IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

&

THE HONOURABLE MRS. JUSTICE M.B. SNEHALATHA

FRIDAY, THE 19TH DAY OF JULY 2024 / 28TH ASHADHA, 1946

CRL.A NO. 673 OF 2024

AGAINST THE ORDER DATED 07.03.2024 IN CRMP NO.44 OF 2024

OF THE SPECIAL COURT FOR TRIAL OF NIA CASES, ERNAKULAM

APPELLANT/ACCUSED NO.4:

SAHEER E P,
AGED 56 YEARS, S/O MOHAMMED SHAFI,
ERATTAPULUKKAL HOUSE, MANNARKKAD, ALANELUR P O,
PALAKKAD DISTRICT - 678601

BY ADVS.
S.RAJEEV
V.VINAY
M.S.ANEER
PRERITH PHILIP JOSEPH
ANILKUMAR C.R.
K.S.KIRAN KRISHNAN
NOURIN S. FATHIMA

RESPONDENT/COMPLAINANT:

NATIONAL INVESTIGATION AGENCY
GIRINGAR HOUSING COLONY, GIRI NAGAR HOUSING SOCIETY, GIRI NAGAR, KADAVANTHRA, KOCHI, ERNAKULAM, KERALA, PIN - 682020

SRI.ARL SUNDARESAN, ADDL.S.G.I.

ASSISTED BY SRI.PRENJITH KUMAR K.S.

THIS CRIMINAL APPEAL HAVING BEEN HEARD ON 04.07.2024, THE COURT ON 19.07.2024 DELIVERED THE FOLLOWING:

2024:KER:53759

C.R.

P.B.SURESH KUMAR & M.B.SNEHALATHA, JJ.

Crl.Appeal No.673 of 2024

Dated this the 19th day of July, 2024

JUDGMENT

P.B.Suresh Kumar, J.

This appeal is preferred invoking Section 21 of the National Investigation Agency Act, 2008 (NIA Act) challenging an order passed by the Special Court for Trial of NIA cases, Ernakulam (the Special Court), dismissing an application for bail submitted by the appellant who is the fifth accused in RC No.02/2023/NIA/KOC.

2. The appellant was arrested on 09.01.2024 and immediately thereupon the final report in the case was filed on 12.01.2024. The materials placed on record indicate that the Central Government had received credible information that an ISIS/IS-KP Module, a proscribed terrorist organization, was working in secrecy for the purpose of committing acts

prejudicial to the sovereignty and integrity of India by conspiring to target certain prominent members of the society and religious places of other communities to commit terrorist acts and create communal disharmony in the society; that as part of the larger conspiracy of the ISIS/IS-KP, the members of the module identified gullible Muslim youths and radicalised them through encrypted communication channels to join ISIS/IS-KP and that in order to raise funds for furthering the activities of ISIS/IS-KP, they have committed various criminal and illegal activities. The materials placed on record also reveal that the Central Government was of the opinion that the above activities would have serious ramifications and accordingly, the Ministry of Home Affairs, Government of India vide order F.No.11011/58/2023/NIA dated 10.07.2023 directed the NIA to take up investigation of the matter, and the subject case was registered and investigated accordingly by the NIA.

3. It is alleged in the final report that the second accused being an active cadre of Popular Front of India (PFI) involved in several violent criminal activities of PFI, got himself associated with India Fraternity Forum (IFF), the overseas forum of PFI while in Qatar since 2012; that he subscribed to the violent jihadi ideologies of ISIS while in Qatar; that he conspired

with the first accused to return to India and to establish an ISIS module in Kerala to recruit gullible youths to the module and he established an ISIS module in Kerala accordingly and recruited several persons in the module for furthering the activities of ISIS. It is also alleged in the final report that the second accused along with accused 1, 3 and 4 started recruiting others to ISIS module in Kerala and he has, along with others, committed several crimes to raise funds for pro-ISIS activities. It was also alleged in the final report that the second accused and others conducted recce of Hindu Temples and prominent persons of other communities for targeting as well as for looting and that the second accused propagated ISIS ideology through the social media, secret communication platforms and in person. The offences alleged against the second accused in the final report are offences punishable under Sections 120B of the Indian Penal Code (IPC) and Sections 20, 38 and 39 of Unlawful Activities (Prevention) Act, 1967 (the UAPA).

4. The allegation against the appellant in the final report is that he harboured the second accused from 22nd July, 2023 onwards when the second accused was hiding, despite it being widely publicised in newspapers as also media that the

second accused was involved in terrorist activities, by wilfully arranging a hideout and finance for the second accused and also arranging logistics such as mobile phone, SIM cards etc. for the use of second accused. The offences alleged against the appellant in the final report are the offences punishable under Section 212 of IPC and Section 19 of the UAPA.

5. The appellant does not dispute the fact that he knows the second accused and that he had monetary transactions with the close relatives of the second accused for quite a long time. The appellant also does not dispute the fact that he arranged for a room in a lodge in his name in the proximity of his house and at his expense for the second accused to stay and that the second accused had stayed in the said lodge for a few days from 22nd July, 2023 onwards. The appellant also does not dispute the fact that he handed over a mobile and two SIM cards, one taken in the name of his wife and the other in the name of his friend Shahjahan, to the second accused for his use while staying in the lodge and also thereafter. According to the appellant, the second accused was sent to him by the brother-in-law of the second accused who is known to the appellant, to train him in stock trading business

and it was for the said purpose that the appellant made the above arrangements for the second accused. The case of the appellant in the bail application before the Special Court was that he was not aware of the fact that the appellant is involved in the present case or in any other case or that he was a sympathizer of ISIS.

6. Section 43D(5) of the UAPA imposes a restriction on the power of the Special Court to grant bail to accused arrested in terms of the provisions contained in the said statute. The restriction is that if the application for bail is opposed, if there are reasonable grounds for believing that the accusation against such person is *prima facie* true, the Special Court is not empowered to grant bail. Section 43D(5) of the UAPA dealing with the restriction as regards grant of bail reads thus:

> **43D. Modified application of certain provisions of the Code**.
>
> (1) xxx
>
> (2) xxx
>
> (3) xxx
>
> (4) xxx
>
> (5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release:

PROVIDED that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) xxx

(7) xxx

(underline supplied)

7. A detailed objection was filed by the respondent to the application for bail. It was contended by the respondent, *inter alia,* that the investigation in the case revealed a strong link between the appellant and the second accused. It was also contended that the second accused is a known Popular Front of India worker involved in serious offences including a robbery on 20.04.2023 in which he was arrested and remanded during April, 2023 and the said arrest and remand were widely reported in the media. It was also contended that the involvement of the second accused in the present crime was reported in Mangalam and Janmabhumi dailies on 22.07.2023, on which day, the appellant harboured him and that the second accused was carrying the mobile phone and SIM cards provided by the appellant when he was arrested. It was also contended that the arrest of the first

accused in the case was also widely reported and since the second accused was absconding then, the said abscondence was also reported in the news published in connection with the arrest of the first accused. It was also contended that since the appellant knew that procurement of a room in a lodge and SIM cards in the name of the second accused would be detrimental to the second accused, the appellant arranged for a room for the second accused in the name of the appellant and took SIM cards for the use of the second accused in the name of his wife and friend. It was also contended that the room expenses were taken care of by the appellant himself and the said fact would also show that the appellant had knowingly and wilfully undertook arrangements for the hideout of the second accused. According to the respondent, there is sufficient and more material in the final report which indicates that the appellant harboured the second accused, a person involved in terrorist activities, knowingly and wilfully and that the said material in the final report constitutes reasonable grounds for believing that the accusation against the appellant is *prima facie* true.

8. The Special Court took the view that there are reasonable grounds to believe that the appellant harboured the

second accused with the knowledge that he is a person involved in the case and consequently, dismissed the application for bail in the light of the embargo contained in Sub-Section (5) of Section 43D of the UAPA. As noted, the appellant is aggrieved by the said decision of the Special Court.

9. Heard the learned counsel for the appellant as also the learned Additional Solicitor General of India.

10. Section 19 of the UAPA which deals with the offence of harbouring has been attributed against the appellant. Section 19 reads thus:

> **19. Punishment for harbouring, etc.**
>
> Whoever voluntarily harbours or conceals, or attempts to harbour or conceal any person knowing that such person is a terrorist shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to imprisonment for life, and shall also be liable to fine:
>
> PROVIDED that this section shall not apply to any case in which the harbour or concealment is by the spouse of the offender.
>
> (underline supplied)

As evident from the extracted provision, in order to attract Section 19, the accused should know that the person harboured by him is a terrorist. Section 2(k) of the UAPA defines “terrorist act” thus:

"terrorist act" has the meaning assigned to it in section 15, and the expressions "terrorism" and "terrorist" shall be construed accordingly.

Section 15 of the UAPA which defines "terrorist act" reads thus:

15. Terrorist act.

(1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security, or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,—

(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely to cause—

(i) death of, or injuries to, any person or persons; or
(ii) loss of, or damage to, or destruction of, property; or
(iii) disruption of any supplies or services essential to the life of the community in India or in any foreign country; or
(iiia) damage to, the monetary stability of India by way of production or smuggling or circulation of high quality counterfeit Indian paper currency, coin or of any other material; or
(iv) damage or destruction of any property in India or in a foreign country used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies; or

(b) overawes by means of criminal force or the show of criminal force or attempts to do so or causes death of any public functionary or attempts to cause death of any public functionary; or

(c) detains, kidnaps or abducts any person and threatens to kill or injure such person or does any other act in order to compel the Government of India, any State Government or the Government of a foreign country or an international or inter-governmental organisation or any other person to do or abstain from doing any act; or]

commits a terrorist act.

Explanation : For the purpose of this sub-section,—

> (a) "public functionary" means the constitutional authorities or any other functionary notified in the Official Gazette by the Central Government as public functionary;
> (b) "high quality counterfeit Indian currency" means the counterfeit currency as may be declared after examination by an authorised or notified forensic authority that such currency imitates or compromises with the key security features as specified in the Third Schedule.
>
> (2) The terrorist act includes an act which constitutes an offence within the scope of, and as defined in any of the treaties specified in the Second Schedule.

As explicit from the aforesaid provisions, a terrorist is a person indulging in any of the activities made mention of in Section 15 of the UAPA. Even though it was contended by the learned counsel for the appellant that in order to apply Section 19 of the UAPA, the accused should know that the person harboured by him is a terrorist, whose name is included in the fourth schedule to the UAPA, we do not find any substance in the said contention since the purpose of the fourth schedule to the UAPA is only to enable the Central Government to comply with the requirement contained in Sections 35 and 36 of the UAPA and it has nothing to do with the offence punishable under Section 19 of the UAPA. The appellant does not have a case that the second accused is not a person indulged in terrorist acts as defined under Section 15 of the UAPA. As such, the question is whether there are reasonable grounds to believe

that the appellant knew that the second accused as harboured by the appellant is a person indulged in terrorist acts. The offence punishable under Section 19 is an offence falling under Chapter IV of the UAPA.

11. The main argument advanced by the learned counsel for the appellant is that the only material relied on by the respondent in the final report to take the stand that the appellant harboured the second accused with the knowledge that the second accused is a terrorist, is that the involvement of the second accused in the present case has been widely reported in newspapers. According to the learned counsel, even if it is assumed that the involvement of the second accused in the case has been reported in newspapers, it cannot be inferred from that circumstance alone that the appellant knew that the second accused is a person indulging in terrorist activities in terms of the provisions contained in the UAPA. This is an aspect to be considered at the time of trial. Inasmuch as the appellant has been denied bail, the question that arises is whether there are reasonable grounds for believing that the accusation against the appellant, that he knew that the second accused was indulging in terrorist activities, while harbouring

him, is *prima facie* true.

12. It is trite that by its very nature, the expression "*prima facie* true" contained in Section 43D(5) would mean that the materials/evidence collected by the investigating agency in reference to the accusation against the accused, must prevail until contradicted or disproved by other evidence and on the face of such materials/evidence, the complicity of such accused in the commission of the offence is seen. It is also trite that the grounds for believing that the accusation against the accused is *prima facie* true must be reasonable grounds and while examining such an issue, the court is not expected to hold a mini-trial for that purpose and the court can take into account only materials forming part of the charge sheet.

13. As noticed, the appellant does not dispute the fact that he was closely connected to the family of the second accused for quite some time and that there were monetary transactions between him and the members of the family of the second accused. The appellant also does not dispute the fact that he arranged for a room in his name in a lodge in the proximity of his house for the second accused to stay at his expense and that the second accused had stayed in the said

room for a few days from 22.07.2023, immediately after the registration of the crime on 11.07.2023 and the arrest of the first accused on 18.07.2023. The appellant does not also dispute the fact that he handed over a mobile phone as also SIM cards taken in the name of his wife and his friend, Shahjahan to the second accused for his use while staying in the lodge and thereafter. As noted, the specific case of the respondent is that the second accused is a known Popular Front of India worker involved in serious offences including a robbery on 20.04.2023, in which he was arrested and remanded during April, 2023; that his arrest and remand in the said case were widely reported in the media; that the involvement of the second accused in the crime was also reported in Mangalam and Janmabhumi dailies on 22.07.2023 on which day, the appellant harboured him; that the second accused was carrying the mobile phone and SIM cards provided by the appellant when he was arrested and that the arrest of the first accused in the case was widely reported and since the second accused was absconding then, the said abscondence was also reported in the news published in connection with the arrest of the first accused. It is also the specific case of the respondent that the

appellant had knowledge that procurement of a room in the lodge and SIM cards in the name of the second accused would be detrimental to the second accused and it is with that knowledge, the appellant undertook the above arrangements. In the aforesaid background, it is difficult to believe that the appellant carried out all those acts to enable the second accused to train him in stock trading business, for if that be so, there would have been several documents demonstrating the same. However, the documents on which reliance was placed are only documents which indicate that there were monetary transactions between the appellant and the members of the family of the second accused. In the circumstances, according to us, the Special Court cannot be found at fault with for taking the view that there are reasonable grounds to believe that the accusation against the appellant is *prima facie* true, for under normal circumstances, no one would make arrangements of this nature unless he has close acquaintance with him or with the members of his family and if that be so, it cannot be presumed that the appellant was not aware of the activities in which the second accused was indulged in. There is, therefore, no illegality in the impugned order.

14. Another argument alternatively raised by the learned counsel for the appellant at the time of hearing was that even if the impugned order is found to be in order, the same will not preclude this Court from granting bail to the appellant, for the restriction provided for under Section 43D(5) of the UAPA in granting bail does not apply to constitutional courts. In order to buttress the said point, the learned counsel brought to our attention the definition of "court" contained in Section 2(d) of the UAPA which does not bring within its scope, the High Court. The judgments of the Apex Court in **Union of India v. K.A. Najeeb**, (2021) 3 SCC 713, and in **Shoma Kanti Sen v. State of Maharashtra**, 2024 SCC OnLine SC 498 were also cited by the learned counsel in support of the said proposition. No doubt, the expression "court" used in the proviso to Section 43D(5) of the UAPA has to be understood as a "court" falling within the scope of Section 2(d) of the UAPA, and constitutional courts would not fall within the scope of the said definition. Even in the absence of such a definition for the "court" in the UAPA, we do not think that the restriction contained in Section 43D(5) of the UAPA would oust the jurisdiction of constitutional courts in granting bail to an

accused in UAPA cases on grounds of violation of Part III to the Constitution, for Part III would cover within its protective ambit not only due procedure and fairness, but also access to justice and speedy trial. A reading of the judgment of the Apex Court in **K.A.Najeeb** cited by the learned counsel would indicate that the ratio of the said case is that constitutional courts would be justified in granting bail on grounds of violation of Part III to the Constitution, notwithstanding the restriction under Section 43D(5) of the UAPA, in situations where timely trial would not be possible and the accused suffered incarceration for a significantly long period of time. Paragraphs 15, 17 and 18 of the judgment in **K.A.Najeeb** read thus :

> "15. This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy trial. In *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners)* v. *Union of India* [*Supreme Court Legal Aid Committee (Representing Undertrial Prisoners)* v. *Union of India*, (1994) 6 SCC 731, para 15 : 1995 SCC (Cri) 39], it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.
>
> 16. x x x x x x x x x x

> 17. It is thus clear to us that the presence of statutory restrictions like Section 43-D(5) of the UAPA *per se* does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a statute as well as the powers exercisable under constitutional jurisdiction can be well harmonised. Whereas at commencement of proceedings, the courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of provisions like Section 43-D(5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.
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> 18. Adverting to the case at hand, we are conscious of the fact that the charges levelled against the respondent are grave and a serious threat to societal harmony. Had it been a case at the threshold, we would have outrightly turned down the respondent's prayer. However, keeping in mind the length of the period spent by him in custody and the unlikelihood of the trial being completed anytime soon, the High Court appears to have been left with no other option except to grant bail. An attempt has been made to strike a balance between the appellant's right to lead evidence of its choice and establish the charges beyond any doubt and simultaneously the respondent's rights guaranteed under Part III of our Constitution have been well protected."
>
> Underline supplied

The said aspect has been reiterated in **Shoma Kanti Sen** also. Paragraph 38 of the judgment of the Apex Court in **Shoma Kanti Sen** reads thus:

> 38. Relying on this judgment, Mr. Nataraj, submits that bail is not a fundamental right. Secondly, to be entitled to be enlarged on bail, an accused charged with offences enumerated in Chapters IV and VI of the 1967 Act, must fulfil the conditions specified in Section 43D (5) thereof. We do not accept the first part of this submission. This Court has already accepted right of an accused under the said offences of the 1967 Act to be enlarged on bail founding such right on Article 21 of the Constitution of India. This was in the case of *Najeeb* (supra), and in that judgment, long period of incarceration was held to be a valid ground to enlarge an

> accused on bail in spite of the bail-restricting provision of Section 43D (5) of the 1967 Act. Pre-conviction detention is necessary to collect evidence (at the investigation stage), to maintain purity in the course of trial and also to prevent an accused from being fugitive from justice. Such detention is also necessary to prevent further commission of offence by the same accused. Depending on gravity and seriousness of the offence alleged to have been committed by an accused, detention before conclusion of trial at the investigation and post-chargesheet stage has the sanction of law broadly on these reasonings. But any form of deprival of liberty results in breach of Article 21 of the Constitution of India and must be justified on the ground of being reasonable, following a just and fair procedure and such deprival must be proportionate in the facts of a given case. These would be the overarching principles which the law Courts would have to apply while testing prosecution's plea of pre-trial detention, both at investigation and post-chargesheet stage.
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> (underline supplied)

However, in the facts of the present case, the appellant was arrested only on 09.01.2024 and it is too early for him to take up the contention that he is entitled to be enlarged on bail by this Court for violation of the provision contained in Part III to the Constitution, for he cannot be heard to contend, at this stage, that any of his fundamental rights has been infringed.

15. Another argument alternatively raised by the learned counsel for the appellant was that even if the impugned order is found to be in order, the appellant is entitled to be enlarged on bail, for the provision contained in Section 43B of the UAPA has not been followed while effecting the arrest of the appellant. Section 43B(1) of the UAPA reads thus :

> **43B. Procedure of arrest, seizure, etc.**
>
> (1) Any officer arresting a person under section 43A

> shall, as soon as may be, inform him of the grounds for such arrest.

It was pointed out by the learned counsel that Section 43B of the UAPA mandates that any officer arresting a person accused of an offence punishable under the UAPA shall, as soon as may be, inform him the grounds for such arrest and in the case on hand, the appellant has not been informed the grounds of his arrest in writing. According to the learned counsel, inasmuch as the requirement under Section 43B has its genesis from Article 22(1) of the Constitution, its non-compliance makes the arrest of the appellant invalid and therefore, he is entitled to be enlarged on bail on that ground. The learned counsel, however, conceded that even though the statutory provision does not mandate that the grounds of arrest shall be informed to the arrestee in writing, it has been held by the Apex Court in **Prabir Purkayastha v. State (NCT of Delhi)**, 2024 SCC OnLine SC 934 that the requirement of the provision is that grounds of arrest shall be served to the arrestee in writing.

16. **Prabir Purkayastha** was a case that arose from a proceeding challenging the validity of the arrest of the accused in a case registered under the UAPA. The case on hand is not one that arises from a proceeding challenging the validity

of the arrest. On the other hand, as noted, it is an appeal instituted under Section 21 of the NIA Act challenging the order dismissing an application for bail preferred by the appellant in a case registered under the UAPA. It is doubtful whether the argument aforesaid is one that could be raised in an appeal under Section 21 of the NIA Act challenging the correctness of the order dismissing an application for bail. Nevertheless, we propose to deal with the contention.

17. It is seen that in **Pankaj Bansal v. Union of India**, 2023 SCC OnLine SC 1244, in the context of a similar provision contained in Section 19 of the Prevention of Money Laundering Act, 2002 (PML Act), the Apex Court took the view that communication of grounds of arrest in writing is necessary, even though the provision does not provide so, as the provision is intended to provide the accused an effective opportunity to seek bail in the light of the restriction imposed in Section 45(1) of the said statute that the accused in a case under the PML Act is entitled to bail only where the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. It was also held by the Apex Court in **Pankaj Bansal** that in

the light of the provision contained in Section 19 of the said Statute that the authorised officer has to record in writing the reasons for forming the belief that the person proposed to be arrested is guilty of the offence punishable under the PML Act, the accused has a constitutional and statutory right to be informed of the grounds of arrest keeping with the mandate of Section 19(1) of the PML Act. The Apex Court in **Prabir Purkayastha** took the view that there is no significant difference in the language employed in Section 19(1) of the PML Act and Section 43B(1) of the UAPA inasmuch as it relates to the right of the accused to be informed of the grounds of arrest and therefore, the proposition of law laid down by the Apex Court in **Pankaj Bansal** shall be applied to the accused arrested under the UAPA as well, for the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution and any infringement of the fundamental right would vitiate the process of arrest and remand. It was also held by the Apex Court in **Prabir Purkayastha** that the mere fact that the charge sheet has been filed in the matter would not validate the illegality and unconstitutionality committed at the time of arresting the accused. Similarly, it was held that the grant of

initial police custody and remand of the accused would not also validate the illegality committed at the time of arresting the accused. It was clarified by the Apex Court in the said case that the interpretation of the provision contained in Section 43B(1) of the UAPA would bind all the courts in the country by virtue of Article 141 of the Constitution of India.

18. The learned Additional Solicitor General of India conceded that the grounds of arrest have been communicated to the appellant only orally, for there was no statutory requirement at the time of the arrest of the appellant that the grounds of arrest should be given in writing. It was pointed out by the learned Additional Solicitor General of India that the arrest of the appellant was long prior to the decision of the Apex Court in **Prabir Purkayastha** and the authorities cannot be blamed, therefore, for having not served the appellant the grounds of arrest in writing. It was argued by the learned Additional Solicitor General of India that the appellant has not challenged his arrest in any proceedings known to law, and had he challenged the arrest, the same would have been rejected by this Court for want of provision. It was pointed out that instead, the appellant has preferred only an application for bail,

accepting the arrest as valid, and he cannot, therefore, be heard to contend that the arrest is bad, especially in this appeal which has been preferred challenging the dismissal of the bail application. It was also pointed out by the learned Additional Solicitor General of India that the decisions of the Apex Court in **Pankaj Bansal** and **Prabir Purkayastha** may not come to the aid of the appellant, for those are cases that arose from proceedings challenging the arrest of the accused in terms of the PML Act as also the UAPA and the ratio in the said cases cannot, therefore, be extended to cases where there is no challenge to the arrest of the accused.

19. As already indicated, there is no provision either in the PML Act or in the UAPA that the grounds of arrest shall be informed to the accused arrested for offences punishable under the said Statutes, in writing. It is in terms of the judgment of the Apex Court dated 03.10.2023 in **Pankaj Bansal**, the said requirement has become necessary for arrests of the accused in terms of the provisions contained in the PML Act. The concluding paragraphs of the judgment in **Pankaj Bansal** read thus:

> **39.** On the above analysis, to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the Act of 2002 of informing the arrested person of

> the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception. The decisions of the Delhi High Court in *Moin Akhtar Qureshi* (supra) and the Bombay High Court in *Chhagan Chandrakant Bhujbal* (supra), which hold to the contrary, do not lay down the correct law. In the case on hand, the admitted position is that the ED's Investigating Officer merely read out or permitted reading of the grounds of arrest of the appellants and left it at that, which is also disputed by the appellants. As this form of communication is not found to be adequate to fulfil compliance with the mandate of Article 22(1) of the Constitution and Section 19(1) of the Act of 2002, we have no hesitation in holding that their arrest was not in keeping with the provisions of Section 19(1) of the Act of 2002. Further, as already noted *supra*, the clandestine conduct of the ED in proceeding against the appellants, by recording the second ECIR immediately after they secured interim protection in relation to the first ECIR, does not commend acceptance as it reeks of arbitrary exercise of power. In effect, the arrest of the appellants and, in consequence, their remand to the custody of the ED and, thereafter, to judicial custody, cannot be sustained.
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> **40.** The appeals are accordingly allowed, setting aside the impugned orders passed by the Division Bench of the Punjab & Haryana High Court as well as the impugned arrest orders and arrest memos along with the orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula, and all orders consequential thereto.
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> **41.** The appellants shall be released forthwith unless their incarceration is validly required in connection with any other case.
>
> **42.** In the circumstances, we make no orders as to costs.
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> (Underline supplied)

As explicit from the concluding paragraphs of the judgment in **Pankaj Bansal**, the direction in the case is that 'henceforth' the grounds of arrest shall be communicated to the accused in cases particularly registered under the PML Act, in writing. In other words, all arrests made under the PML Act were protected and relief was given only to the party to that proceedings. This

aspect has been clarified by the Apex Court in **Ram Kishor Arora v. Enforcement Directorate**, 2023 SCC OnLine SC 1682. Paragraph 23 of the judgment reads thus:

> **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).

20. The appellant was arrested on 09.01.2024, much after the decision of the Apex Court in **Pankaj Bansal**. At the relevant time of arrest of the appellant, there was no requirement to serve the grounds of arrest, in writing, to the accused in a case under the UAPA. As noted, the stand taken by the respondent is that the appellant was communicated, orally, the grounds of arrest as done in all identical cases until then. It was much later that the Apex Court in **Prabir Purkayastha**, held

that the ratio in **Pankaj Bansal** would apply to the arrest of the accused in terms of the UAPA also. Paragraphs 17 and 19 of the judgment of the Apex Court in **Prabir Purkayastha** read thus:

> **17.** Upon a careful perusal of the statutory provisions (reproduced supra), we find that there is no significant difference in the language employed in Section 19(1) of the PMLA and Section 43B(1) of the UAPA which can persuade us to take a view that the interpretation of the phrase 'inform him of the grounds for such arrest' made by this Court in the case of *Pankaj Bansal* (supra) should not be applied to an accused arrested under the provisions of the UAPA.
>
> **18.** x x x x x x x x x x x x
>
> **19.** We may note that the modified application of Section 167 CrPC is also common to both the statutes. Thus, we have no hesitation in holding that the interpretation of statutory mandate laid down by this Court in the case of *Pankaj Bansal* (supra) on the aspect of informing the arrested person the grounds of arrest in writing has to be applied *pari passu* to a person arrested in a case registered under the provisions of the UAPA.

As evident from the extracted paragraphs, what is directed in **Prabir Purkayastha** by the Apex Court is that the interpretation of the statutory mandate laid down by the Apex Court in **Pankaj Bansal** on the aspect of informing the arrested persons the grounds of arrest in writing, shall be applied *pari passu* to persons arrested in a case registered under the provisions of the UAPA as well. There cannot be any doubt that *pari passu* means "with equal steps, equally, without preference" [See **International Coach Builders Ltd. v. Karnataka State Financial Corpn.**, (2003) 10 SCC 482]. In other words, the direction is that the provision contained in Section 43B(1) shall, henceforth, be

understood as a provision directing communication of the grounds of arrest to the accused, in writing. Needless to say, the said judgment would not invalidate the valid arrests already made as on the date of the judgment.

We do not, therefore, find any merit in the appeal and the same is accordingly, dismissed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

Sd/-

M.B.SNEHALATHA, JUDGE.

YKB