be obedient to law. **Further, arrest may be defined as "the execution of the command of a court of law or of a duly authorised officer". Even, this decision recognises the power of the authorised officer to cause arrest during the inquiry to be conducted under the concerned legislations.** While adverting to the safeguards provided under that legislation before effecting such arrest, the Court noted as follows:

"Safeguards against abuse of power

36. From the above discussion, it is amply clear that power to arrest a person by a Customs Officer is statutory in character and cannot be interfered with. Such power of arrest can be exercised only in those cases where the Customs Officer has "reason to believe" that a person has been guilty of an offence punishable under Sections 132, 133, 135, 135-A or 136 of the Act. Thus, the power must be exercised on objective facts of commission of an offence enumerated and the Customs Officer has reason to believe that a person sought to be arrested has been guilty of commission of such offence. The power to arrest thus is circumscribed by objective considerations and cannot be exercised on whims, caprice or fancy of the officer.

37. The section[534] also obliges the Customs Officer to inform the person arrested of the grounds of arrest as soon as may be. The law requires such person to be produced before a Magistrate without unnecessary delay.

38. The law thus, on the one hand, allows a Customs Officer to exercise power to arrest a person who has committed certain offences, and on the other hand, takes due care to ensure individual freedom and liberty by laying down norms and providing safeguards so that the power of arrest is not abused or misused by the authorities. ….”

(emphasis supplied)

325. The safeguards provided in the 2002 Act and the preconditions to be fulfilled by the authorised officer before effecting arrest, as contained in Section 19 of the 2002 Act, are equally stringent and of higher standard. Those safeguards ensure that the authorised officers do not act arbitrarily, but make them accountable for their judgment about the necessity to arrest any person as being involved in the commission of offence of money-laundering even before filing of the complaint before the Special Court under Section 44(1)(b) of the 2002 Act in that regard. If the action of the authorised officer is found to be vexatious, he can be proceeded with and inflicted with punishment specified under Section 62 of the 2002 Act…….

326. Considering the above, we have no hesitation in upholding the validity of Section 19 of the 2002 Act. We reject the grounds pressed into service to declare Section 19 of the 2002 Act as unconstitutional. On the other hand, we hold that such a provision has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act of prevention of money-laundering and confiscation of proceeds of crime involved in money-laundering, including to prosecute persons involved in the process or activity connected with the proceeds of crime so as to ensure that the proceeds of crime are not

dealt with in any manner which may result in frustrating any proceedings relating to confiscation thereof."

11. Further while dealing with the issue as to whether it was necessary to furnish a copy of ECIR to the person concerned apprehending the arrest or at least after his arrest, the Bench held in ***Vijay Madanlal*** (supra) 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**."**

12. Since, much reliance has been placed on the decisions in case of ***V. Senthil Balaji vs. State*** (supra) and in ***Pankaj Bansal vs. Union of India*** (supra), the relevant part thereof also deserve to be reproduced. In ***V. Senthil Balaji*** (supra), the two-Judge Bench while dealing with Section 19 of PMLA observed as under: -

> **"39.** To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. **The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest.** Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a

> solemn function of the arresting authority which brooks no exception."

13. In ***Pankaj Bansal case*** (supra), the two-Judge Bench after analyzing the provisions contained in Section 19(1) of PMLA observed as under:-

> **"39.** On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of the grounds of arrest, **we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.** The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law.…"

14. It hardly needs to be emphasized that as well settled, it is in order to guard against the possibility of inconsistent decisions on the points of law by different Division Benches that the Rule of precedent has been evolved. It is in order to promote the consistency and certainty in the development of law and its contemporary status that the statement of law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. In this regard, we may refer to

the pronouncement of the Constitution Bench judgment in ***Union of India and Another vs. Raghubir Singh (Dead) by LRs. Etc.***[6]

> "**7**. ……..The position is substantially different under a written Constitution such as the one which governs us. The Constitution of India, which represents the Supreme Law of the land, envisages three distinct organs of the State, each with its own distinctive functions, each a pillar of the State. Broadly, while Parliament and the State Legislature in India enact the law and the Executive Government implements it, the Judiciary sits in judgment not only on the implementation of the law by the Executive but also on the validity of the legislation sought to be implemented. One of the functions of the superior judiciary in India is to examine the competence and validity of legislation, both in point of legislative competence as well as its consistency with the Fundamental Rights. In this regard, the courts in India possess a power not known to the English Courts. Where a statute is declared invalid in India it cannot be reinstated unless constitutional sanction is obtained therefore by a constitutional amendment or an appropriately modified version of the statute is enacted which accords with constitutional prescription. The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. The power extends to examining the validity of even an amendment to the Constitution, for now it has been repeatedly held that no constitutional amendment can be sustained which violates the basic structure of the Constitution. (See Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225 : 1973 Supp SCR 1] , Indira Nehru Gandhi v. Raj Narain [1975 Supp SCC 1 : (1976) 2 SCR 347] , Minerva Mills Ltd. v. Union of India [(1980) 2 SCC 591] and recently in S.P. Sampath Kumar v. Union of India [(1987) 1 SCC 124 : (1987) 1 SCR 435 : (1987) 2 ATC 82] .) With this impressive expanse

[6] **(1989) 2 SCC 754**

of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India.

8. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases. In this latter aspect lies their particular value in developing the jurisprudence of the law.

9. The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a Court.

10. **to 26**…….

27. What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide

> questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the Rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. ……"

15. Another Constitution Bench in ***Chandra Prakash and Others vs. State of U.P. and Another***[7] highlighting the utmost importance of the doctrine of binding precedent in the administration of judicial system and following the decision in ***Raghubir Singh's*** case (supra) observed as under: -

> "**22.** A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common

[7] **(2002) 4 SCC 234**

knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghubir Singh [(1989) 2 SCC 754] held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or smaller number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of Parija [(2002) 1 SCC 1] held that : (SCC p. 4, para 6)

"But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified.

(emphasis supplied)"

16. In ***Sundeep Kumar Bafna vs. State of Maharashtra*** (supra) also the above stated jurisprudence has been followed: -

"**19.** It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution

> of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam."

17. In view of the afore-stated proposition of law propounded by the Constitution Benches, there remains no shadow of doubt that the law laid down by the Three-Judge bench in ***Vijay Madanlal Choudhary*** case (supra) that Section 19(1) of the PMLA has a reasonable nexus with the purposes and objects sought to be achieved by the PML Act and that the said provision is also compliant with the mandate of Article 21(1) of the Constitution of India, any observation made or any finding recorded by the Division Bench of lesser number of Judges contrary to the said ratio laid down in ***Vijay Madanlal Choudhary*** (supra) would be not in consonance with the jurisprudential wisdom expounded by the Constitution Benches in cases referred above. The Three-Judge Bench

in ***Vijay Madanlal Choudhary*** case (supra) having already examined in detail the constitutional validity of Section 19 of PMLA on the touchstone of Article 22(1) and upheld the same, it holds the field as on the date.

18. It is true that the expression "as soon as may be" has not been specifically explained in ***Vijay Madanlal Choudhary*** (supra). Even the said expression has not been interpreted in either ***V. Senthil Balaji*** or in ***Pankaj Bansal*** case. In ***V. Senthil Balaji***, it is held *inter alia* that after forming a reason to believe that the person has been guilty of an offence punishable under the PMLA, the concerned officer is at liberty to arrest him, while performing his mandatory duty of recording the reasons, and that the said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. In ***Pankaj Bansal*** case also the court after highlighting the inconsistent practice being followed by the respondent-ED about the mode of informing the person arrested, held that it would be necessary henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.

19. In view of the above, the interpretation of the expression "as soon as may be" assumes significance. In our opinion, the interpretation of the said expression should not detain us more in view of the Constitution

Bench Judgment in case of ***Abdul Jabar Butt and Another vs. State of Jammu & Kashmir.***[8] In the said case, the Constitution Bench while interpreting Section 8 of Jammu & Kashmir Preventive Detention Act 2011, had an occasion to interpret the expression "as soon as may be" and it observed thus:-

> **"6.** Sub-section (1) imposes on the Government two duties, namely, (*i*) the duty of communicating to the detenue the grounds on which the order has been made, and (*ii*) the duty of affording him the earliest opportunity of making representation against the order to the Government. The first duty is to be performed "as soon as may be". Quite clearly the period of time predicated by the phrase "as soon as may be" begins to run from the time the detention in pursuance of the detention order begins. The question is — what is the span of time, which is designated by the words "as soon as may be"? The observations of Dysant, J. in *King's Old Country, Ltd.* v. *Liquid Carbonic Can. Corpn., Ltd.* [(1942) 2 WWR 603, 606] quoted in *Stroud's Judicial Dictionary* 3rd Edn., Vol. 1, p. 200 are apposite. Said the learned Judge, "to do a thing 'as soon as possible' means to do it within a reasonable time, with an understanding to do it within the shortest possible time". Likewise to communicate the grounds 'as soon as may be may well be said to mean to do so within a reasonable time with an understanding to do it within the shortest possible time. What, however, is to be regarded as a reasonable time or the shortest possible time? The words "as soon as may be" came for consideration before this Court in *Ujagar Singh* v. *State of the Punjab* [1951 SCC 170 : (1952) SCR 756] . At pp. 761-62 this Court observed that the expression meant with a "reasonable despatch" and then went on to say that "what was

[8] **AIR 1957 SC 281**

> reasonable must depend on the facts of each case and no arbitrary time limit could be set down". In *Keshav Nilakanth Joglekar* v. *Commissioner of Police, Greater Bombay* [Supreme Court Petition No. 102 of 1956, decided on September 17, 1956] the word "forthwith" occurring in Section 3(3) of the Indian Preventive Detention Act (4 of 1950) came up for consideration. After observing that the word "forthwith" occurring in Section 3(3) of that Act did not mean the same thing as "as soon as may be" used in Section 7 of the same Act and that the former was more peremptory than the latter, this Court observed that the time that was allowed to the authority to communicate the grounds to the detenue and was predicated by the expression "as soon as may be" was what was "reasonably convenient" or "reasonably requisite".

20. Again, a three-judge bench in ***Durga Pada Ghosh vs. State of West Bengal***[9] while considering the scheme of Article 22 of the Constitution held as under: -

> **"8.** The scheme underlying Article 22 of the Constitution highlights the importance attached in our constitutional set-up to the personal freedom of an individual. Sub-articles (1) and (2) refer to the protection against arrest and detention of a person under the ordinary law. Persons arrested or detained under a law providing for preventive detention are dealt with in sub-articles (4) to (7). Sub-article (5) says that when a person is detained in pursuance of an order under a law providing for preventive detention the grounds on which the order is made have to be communicated to the person concerned as soon as may be and he has to be afforded earliest opportunity to represent against the order. The object of communicating the grounds is to enable the detenu to make his representation against the order. The words "as soon as may be" in the

[9] **(1972) 2 SCC 656**

> context must imply anxious care on the part of the authority concerned to perform its duty in this respect as early as practicable without avoidable delay."

21. In view of the above, the expression "as soon as may be" contained in Section 19 of PMLA is required to be construed as- "as early as possible without avoidable delay" or "within reasonably convenient" or "reasonably requisite" period of time. Since by way of safeguard a duty is cast upon the concerned officer to forward a copy of the order along with the material in his possession to the Adjudicating Authority immediately after the arrest of the person, and to take the person arrested to the concerned court within 24 hours of the arrest, in our opinion, the reasonably convenient or reasonably requisite time to inform the arrestee about the grounds of his arrest would be twenty-four hours of the arrest.

22. In ***Vijay Madanlal Choudhary*** (supra), it has been categorically held that so long as the person has been informed about the grounds of his arrest, that is sufficient compliance of mandate of Article 22(1) of the Constitution. It is also observed that 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. Therefore, in our opinion the person asserted, if he is informed or made aware orally about the grounds of arrest at the time of his arrest and is furnished a written communication about the grounds of arrest as soon as may be i.e as early as possible and within reasonably convenient and requisite time of twenty-four hours of his arrest, that would be sufficient compliance of not only Section 19 of PMLA but also of Article 22(1) of the Constitution of India.

23. As discernible from the judgment in ***Pankaj Bansal*** Case also noticing the inconsistent practice being followed by the officers arresting the persons under Section 19 of PMLA, directed to furnish the grounds of arrest in writing as a matter of course, “henceforth”, meaning thereby from the date of the pronouncement of the judgment. The very use of the word “henceforth” implied that the said requirement of furnishing grounds of arrest in writing to the arrested person as soon as after his arrest was not the mandatory or obligatory till the date of the said judgment. The submission of the learned Senior Counsel Mr. Singhvi for the Appellant that the said judgment was required to be given effect retrospectively cannot be accepted when the judgment itself states that it would be necessary “henceforth” that a copy of such written grounds

of arrest is furnished to the arrested person as a matter of course and without exception. Hence non furnishing of grounds of arrest in writing till the date of pronouncement of judgment in ***Pankaj Bansal*** case could neither be held to be illegal nor the action of the concerned officer in not furnishing the same in writing could be faulted with. As such, the action of informing the person arrested about the grounds of his arrest is a sufficient compliance of Section 19 of PMLA as also Article 22(1) of the Constitution of India, as held in ***Vijay Madanlal*** (supra).

24. In so far as the facts of the present case are concerned, it is not disputed that the appellant was handed over the document containing grounds of arrest when he was arrested, and he also put his signature below the said grounds of arrest, after making an endorsement that "I have been informed and have also read the above-mentioned grounds of arrest." The appellant in the rejoinder filed by him has neither disputed the said endorsement nor his signature below the said endorsement. The only contention raised by the learned Senior Counsel, Mr. Singhvi is that he was not furnished a copy of the document containing the grounds of arrest at the time of arrest. Since the appellant was indisputably informed about the grounds of arrest and he having also put his signature and the endorsement on the said document of having been

informed, we hold that there was due compliance of the provisions contained in Section 19 of PMLA and his arrest could neither be said to be violative of the said provision nor of Article 22(1) of the Constitution of India.

25. In that view of the matter, the Appeal being devoid of merits is dismissed.

……..……..J.
[BELA M. TRIVEDI]

..……..…..J.
[SATISH CHANDRA SHARMA]

NEW DELHI,
DECEMBER 15th, 2023