2025:DHC:3739

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

Date of Decision : 15th May, 2025

\+ W.P.(CRL) 2241/2024 & CRL.M.A. 21882/2024, CRL.M.A. 30909/2024

MANIDEEP MAGO .....Petitioner

Through: Mr. Vikram Chaudhri, Senior Advocate with Mr. Raktim Gogoi, Mr. Arveen Sekhon, Mr. Rishi Sehgal, Mr. Shivam Pal Sharma, Mr. Anuj Kr. And Mr. Ishaan Sahai, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Amol Sinha, ASC (Criminal) for the State with Mr. Kshitiz Garg, Mr. Ashvini Kumar and Mr. Nitish Dhawan, Advocates.
Insp. Pawan Kumar, AGS Crime Branch.
Dr. B. Ramaswamy, CGSC for Union of India.
Mr. Zoheb Hossain, Special Counsel with Mr. Vivek Gurnani, Panel Counsel, Mr. Pranjal Tripathi and Mr. Kartik Sabharwal, Advocates for ED.

\+ W.P.(CRL) 2391/2024 & CRL.M.A. 23401/2024

SANJAY SETHI .....Petitioner

Through: Mr. Raktim Gogoi, Mr. Arveen Sekhon, Mr. Rishi Sehgal, Mr. Shivam Pal Sharma, Mr. Anuj Kr. And Mr. Ishaan Sahai, Advocates.

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Insp. Pawan Kumar, AGS Crime Branch.
Mr. Amit Tiwari, CGSC with Mr.Hussain Taqvi, GP, Mr. Ayush Tanwar and Ms. Ayushi Srivastava, Advocates for UOI.
Mr. Zoheb Hossain, Special Counsel with Mr. Vivek Gurnani, Panel Counsel, Mr. Pranjal Tripathi and Mr. Kartik Sabharwal, Advocates for ED.

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

These petitions evince common questions of law arising from a similar fact-situation and are therefore being taken-up together for consideration. It may be noted however, that certain specific factual aspects relating to the two petitioners may be different; but since those aspects are not central to the decision of the legal issues involved, the matters are amenable to disposal by way of this common judgment.

2. The petitioners are challenging their arrests in case FIR No. 111/2024 dated 30.05.2024 registered under sections 120-B/420/468/467/ 471/201 of the Indian Penal Code, 1860 ('IPC') at P.S. : Crime Branch, Delhi and ECIR No. ECIR/HIU-II/13/2024 dated 31.05.2024

registered by respondents Nos. 2 and 3/Directorate of Enforcement ('ED') under the Prevention of Money Laundering Act, 2002 ('PMLA'); as well as their consequent remand to judicial custody *vide* various orders as detailed in their respective petitions.

3. The court has heard Mr. Vikram Chaudhri, learned senior counsel appearing for the petitioner in W.P.(CRL) No. 2241/2024; Mr. Amol Sinha, learned ASC (Criminal) appearing for the State; and Mr. Zoheb Hossain and Mr. Vivek Gurnani, learned special counsel appearing for the ED. As recorded in order dated 09.04.2025, Mr. Raktim Gogoi, learned counsel appearing for the petitioner in W.P.(CRL) No.2391/2024 has adopted the arguments made by Mr. Chaudhari.

4. The principal contention of the petitioners is that the search and seizure operation carried-out by the ED at the petitioners' residential premises and at the office premises of their companies under the powers conferred upon them under section 37 of the Foreign Exchange Management Act, 1999 ('FEMA') and under section 132 of the Income Tax Act, 1961 ('IT Act') on 28.05.2024 and 29.05.2024, could *not* have led to the registration of the subject FIR or the subject ECIR. It is accordingly the petitioners' contention, that all actions taken by the police pursuant to the subject FIR *and* by the ED in the subject ECIR, including the petitioners' arrest, are illegal and deserve to be set-aside.

BRIEF FACTS

5. The brief factual background necessary for deciding the present petitions is set-out below :

5.1. The genesis of the case against the petitioners is a search and seizure operation that was carried-out by the ED under section 37 of the FEMA at the premises of the petitioners on 28.05.2024, during which the ED also recorded their statements. It is the ED's case that in the statements so recorded, the petitioners admitted that they had indulged in international hawala transactions to the tune of Rs.3,500 crore *inter-alia* by fabricating documents to send outward remittances to their companies in Hong Kong and Canada.

5.2. Furthermore, it is the ED's allegation that the petitioners have admitted that cash was handed-over to them, which they deposited in certain bank accounts, and thereafter made onward remittances to foreign entities engaged in the trade of textile, electronics, and opticals, through the petitioners' company, one M/s Birfa IT Services (P) Limited ('Birfa IT'), by preparing fake invoices for import of software from one M/s. Mozire Technologies Limited.

5.3. The ED contends that a similar search operation was carried-out at the office premises of Birfa IT on 28.05.2024, which led to seizure of certain digital devices and documents. The ED states that they concluded the search proceedings on 30.05.2024, which culminated in freezing of certain bank accounts belonging to the petitioners and their companies under the provisions of section 37 of the FEMA read with section 132 of the IT Act. Thereafter, the ED also proceeded to issue

provisional attachment orders on 30.05.2024, attaching 05 vehicles belonging to the petitioners and their companies.

5.4. Pertinently, on the very same day, *i.e.* 30.05.2024, the ED filed a police complaint with P.S. : Crime Branch, Delhi, which led to the registration of FIR No. 111/2024 dated 30.05.2024 against the petitioners, leading to their arrest on 31.05.2024 by P.S.: Crime Branch; whereafter the petitioners were produced before the learned Magistrate, who remanded them to police custody till 02.06.2024.

5.5. Treating the offences alleged in the subject FIR as predicate or scheduled offences, the ED then proceeded to register an Economic Crime Information Report bearing No. ECIR/HIU-II/13/2024 dated 31.05.2024 alleging commission of offences under the PMLA.

5.6. Since the petitioners were lodged in jail upon their arrest in the subject FIR, on 10.06.2024 the ED filed an application before the learned Sessions Court seeking permission to examine the petitioners in relation to the subject ECIR under section 50(2) of the PMLA. The said application was allowed *vide* order dated 11.06.2024 passed by the learned ASJ, Dwarka Courts, New Delhi, whereupon the ED recorded the statements of Manideep Mago and Sanjay Sethi in jail under section 50 of the PMLA on 13.06.2024 and 02.07.2024 respectively. Thereupon the ED proceeded to arrest the petitioners in the subject ECIR on 14.06.2024 and 03.07.2024 respectively. The relevant

extracts of the grounds of arrest recorded by the ED are as follows:

Grounds of Arrest for Manideep Mago arrested on 14.06.2024

> "*Statement of Manideep Mago was recorded u/s 50 of PMLA, 2002 on 13/06/24 in Tihar Jail, New Delhi. However, during, the recording of his statement, he gave evasive replies contrary to the evidences gathered and statements of his key employees recorded so far. He has thus been concealing the material information and non-cooperating so as to frustrate the proceedings under PMLA.*
>
> "*Shri Manideep Mago has not cooperated with the investigation and has failed to provide the true relevant facts i.e. from whom and how they have collected cash and who were the ultimate beneficiary of the forex remitted by them abroad using various illegal processes.*"

Grounds of Arrest for Sanjay Sethi arrested on 03.07.2024

> "*Statement of Sanjay Sethi was recorded u/s 50 of PMLA, 2002 on 02.07.2024 in Tihar Jail, New Delhi. However, during, the recording of his statement, he gave evasive replies contrary to the evidences gathered and statement of employees of Manideep Mago recorded so far. He has thus been concealing the material information and non-cooperating so as to frustrate the proceedings under PMLA.*
>
> "*Shri Sanjay Sethi has not cooperated with the investigation and has failed to provide the true relevant facts i.e. from whom and how they have collected cash and who were the ultimate beneficiary of the forex remitted by them abroad using various illegal processes.*"

5.7. The ED then filed an application before the learned Sessions Court on 15.06.2024 seeking the production and remand of the petitioner Manideep Mago, which was allowed *vide* order dated

18.06.2024 made by the learned ASJ, Dwarka Courts, New Delhi, and the said petitioner was remanded to ED custody from 18.06.2024 till 23.06.2024; which custody was subsequently extended for another 05 days till 28.06.2024; after which he was remanded to judicial custody *vide* order dated 28.06.2024 till 12.07.2024, where he continues to be till date.

5.8. Insofar as the petitioner Sanjay Sethi is concerned, the ED filed an application before the learned Sessions Court on 04.07.2024 seeking his production and remand, which was allowed *vide* order dated 05.07.2024 made by the learned ASJ, Dwarka Courts, New Delhi; and the said petitioner was remanded to ED custody till 11.07.2024; after which he was remanded to judicial custody *vide* order dated 11.07.2024, where he continues to be till date.

PETITIONERS' SUBMISSIONS

6. The principal grounds raised by the petitioners in challenge to their arrest by the ED in the subject ECIR *and* by the Delhi Police in the subject FIR, are the following :

6.1. *Firstly*, the petitioners contend, that at worst, their acts and omissions called into question by the ED amount to violation of the provisions of FEMA, which statute contemplates only civil penalty for those infractions; and since that is so, the *underlying actions* of such acts and omissions also cannot be punished as criminal offences. The essence of the argument is that FEMA was brought-in to replace Foreign Exchange Regulation Act, 1973 ('FERA') with the objective of

decriminalizing acts and omissions relating to foreign exchange transactions; and therefore, an act or omission that violates FEMA cannot be subject matter of criminal action by way of an FIR, since that would in effect bring-back the criminal provisions of FERA through the backdoor.

6.2. *Secondly*, it is the petitioners' submission that registration of the subject FIR is bad in law, inasmuch as no preliminary enquiry was carried-out by the police prior to registering the subject FIR and the allegations in the subject FIR are squarely covered by the provisions of FEMA. Also, that the subject FIR proceeds solely on the search and seizure operations conducted by the ED under FEMA; and the alleged confessions of the petitioners recorded under section 37 FEMA are inadmissible in view of the law laid down in ***K.T.M.S. Mohd. & Anr. vs. Union of India.***[1]

6.3. *Thirdly*, it is argued that the petitioners' arrest by the police in the subject FIR is bad in law since no 'grounds of arrest' were served upon the petitioners in writing, which violates the mandate of the Supreme Court in ***Prabir Purkayastha vs. State (NCT of Delhi)***;[2] and furthermore, the petitioners' arrest by the Delhi Police on 31.05.2024 did not fulfil the test of 'necessity to arrest', which is now a pre-requisite for making any arrest as

[1] (1992) 3 SCC 178

[2] 2024 SCC OnLine SC 934

held by the Supreme Court in ***Arvind Kejriwal vs. Directorate of Enforcement***.[3]

6.4. *Fourthly*, the petitioners contend that their arrest under PMLA is also bad in law, since it was made against the postulates of section 19(1) of the PMLA and no 'reasons to believe' were furnished to the petitioners by the ED. It is contended that the petitioners were arrested at a nascent stage of the proceedings, when no conclusive material was available with the ED and the required satisfaction for making the arrest could not have been fulfilled. It is also contended that in making the arrest, the ED did not comply with the requirements of section 19(2) PMLA read with Arrest Rules, 2005 as mandated by the decision of the Punjab & Haryana High Court in ***Dilbag Singh vs. Union of India & Anr.***[4] It is pointed-out that the special leave petition bearing SLP (Crl.) No. 4044/2024 titled *Directorate of Enforcement & Anr. vs. Dilbag Singh @ Dilbag Sandhu*, filed against the decision of the High Court in *Dilbag Singh* stands dismissed as withdrawn *vide* order dated 01.08.2024 passed by the Supreme Court. It is further argued that merely the allegation that the petitioners did not cooperate in response to summons issued under section 50 PMLA, would not render them liable to be arrested under section 19 PMLA.

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[3] (2025) 2 SCC 248

[4] 2024 SCC OnLine P&H 2705

7. In essence, the argument is that FERA which was enacted in 1973, was repealed by Parliament since at the relevant time the Indian economy was undergoing liberalization, privatization and globalization and the Legislature felt the need for relaxing control over the foreign exchange market. To this end, in its 11th Report presented to the Lok Sabha on 23.12.1998, the Standing Committee on Finance (1998-99) made the following observations :

> "*9. ... ... The liability for contravention of an offence under FEMA has been made civil as compared to the criminal one under FERA. The Enforcement Directorate has been entrusted with the same powers as are conferred on the Income Tax authorities under Chapter XIII of the Income Tax Act, 1961. Certain onerous provisions of FERA, 1973 viz. preparation/attempts to contravene any provisions which were deemed to be contraventions under Section 64 and provisions relating to burden of proof have been deleted. A new provision which is an improvement over FERA is with regard to the powers of compounding the contraventions. ... ...*"

8. The petitioners contend that the intention of the Legislature in repealing FERA was clear, namely, that no act or omission relating to a foreign exchange transaction was to attract any element of criminality; and that therefore, based on the ED's allegations of violation of the provisions of FEMA, no FIR could at all have been registered against the petitioners.

9. Dilating on their challenge to the registration of the subject FIR, the petitioners contend that the subject FIR has come to be registered *solely* on the basis of the so-called 'investigation' conducted by ED under FEMA. It is their contention that the acts and omissions that form the basis of the subject FIR are all an intrinsic part of the alleged

FEMA violations. In this regard, attention of the court is drawn to following specific allegations in the subject FIR, to point-out that the allegations in the subject FIR proceed *only* on the basis of the search and seizure operation conducted by the ED :

> "*... ...Credible information was received in ED regarding highly suspect crypto-currency related transactions and large payout in the Bank accounts of M/s. Birfa IT Services Private Limited having office at C1/107, Janakpuri, New Delhi-110058 from ZEBPAY crypto exchange. On this basis, investigation in terms of Foreign Exchange Management Act 1999 was initiated by ED. Analysis of bank accounts of M/s. Birfa IT Services Private Limited & related entities revealed that mammoth amount of cash of around Rs 1300/- Crores as detailed below was illegally deposited in the bank account of Oested Solutions {having office at 301, Top Floor, Plot No.2 Aggarwal Tower, Sector-5, Dwarka, New Delhi-110058} on the pretext of fabricated invoices. ... ... During search, a lot of incriminating documents regarding forgery & cheating were recovered including invoices from his house at C-2/116, Janakpuri, Delhi. ED investigation has revealed his modus operandi which is explained in brief here :- Mr Manideep Mago was involved in conducted large ticket international hawala operations for Indian Importers etc who need to make compensatory payments to Exporters in China, HongKong etc. In conspiracy with one Mr Sanjay Sethi, his wife, his employees, few Bank Officials, hatched a well planned conspiracy. He deposited cash in his Bank accounts with active connivance of unknown Bank officials. In his firm, in order to cheat the Indian authorities, he started falsely claiming that thousands of Indian customers were buying Cloud Mining Hash value on Hong Kong based Servers (of his WoS in Hong Kong) and all of them were paying him a sum less than Rs 50000 each. He claimed that he did not collect their KYC and created bogus receipts and also generated fabricated entries in his Tally Software. He made this elaborate arrangement and created fabricated entries so that he could show that he was doing genuine crypto-mining business. Further, all the pooled money in his Bank accounts was remitted to the Bank accounts of his M/s Mozire Technologies Limited Hong*

Kong on the pretext of import of software services. ... ... On being asked the receipt of money from thousands of alleged Indian clients, Manideep Mago stated that he had sold software testing tools to different individuals through online mode and received amount in cash. It was also found that, such invoices were raised in interval of every 2-3 days and all payments were received in cash only. It further revealed that, Manideep Mago didn't have any details of persons to whom these Penetration Testing Tool were sold. He further stated that, the tool kit includes Kali Linux and E-Book written by him (Manideep) as told by him. As per his version, he first used to receive cash payment from buyers at his office, then allowed the buyers to download the tool through WORDPRESS WEBSITE by enabling download link after receiving payment. He failed to give any demo or justification as to how he used to send testing tool to so many individual buyers in a day via this means. ... ... Mr Manideep Mago has created bogus receipt entries in the name of 60000-70000 non-existing individuals, to justify deposit of cash in his accounts. i. It is further submitted that, during search operation unused Notary stamps (yellow colour) was found from house of Mr & Mrs Manideep bearing stamp impression of "HARPINDER SINGH BOORA NOTARY PUBLIC ONTARIO". It is pertinent to mention herein that the said stamp impression was also found on invoice dated 15.03.2023 of Absax Technologies Private Limited at C1/107, Basement, Janakpuri, New Delhi-110058 having GSTIN/UIN: 07AAXCA7004N1Z4.. It shows that, alleged person is creating fake and fabricated documents in India by using the stamps of Notary based in Canada. i. (sic) Further, during search at house of Manideep Mago several bogus commercial invoices issued by Mozire Technologies to Birfa IT Services Private Limited were found wherein Cryptocurrency Mining hardware was sold by Mozire Technologies to Birfa IT Services. ... ... Further, there is a round stamp of MOZIRE TECHNOLOGIES LIMITED HONG KONG and signatures of Jinag Fan (Manager). There are total 18 such Invoices of different dates different dates and invoice numbers, wherein 683 Whatsminer MicroBT M30s, 997 innosillicon T2+57T 1055 BITMAIN Antminer T17 and 3022 AMD radeon RX580 as well as other hardware were sold to Birfa IT. Further, Manideep Mago told

that these hardwares never came to India. Further, on the said receipts all the signatures of the Manager are exactly superimposing on each other which points towards computer generated fake receipts. Thus, Manideep Mago has indulged in fabricating the signatures of the Manager. No address of the place of Delivery is given apart from Shanghai, China. He also failed to provide any proof of payment transaction with Chinese Entity where shipment was delivered. The above invoice along with other invoices were found to be fake and fabricated as the said items were never delivered to India or to China, they were created just to do money laundering and hawala operations. The real purpose of this hawala could be to facilitate under-valued imports OR some other sinister motive. Outward remittances have been sent illegally to Hong Kong and Canada. ... ... Further this invoice bears a stamp having following description:- NOTARY GOVT OF INDIA G.P. SINGH South West Delhi Regd. No. 16965, Register Entry number 2-C/2022 Date 28 MAR 2022 Title of Documenting genesis Invoice. ATTESTED Notary Public, Delhi 28 MAR 2022. This also bears signatures of above Notary Public. There are several other stamps of different of different dates in this document. It was found that, the document itself was generated on 15-03-2023 and the notary entry mentioned is of 28 march 2022. The anti dated notarization of documents points towards it being forged and fabricated. Confession by Mr Manideep Mago: During the recording of the statements u/s 37 of FEMA r/w Sec 132 IT. Act, Mr Manideep has admitted that his wife is also a Director in his entities. He finally admitted that he has indulged in international hawala of Rs 3500 Crore. He admitted to creating fabricated documents to facilitate the hawala and cheat the system. He is yet to explain the source of crypto worth Rs 1850 Crore which was credited into his Zebpay Wallet from Binance Wallets. It is also noticed that he was tipped of ED enquiries against him by a Canara Bank (Mayapuri Branch) Official and hence, had burnt many papers and changed his phone to destroy evidence. He has admitted while doing hawala, he used to delay the hawala payments for a week or so and use that money for crypto-mining investment He has admittedly earned substantial commission of around Rs 40 Crore and has invested in real estate

> *and bought 5 hi-end cars. ... ... ED is already investigating the foreign remittances under FEMA 1999 which is a civil offence. But since it is prima facie clear that Manideep Mago, his wife and Co-Director of his companies, Mr Sanjay Sethi (who provided the funds for hawala), unnamed Bank Officials, and his business entities and their staff are involved in cognizable predicate offences, hence, this complaint is being filed with a prayer to register a FIR and investigate this entire conspiracy. ... ...*"

10. In support of the aforesaid grounds challenging their arrest, the petitioners have referred to the following judicial precedents :

10.1. On the contention that FEMA contemplates *only* civil action, and that upon repeal of FERA and enactment of FEMA, no act or omission falling within the ambit of FEMA can attract any criminality, the petitioners have placed reliance on the decision of Supreme Court in ***Dropti Devi &Anr. vs. Union of India & Ors***.[5] The petitioners also contend that the provisions of FEMA must be interpreted by applying the 'doctrine of mischief' or the 'mischief rule'; and to support this contention the petitioners have cited the verdicts of the Supreme Court in ***Attorney General for India vs Satish &Anr***.[6], ***Sushila N. Rungta vs. Tax Recovery Officer-16(2) & Ors.***[7] and ***K.S. Paripoornan vs. State of Kerala & Ors.***[8]

10.2. In support of their contention that the subject FIR could never have been registered, the petitioners have placed reliance on

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[5] (2012) 7 SCC 499 at paras 66, 67 & 68

[6] (2022) 5 SCC 545 at para 63

[7] (2019) 11 SCC 795 at paras 7-8

[8] AIR 1995 SC 1012 at para 87

Lalita Kumari vs. Government of Uttar Pradesh & Ors.[9] to argue that since the present case concerns what are essentially civil wrongs being enquired into by the ED under FEMA, it was mandatory for the police to do a preliminary enquiry, which they did not do. The petitioners have also relied upon certain subsequent judgments in ***Nirmal Singh Kahlon vs. State of Punjab & Ors.***,[10] ***Yashwant Singh & Ors. vs. Central Bureau of Investigation & Anr.***, [11] ***Central Bureau of Investigation & Anr. vs. Thommandru Hannah Vijayalakshmi & Anr.***,[12] ***Kailash Vijayvargiya vs Rajlakshmi Chaudhuri & Ors.***[13] and ***Rana Ram vs. State of Rajasthan & Anr.***[14]

10.3. The petitioners have cited the judgment of the Supreme Court in *K.T.M.S. Mohd.*to argue that the alleged confession of the petitioners recorded by the ED under section 37 of the FEMA is inadmissible in evidence; and that statements recorded under one law can only be used for purposes of the law under which they are recorded and cannot be used to initiate proceedings under any other law. The petitioners have also drawn attention to the most recent decision of the Supreme Court in *Arvind*

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9 (2014) 2 SCC 1 at paras 119 & 120

10 (2009) 1 SCC 441 at para 30

11 (2020) 2 SCC 338 at paras 108, 110, 112 & 114

12 (2021) 18 SCC 135 at para 26

13 (2023) 14 SCC 1 at para 60

14 2024:RJ-JD:33404 at paras 24 & 25

Kejriwal[15] to stress that guilt can only be established on the basis of admissible evidence and not on inadmissible evidence.

10.4. In support of their third contention, namely that the petitioners' arrest by P.S. : Crime Branch is illegal, the petitioners have placed reliance on the celebrated judgment of the Supreme Court in *Prabir Purkayastha*, to submit that the *grounds of arrest* were never served upon the petitioners *in writing*, which requirement has been held to be sacrosanct. The petitioners have highlighted the fact that in the said verdict, the Supreme Court has held that 'reasons for arrest' are different and distinct from 'grounds of arrest' and communicating the grounds of arrest in writing to an arrestee is mandatory, failing which the arrest is rendered illegal.

10.5. To substantiate their contention that their arrest under section 19 of the PMLA is also bad in law, the petitioners have placed reliance on the decision of the Supreme Court in ***V. Senthil Balaji vs. State & Ors.***[16] as well as on the decision of a Co-ordinate Bench of the Punjab & Haryana High Court in *Dilbag Singh*,[17] where it has been held that compliance with section 19, including Section 19(2), is mandatory and brooks no exception. It has been argued that the law requires that the Magistrate before whom an arrestee is produced must satisfy himself as regards compliance with the safeguards mandated in section

15 cf. paras 47, 56-57, & 61-62

16 (2024) 3 SCC 51

17 cf. para 60

19(2) of the PMLA, which postulates that immediately after arresting an accused, the concerned officer must forward a copy of the order alongwith the material in his possession to the adjudicating authority in a sealed envelope in the prescribed manner, which the adjudicating authority is required to retain for such period as may be prescribed. It is submitted that none of which was done in the present case. It is pointed-out that a perusal of remand order dated 18.06.2024 passed by the learned Vacation Judge, ASJ (FTSC)(POCSO), Dwarka Courts, New Delhi and arrest order dated 04.06.2024 recorded by the ED arresting the petitioner/Manideep Mago also carry no reference to compliance with the requirements of section 19(2) of the PMLA. It is further submitted that the requirement of complying with the provisions of section 19(2) of the PMLA has also been emphasized by the Supreme Court in its decisions in ***Ram Kishor Arora vs. Directorate of Enforcement***[18] and ***Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors***.[19] It has been argued that the petitioners' arrest is vitiated since section 19(2) of the PMLA was not complied-with by the ED.

10.6. In support of their proposition that mere non-cooperation of a witness in response to summons issued under section 50 PMLA does not render a noticee liable for arrest under section 19, the

[18] 2023 SCC OnLine SC 1682 at para 21

[19] 2022 SCC OnLine SC 929 at para 322

petitioners have drawn attention to the decision of Supreme Court in *Vijay Madanlal Choudhary*,[20] ***Pankaj Bansal vs. Union of India & Ors.***[21] and ***Prem Prakash vs. Union of India***.[22]

ENFORCEMENT DIRECTORATE'S SUBMISSIONS

11. On behalf of the respondents, the ED has defended the arrests made in the subject ECIR, and the Delhi Police have defended the arrests made in the subject FIR. It may be noted that there is little contestation, if any, insofar as the factual scenario is concerned; and the respondents are essentially contesting the legal propositions argued on behalf of the petitioners.

12. It is the ED's allegation that between 2016 and 2019, a sum of about Rs. 2,886 crores was deposited in various bank accounts belonging to the petitioners and/or their business entities. The ED has sought to clarify, that according to them, on point of fact, this money was part of the international hawala operations that the petitioners were conducting for Indian importers and others, to facilitate payments that were to be made to exporters in China, Hong Kong and other countries.

13. It is also the ED's case that a total of about Rs. 4,817 crores was remitted to foreign countries against bogus and fabricated invoices raised by foreign companies. The ED has set-out the names of several

[20] cf. paras 431 & 449

[21] (2024) 7 SCC 576 at paras 11 & 28

[22] (2024) 9 SCC 787 at paras 22, 27, 28, 29, 30, 31, 32, 33 & 34

companies and entities, which they claim, acted as escrow and sub-escrow service providers to foreign entities owned and controlled by the petitioners and their friends, the allegation being that foreign companies were fictitiously shown to have provided IT-related services (such as leasing and sale of software etc.) to fictitious clients based in India, through various entities owned and controlled by the petitioners; and payment towards fictitious sales and services were shown to have been made by the Indian clients in cash, to justify the collection of cash by the petitioners for onward international hawala transactions. The allegation is that crypto-payouts were also shown by fictitious Indian clients for receiving various services from foreign entities.

14. It is the ED's contention that the documents submitted by the petitioners to various banks for sending outward foreign remittances, were found to be based on bogus and fabricated invoices, raised upon fictitious clients in India, using fictitious names and e-mail IDs, etc. It is the ED's case that in the course of their investigation, they have recorded statements of several witnesses under section 50 PMLA, all of whom have said that they were directed by the petitioners to collect huge amounts of cash from various places and that invoices were drawn-up by them in India to justify the cash so collected, for onward international hawala transactions.

15. To answer the legal propositions canvassed on behalf of the petitioners, the ED has contended as follows :

15.1. Insofar as the petitioners' contention that any act or omission covered by FEMA cannot be the basis of registering a criminal

case, the ED contends that a bare perusal of the provisions of FEMA makes it clear that the said statute *only* penalises violations pertaining to foreign exchange transactions; and does not pertain to any criminal offences that may be committed *in the process of* making foreign exchange transactions, such as cheating, forgery, destruction of evidence etc.

15.2. It has been pointed-out that there is no provision in FEMA which ousts the application of other laws or the jurisdiction of other law enforcement agencies to initiate action for offences under those laws, if such offences are made-out in the process of making foreign exchange transactions. The ED has argued that if the petitioner's contention – *viz.* that after enactment of FEMA, any criminal offence committed in the course of making a foreign exchange stands nullified – is to be accepted, it would lead to 'implied repeal' of the IPC; and grant of immunity from prosecution to a person for any offence under the IPC merely because the offence is committed while making a foreign exchange transaction.

15.3. It has also been argued that the petitioners have failed to show how the allegations made in the subject FIR, which constitute cognizable offences under the IPC, are covered within the ambit of FEMA, to say that neither forgery nor cheating can be prosecuted under FEMA.

15.4. It has been submitted that it is settled law, that the same set of acts may give a rise to an offence under different statutes,

which is the case here.[23] It has been argued that it is also well-settled that 'money laundering' is an independent offence, as has been held in several cases including *Vijay Madanlal Choudhary*. It has been further submitted that the petitioners' argument that since FEMA is a special statute, it would prevail over the IPC, also deserves to be rejected, since in a comparable situation a violation of the provisions of the IT Act, which is a special law, commonly leads to offences under the IPC *e.g.*, cheating under section 420 of the IPC.[24] It has also been argued, that in a case under section 105 of the Insurance Act, 1938, the Supreme Court has held that a prosecution under section 409 IPC can be initiated simultaneously based on the same set of facts.[25]

15.5. The ED has also argued, that assuming for sake of argument that the enquiry under FEMA is closed at some later stage, that would have no bearing on the criminal proceedings initiated against the petitioners in the subject FIR, since the proceedings under FEMA are of a civil nature, though arising from the same transaction. Parallel in this behalf is drawn from a well-settled principle that exoneration in a disciplinary enquiry, which is civil in nature, will not preclude or affect any criminal proceedings arising from the same set of allegations.[26]

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[23] ***Monica Bedi vs. State of Andhra Pradesh***, (2011) 1 SCC 284

[24] ***Ishwarlal Girdharilal Parekh vs. State of Maharashtra & Ors.***, AIR 1969 SC 40

[25] ***State of Bombay vs. S.L. Apte & Anr.***, AIR 1961 SC 578 at paras 14 & 17

[26] ***State (NCT of Delhi) vs. Ajay Kumar Tyagi***, (2012) 9 SCC 685

15.6. The ED has also submitted that the principal argument, *viz.* that once FEMA was enacted no criminal prosecution would lie in relation to foreign exchange transactions, has been rejected by the Supreme Court in ***Union of India & Anr. vs. Venkateshan S. & Anr***.[27] on a comparable set of facts relating to detention under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 ('COFEPOSA'). Reliance in support of this principle has also been placed on the decision of the Supreme Court in ***M. Karunanidhi vs. Union of India & Anr.***[28]

15.7. As regards the argument of non-compliance with section 19(1) PMLA, it is the ED's contention that the mandate of the Supreme Court in *Arvind Kejriwal*, *viz.* the requirement to supply 'reasons to believe' to an arrestee under section 19, only came into effect from the date of pronouncement of the said verdict *i.e.*, on 12.07.2024; whereas in the present case the petitioners were arrested by the ED on 14.06.2024 and 03.07.2024. Pertinently, it is pointed-out that though in *Arvind Kejriwal*[29] reasons to believe were not supplied to the arrestee, yet the Supreme Court upheld his arrest.

15.8. It has been submitted that the petitioners were arrested in compliance with the prevailing law of the land as of their dates of arrest; and a Co-ordinate Bench of this court in ***Arvind***

27 (2002) 5 SCC 285 at para 12

28 (1979) 3 SCC 431 at para 35

29 cf. paras 49 and 65

Dham vs. Union of India[30] has held that for arrests made prior to 12.07.2024, there was no requirement for the ED to supply the reasons to believe to an arrestee; and special leave petition bearing SLP(Crl.) No.17357/2024 filed against *Arvind Dham* stands dismissed by the Supreme Court *vide* order dated 13.12.2024.

15.9. The ED has further contended that section 19 of the PMLA has been duly complied-with in the present case, since copies of the arrest orders alongwith the material in their possession was immediately sent to the adjudicating authority *via* e-mail on the very same day the petitioner Manideep Mago was arrested *i.e.*, on 14.06.2024; but since the next 03 days were non-working days and the office of the adjudicating authority was closed, a hard-copy of the same was forwarded to the adjudicating authority on 18.06.2024 against due acknowledgement. Insofar as petitioner Sanjay Sethi is concerned, the ED has said in their reply that consequent upon his arrest on 03.07.2024, they immediately informed the adjudicating authority and sent copies of the arrest orders and other material on the very next day *i.e.*, on 04.07.2024. Furthermore, the ED has argued that *vide* orders dated 18.06.2024 and 05.07.2024, the learned Sessions Court has also recorded its satisfaction as to compliance with section 19(2). If any doubt was to remain as to the forwarding of the arrest orders and other material to the

[30] 2024 SCC OnLine Del 8490

adjudicating authority within the timeframe prescribed in law, the ED has cited section 10 of the General Clauses Act 1897 ('GC Act'), to submit that if the law requires any statutory obligation to be fulfilled within a certain timeframe but an office is closed on certain days, those days can be excluded, if such act is done on the very next day following thereafter on which day the office is open.[31] It has been argued that no law requires a person to do what is impossible.[32] It has been pointed-out that in ***Dilbag Singh @ Dilbag Sandhu vs. Union of India & Ors. and connected matters***,[33] where a provisional attachment order was issued under section 5(2) of the PMLA on a Friday and the order alongwith material in possession of the concerned officer was submitted to the adjudicating authority on the following Monday, the Punjab & Haryana High Court has rejected the argument that the arrest made in that context was in breach of section 19(2) of the PMLA.

15.10. Insofar as the contention raised that the petitioners' confession recorded under section 37 FEMA is inadmissible in evidence and could not have been the basis of registration of the subject FIR, the ED has responded to say that a perusal of the subject FIR would show that it is based on several documents and material and *not merely* on the confessional statements of the petitioners. It has been pointed-out that in the course of their

[31] ***H.H. Raja Harinder Singh vs. S. Karnail Singh & Ors.***, AIR 1957 SC 271

[32] ***State of Rajasthan & Anr. vs. Shamsher Singh***, 1985 SCC (Cri) 421 at para 10

[33] 2024 SCC OnLine P&H 15453

search and seizure operations, the ED recovered bogus invoices, unused notary stamps, and such other material and evidence from the petitioners' premises, all of which have formed the basis of the subject FIR.

15.11. The ED has also argued that in *Lalita Kumari*, the Supreme Court has held that considerations such as whether information given is genuine or credible, or whether it has been given falsely, are not relevant at the stage of registration of an FIR. Furthermore, it has been contended that there is no absolute bar on statements recorded in certain proceedings being used in another proceedings under another statute;[34] and that in any case, impropriety in obtaining evidence will not affect its admissibility, if it is otherwise relevant.[35] Reliance in support of this submission has also been placed on the decision of the Supreme Court in ***R.M. Malkani vs. State of Maharashtra***.[36]

15.12. It has also been pointed-out that those parts of the petitioners' statements which amount to 'admissions' but are not 'confessions' can in any case be used in terms of the law laid down in ***Pakala Narayana Swami vs. King-Emperor***.[37] Additionally, it has been argued that in *Vijay Madanlal Choudhary*[38] the Supreme Court has held that ED officers are

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[34] ***Vinod M. Chitalia vs. Union of India,*** 2012 SCC OnLine Bom 476 at para 21

[35] ***Pooran Mal vs. Director of Inspection (Investigation) & Ors.***, (1974) 1 SCC 345 at paras 23-24

[36] (1973) 1 SCC 471

[37] (1938-39) 43 CWN 473 at page 481

[38] cf. para 449

not police officers and that therefore a confessional statement made to them is admissible in evidence.

15.13. Responding to the allegation that non-cooperation in an investigation is no ground to arrest an accused, and in the present case there was no *necessity* to arrest, the ED has submitted that it was necessary to arrest the petitioners for proper investigation of the offence. It has been argued that in *Pankaj Bansal*[39] the Supreme Court has only said that *mere* non-cooperation would not be enough to arrest a person under section 19 PMLA; but non-cooperation can certainly form *part* of the necessity to arrest.[40] It has been pointed-out that arrest is part of the process of investigation and that it has been so held *inter-alia* in *Vijay Madanlal Choudhary*[41] and in *V. Senthil Balaji*.[42]

15.14. The ED has also submitted, that all other things apart, in *Vijay Madanlal Choudhary*[43] the Supreme Court has held that an ECIR is not a statutory document but merely an internal document and cannot therefore be quashed. The submission is that, in law, there is no need to formally register an ECIR and even the absence of an ECIR does not come in the way of the ED commencing an enquiry for any violation of PMLA. It is

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[39] cf. para 33

[40] ***P. Chidambaram vs. Directorate of Enforcement***, (2019) 9 SCC 24.

[41] cf. para 324

[42] cf. paras 48 & 49

[43] cf. paras 290, 431, 457 & 461

therefore the submission, that the prayer seeking quashing of the ECIR is of no consequence and is therefore not maintainable.

15.15. As regards the contention that no preliminary enquiry was conducted prior to registration of the subject FIR, the ED has submitted that a preliminary enquiry is required to be conducted before registering an FIR only for the limited purpose of ascertaining whether a cognizable offence is disclosed; and in *Lalita Kumari*[44] it has been held that if information discloses commission of a cognizable offence, then the registration of an FIR is mandatory.

15.16. It has also been submitted, that in fact, *vide* letter dated 12.10.2015 issued by the Ministry of Home Affairs regarding "*Advisory on no discrimination in compulsory registration of FIRs*", the Ministry has issued clear instructions for compulsory registration of an FIR on receipt of information disclosing a cognizable offence. It has accordingly been argued that a preliminary enquiry is not necessary in relation to the offences of forgery and cheating; and in any case, it has been held that an FIR does not stand vitiated merely because a preliminary enquiry was not conducted.[45]

15.17. It has further been argued that the petitioners' contention that the subject FIR was registered only so that a scheduled offence

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[44] cf. paras 119-120

[45] ***State of Telangana vs. Managipet***, (2019) 19 SCC 87 at paras 32 & 34 and *Thommandru Hannah Vijayalakshmi* at para 2

became available for the ED to invoke its powers under PMLA, is also misplaced and deserves to be rejected, since the search and seizure operations conducted under FEMA led to recovery of material that disclosed the commission of cognizable offences *in addition to* FEMA violations.

15.18. The ED has contended, that as per inputs received from their intelligence department, the petitioners and their companies have sold very large amounts of crypto assets worth about Rs.1,858 crores on an Indian crypto exchange; that Rs. 1,300 crores were deposited in the bank account of one of the proprietorship concerns of one of the petitioners; and that initial investigation has revealed that though money was deposited into the bank account, no corresponding payments were made for purchasing those crypto currencies in India. In this context, the ED has argued that sharing of information between two government departments – in this case the ED and the Delhi Police – is an established and well-recognized norm within the framework of the law, and that therefore, the ED has operated within the law in sharing with the Delhi Police information they received during the search and seizure operations conducted on the petitioners' premises.

DELHI POLICE'S SUBMISSIONS

16. In addition to adopting the arguments made on behalf of the ED, the Crime Branch of the Delhi Police have supplemented those submissions in the following manner :

16.1. It has been argued that it is settled law that an act or omission can be treated as a penal offence under two or more enactments; and the only proscription in law is that a person cannot be *punished twice* for the *same offence*. In this behalf reference has been made to the provisions of section 26 of the GC Act, to argue that where an act or omission constitutes an offence under the provisions of more than one enactment, the offender is liable to be prosecuted and punished under either, or any, of those enactments; but an offender cannot be punished twice for the same offence. In support to this submission the Delhi Police have drawn attention to the verdicts of the Supreme Court in ***State of Bihar vs. Murad Ali Khan & Ors.***[46] and ***T.S. Baliah vs. T.S. Rangachari***[47] in support of this submission. It has been argued that section 26 of the GC Act has been interpreted to mean that there is no bar to trying and even convicting an offender under one or more enactments; and the only prohibition is against *punishing* an offender *twice for the same offence.*

16.2. It has accordingly been argued that merely because one statute (in this case, FEMA) treats an act as a civil wrong does not preclude another statute (in this case, IPC) treating the same act as a criminal offence. By way of an example, it has been submitted that in case of dishonour of a cheque, both civil and

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46 (1988) 4 SCC 655 at para 30

47 1968 SCC OnLine SC 68

criminal liability arises – and the civil liability can be invoked by filing a civil suit for recovery of money; while the criminal liability can be raised by way of a criminal complaint seeking punishment under section 138 of the Negotiable Instruments Act, 1881.

16.3. The Delhi Police have also placed reliance on the decision of the Supreme court in ***State of Maharashtra & Anr. vs. Sayyed Hassan Sayyed Subhan & Ors.***,[48] to submit that while dealing with the same question under the Food Safety and Standards Act 2006 ('FSS Act'), the Supreme Court has held that non-compliance with the provisions of section 55 of the FSS Act can also be subject matter of prosecution under the IPC; and that action can be initiated against defaulters both under section 55 of the FSS Act as well as under section 188 of the IPC. It has been argued that the law is that such action would not amount to double jeopardy.[49]

16.4. It has also been argued on behalf of the Delhi Police that in the present case there are specific allegations of criminal conspiracy, which can by no stretch of imagination be covered within the ambit of FEMA. In fact, it has been argued, that even if FERA had *not* been repealed, the petitioners would yet have been liable to be prosecuted under IPC *in addition to* being prosecuted under FERA, since prosecution under multiple

[48] (2019) 18 SCC 145 at paras 6 & 7

[49] ***State of Rajasthan vs. Hat Singh***, (2003) 2 SCC 152 at paras 11 & 14

statutes is permissible *provided* a person is *not punished twice for the same offence*. It has been argued that merely because the *final* act relating to a foreign exchange transaction has been decriminalised by repealing FERA, that does not mean that *all acts* that comprised the final act would also stand decriminalised, automatically or impliedly.

16.5. The Delhi Police have further drawn attention of this court to the decision of the Supreme Court in ***State of West Bengal vs. Narayan K. Patodia***,[50] to argue, that in the said case, in the context of an offence committed under section 88 of the West Bengal Sales Tax Act, 1994 ('W.B. Sales Tax Act'), the Supreme Court has held that it would be a far-fetched legal proposition and would lead to startling consequences, to assume that if a person who commits an offence under section 88 of the Sales Tax Act also commits other serious offences falling under the IPC as part of the same transaction, the police would not be authorised to investigate such penal offences. The Supreme Court has observed that that would be a serious casualty to criminal justice.

16.6. It has been stressed on behalf of Delhi Police that the doctrine of 'implied repeal' cannot be attracted in the case of FEMA, since, if the Legislature had intended to exclude the application of the IPC entirely once FERA was repealed, it would have explicitly stated so; but that is not the case. It has also been

[50] ***State of West Bengal vs. Narayan K. Patodia***, (2000) 4 SCC 447 at paras 8, 17 & 18

argued that judicial precedents emphasise that 'implied repeal' should only be inferred in cases where there is clear and irreconcilable conflict and where compliance with two statutes is impossible.

16.7. It has been argued that FEMA and IPC address different aspects of an action or omission, with FEMA dealing with regulatory infractions and the IPC addressing the broader criminal liability. Dealing with the concept of implied repeal, the Delhi Police have cited the decision of the Supreme Court in ***Municipal Council Palai vs. T.J. Joseph & Ors.***,[51] which holds that there is a *presumption against implied repeal*, since the assumption is that the Legislature enacts laws with complete knowledge of existing laws pertaining to the same subject; and the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. The submission is that for invoking the doctrine of implied repeal, there must be repugnancy between two statutes, as has been held by a Constitution Bench of the Supreme Court in ***Deep Chand & Ors. vs. State of Uttar Pradesh & Ors.***[52] It has been argued that on a conjoint reading of IPC and FEMA, no such repugnancy arises or exists, since the two statutes do not occupy the same field and work within their separate and distinct domains. Attention in this behalf has been drawn to the objects of FERA

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51 1963 SCC OnLine SC 55 at para 9

52 AIR 1959 SC 648

and FEMA, to point-out that those laws were enacted with the purpose of regulating foreign exchange transactions, and to conserve foreign exchange reserves and ensure compliance with economic policies, the focus of the laws being on *procedural* and *technical* compliance within a narrow regulatory framework; and for penalising violations through administrative measures of civil penalties. On the other hand, it has been submitted that the IPC is the *general criminal law* of the land, designed for a different purpose.

16.8. Insofar as the petitioner's contention that ED officials had no *locus standi* to get the subject FIR registered, the Delhi Police have argued that the concept of *locus standi* does not apply *stricto sensu* to invocation of criminal law; and *any person* can initiate the criminal process by filing a complaint or by reporting a crime, since a criminal offence is against the society as a whole, and not only against an individual. It has further been pointed-out that section 154 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') does not prescribe any qualification for a person to register an FIR in respect of a cognizable offence; and under section 190 Cr.P.C. cognizance can be taken on a complaint which reveals facts which constitute such offences regardless of who has filed such complaint. Reference in this behalf is made to the decision of the Supreme Court in ***A.R. Antulay vs. Ramdas Sriniwas Nayak & Anr.***,[53] which

[53] (1984) 2 SCC 500 at para 6

holds that anyone can set or put the criminal law into motion *except* where the statute enacting or creating an offence indicates to the contrary.

16.9. It has been pointed-out that in the complaint filed by the ED, the following incriminating information is revealed : (i) that during the search conducted by the ED, incriminating documentary evidence in the form of bogus invoices, notary certificates and such other documents have been recovered; (ii) that 02 out of 06 unused notary stamps recovered, were found bearing the impression "*HARPINDER SINGH BOORA NOTARY PUBLIC ONTARIO*", which the petitioners were using to create fake invoices and notarising them using the stamps; (iii) that 23 invoices recovered from the petitioners' premises show that payments were collected against sale of penetration testing tools packaged by Mozire Technologies Limited, Hong Kong, but on questioning petitioner/Manideep Mago, he was unable to disclose any details of the persons to whom those tools were sold. Though the invoices were raised regularly every 02-03 days, petitioner/Manideep Mago was also unable to show or justify as to how he used to send the packages to so many individual buyers in a day; nor was he able to furnish the names or details of any particular tools package; (iv) that 18 invoices were recovered from petitioner/Manideep Mago which were found to be bogus and which had been created by the petitioners, since no actual

purchase of crypto-currency mining tools as indicated in those invoices was found.

16.10. It has also been argued that pursuant to registration of the subject FIR, other substantial evidence has been gathered in the course of investigation and a chargesheet has been filed against the petitioners before the concerned court; and cognizance of the offences has also been taken by that court.

16.11. *Apropos* the requirement for furnishing to the petitioners the 'grounds of arrest' as distinct from the 'reasons of arrest', the Delhi Police have argued that they have fully complied with the requirements of the law laid-down by the Supreme Court in *Prabir Purkayastha*, inasmuch as the grounds of arrest, *viz.* the specific bases for arresting each of the petitioners were set-out by the Investigating Officer in their respective arrest memos. It has further been argued that though there is a mandate to serve the grounds of arrest *in writing* to an arrestee, the Cr.P.C. does not prescribe any specific format in which grounds of arrest are to be served and there is no bar in law against incorporating grounds of arrest within the arrest memo, which is what was done in the present case. To make good this point, attention has been drawn to the contents of the arrest memos to point-out that specific grounds relating to forgery and fabrication of documents; destruction of evidence; and reference to statements of employees of the accused and other independent witnesses disclosing the petitioners' illegal activities were duly set-out in the arrest memos issued to the petitioners. These, it is

argued, amount to sufficient compliance with the requirement of serving grounds of arrest in writing to the petitioners. The argument is that the arrest memos admittedly served upon the petitioners, are not pro-forma arrest memos only reciting formal reasons for arresting the petitioners; but the arrest memos narrate the grounds of arrest, supplementing and explaining the specific allegations against the petitioners.

16.12. In fact, it is pointed-out that in a decision recently rendered by this Bench in ***Marfing Tamang vs. State***,[54] the court has referred to a decision of Co-ordinate Bench in ***Pranav Kuckreja vs. State (NCT of Delhi)***,[55] to suggest that a column be incorporated in the format of an arrest memo itself, requiring the Investigating Officer/Arresting Officer to pen-down the grounds of arrest, in order to streamline and ensure that such grounds are communicated to an arrestee *forthwith* at the time of issuing the arrest memo. It is submitted that this was in fact done in the present case.

16.13. Lastly, the Delhi Police have argued that there is no basis to seeking quashing of the subject FIR since the grounds for quashing of an FIR as laid down by the Supreme Court in ***State of Haryana & Ors. vs. Bhajan Lal & Ors.***[56] are not made-out in the present case. The argument is that based on the facts and circumstances obtaining in the matter, incriminating evidence

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54 2025 SCC OnLine Del 548

55 2024 SCC OnLine Del 9549

56 1992 Supp (1) SCC 335 at para 102

has come on record, which precludes the quashing of the subject FIR.

DISCUSSION

17. After hearing extensive arguments on behalf of the parties, this court is of the view that the following 04 questions need to be addressed for deciding the present petitions :

17.1. **Question I** : Does the enactment of FEMA grant to a person immunity from prosecution for offences which arise under the IPC from the underlying acts or omissions that led to infraction of the provisions of FEMA ?

17.2. **Question II**: Was the registration of the subject FIR by the Delhi Police valid and legal ?

17.3. **Question III**: Was the petitioners' arrest by the ED in the subject ECIR valid and legal ?

17.4. **Question IV** : Was the petitioners' arrest by the Delhi Police in the subject FIR valid and legal ?

18. It must be noted that the petitioners have only challenged their arrest; and the present petitions have not been filed under section 439 Cr.P.C., seeking release on bail.

Re : Question I

19. Though much stress has been laid by learned senior counsel appearing for the petitioners on the argument that this court must appreciate the 'mischief' that the Legislature had sought to remedy by enacting FEMA, in the opinion of this court, that proposition is not contested, since there is no doubt even in the minds of the ED, that FEMA was enacted to *decriminalise* infractions *relating to foreign exchange*

transaction. There is no contest with the proposition that once FEMA was enacted, the criminality that used to attach to infractions relating to foreign exchange transactions under FERA, got converted into civil penalty, with no penal consequences.

20. However, the relevant question is whether an infraction under FEMA also implies that *any and all underlying acts and omissions* leading to that infraction also stands decriminalised; and whether such actions and omissions are immune from prosecution under the IPC.

21. This question is squarely answered by the Supreme Court in *Venkateshan S.*, where the Supreme Court was dealing with a detention order passed under the COFEPOSA, which detention order was quashed by the Karnataka High Court on the ground that what was considered a criminal violation under FERA, had ceased to be so once FERA was repealed and FEMA was enacted. In this context the Supreme Court observed as follows :

> "*8. Hence, the limited question would be — whether a person who violates the provisions of FEMA to a large extent can be detained under the preventive detention Act, namely, the COFEPOSA Act. As stated above, the object of FEMA is also promotion of orderly development and maintenance of foreign exchange market in India. Dealing in foreign exchange is regulated by the Act. For violation of foreign exchange regulations, penalty can be levied and such activity is certainly an illegal activity, which is prejudicial to conservation or augmentation of foreign exchange. From the objects and reasons of the COFEPOSA Act, it is apparent that the purpose of the Act is to prevent violation of foreign exchange regulations or smuggling activities which are having increasingly deleterious effect on the national economy and thereby serious effect on the security of the State. Section 3 of the COFEPOSA Act, **which is not amended or repealed**, empowers the authority to exercise its power of detention with a view to preventing*

any person inter alia from acting in any manner prejudicial to the conservation or augmentation of foreign exchange. If the activity of any person is prejudicial to the conservation or augmentation of foreign exchange, the authority is empowered to make a detention order against such person and the Act does not contemplate that such activity should be an offence.

* * * * *

"*10.* ***The other important aspect is that the COFEPOSA Act and FEMA occupy different fields****. The COFEPOSA Act deals with preventive detention for violation of foreign exchange regulations and FEMA is for regulation and management of foreign exchange through authorised person and provides for penalty for contravention of the said provisions. The object as stated above is for promoting orderly development and maintenance of foreign exchange market in India. Preventive detention law is for effectively keeping out of circulation the detenu during a prescribed period by means of preventive detention (Poonam Lata v. M.L. Wadhawan [(1987) 3 SCC 347 : 1987 SCC (Cri) 506]). ... ...*

"*11. Hence, in our view, the order passed by the High Court holding that what was considered to be the criminal violation of FERA has ceased to be criminal offence under FEMA, the detention order cannot be continued after 1-6-2000, cannot be justified.*

"*12.* ***Further, if the view taken by the High Court and the contentions raised by learned counsel for the respondent are accepted, it would result in implied repeal of substantial part of Section 3 of the COFEPOSA Act****. One of the established principles of interpretation of the statutory provisions is that* ***courts as a rule lean against implied repeal unless the provisions are plainly repugnant to each other****. There is also a* ***presumption against repeal by implication****; and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter and, therefore, when it does not provide a repealing provision it gives out an intention not to repeal the existing legislation. In Municipal Council, Palai v. T.J. Joseph [AIR 1963 SC 1561] the Court*

discussed the principles with regard to the "implied repeal" and held thus: (AIR p. 1564, para 10)

> *"10. It must be remembered that at the basis of the doctrine of implied repeal is the presumption that the legislature which must be deemed to know the existing law did not intend to create any confusion in the law by retaining conflicting provisions on the statute-book and, therefore, when the court applies this doctrine it does no more than give effect to the intention of the legislature ascertained by it in the usual way, i.e., by examining the scope and the object of the two enactments, the earlier and the later."*

"*13. Similarly, in Municipal Corpn. of Delhi v. Shiv Shanker [(1971) 1 SCC 442 : 1971 SCC (Cri) 195] (SCC relevant at p. 446, para 5) this Court observed—*

> *"The courts, therefore, as a rule, lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not possible on any reasonable hypothesis to give effect to both at the same time. The repeal must, if not express, flow from necessary implication as the only intendment."* "

(emphasis supplied)

What is noteworthy, is that even though both COFEPOSA and FEMA deal essentially with the same subject matter, namely foreign exchange transactions, even so in the above case the Supreme Court held that though FEMA had decriminalised foreign exchange transactions, yet a person could be detained under COFEPOSA based on his conduct relating to the same foreign exchange transactions.

22. The concept of 'implied repeal' has also been dealt with authoritatively by a Constitution Bench of the Supreme Court in *M. Karunanidhi*, in which the Supreme Court has enunciated the following tests for deciding whether there is repeal by implication :

> "*35. On a careful consideration, therefore, of the authorities referred to above, the following propositions emerge:*

> *1. That in order to decide the question of repugnancy it must be shown that the* ***two enactments contain inconsistent and irreconcilable provisions****, so that they cannot stand together or operate in the same field.*
>
> *2. That there can be no repeal by implication* ***unless*** *the* ***inconsistency appears on the face of the two statutes****.*
>
> *3. That where the* ***two statutes occupy a particular field****, but* ***there is room or possibility of both the statutes operating in the same field*** *without coming into collision with each other, no repugnancy results.*
>
> *4. That where there is no inconsistency but a statute occupying the same field seeks to create* ***distinct*** *and* ***separate offences****, no question of repugnancy arises and both the statutes continue to operate in the same field.*"

(emphasis supplied)

23. The same proposition was answered by the Supreme Court in an earlier decision, *Narayan K. Patodia*, which arose from an order of the Calcutta High Court quashing an FIR registered for offences under the IPC and the W.B. Sales Tax Act, where the High Court had taken the view that a case of suspected evasion of tax can only be investigated by the Bureau of Investigation under the W.B. Sales Tax Act and no police officer can investigate any such offence under the IPC. The Supreme Court set-aside this view, with the following observations :

> "*8. It is apparent that learned Single Judge has not been apprised of the danger involved in adopting such a far-fetched legal proposition. Assume that a person who committed any offence under Section 88 of the Sales Tax Act* ***has also committed some other serious offence in connection with perpetration of the former offence****; what would be the position of the police if the view adopted by the learned Single Judge is to be followed? Is it that the police force has merely to look askance at such persons helplessly on the*

mere ground that an offence under Sales Tax Act is also involved and hence the powers of the police are unenforceable in that condition?

* * * * *

"*17. Section 7(1) of the Sales Tax Act empowers the State Government to constitute a Bureau of Investigation for discharging the functions referred to in sub-section (3) thereof. It empowers the Bureau to carry on the investigation or hold inquiry into any case or alleged or suspected case of evasion of tax or malpractice created thereof and send a report of it to the Commissioner. A reading of Section 7 makes it clear that creation of a Bureau of Investigation is for the purpose of discharging the function envisaged in sub-section (3) which, of course, includes investigation also. But there is nothing in Section 7 that such investigation can be carried on "only" by the Bureau and not any other investigating agency. It is open to the Bureau to get the assistance of any other legally-constituted investigating agency for effectively inquiring into all the ramifications of the offence.* ***As in this case if offences falling under the Penal Code, 1860 or any other enactment are also detected during the course of investigation conducted by the Bureau there is no inhibition to pass over the investigation to the regular police****.*

"*18. If the view of the learned Single Judge gets approval it would lead to startling consequences.* ***The consequences of such an interpretation would be that if the person who commits the offence under Section 88 of the Act also commits other serious offences falling under the Penal Code, 1860 as part of the same transaction neither the regular police nor any special police force nor even the Central Bureau of Investigation can be authorised to conduct investigation****.* ***The accused in such cases would then be well ensconced and insulated from the legal consequences of a proper and effective investigation. Criminal justice would be the serious casualty then***."

(emphasis supplied)

24. In the present case, neither do the two statutes *viz.*, FEMA and IPC, occupy or operate in the same field; nor do they contain any

inconsistent or repugnant or irreconcilable provisions. FEMA replaced FERA with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of the foreign exchange market in India;[57] while IPC is the codified substantive penal law of the country, which deals with punishing conventional crimes.

25. In the opinion of this court, the *civil wrongs* alleged to have been committed by the petitioners relating to foreign exchange transactions under FEMA cannot be viewed as having been committed in one fell swoop with all preceding actions and omissions that the petitioners committed in preparation of the civil wrongs. As per the allegations, the foreign exchange transactions that are subject matter of investigation by the ED under the provisions of the FEMA were *preceded by* several actions and omissions, such as forging of notarial stamps and fabrication of fake invoices, which amount to criminal offences under the IPC; and these offences were committed even before the petitioners committed the civil wrongs under FEMA that they have been accused of.

26. In deciding the legal construct that must be placed on the above sequence of actions, this court must be guided by the observations of a Constitution Bench of the Supreme Court in ***Leo Roy Frey vs. Superintendent, District Jail, Amritsar & Anr.***,[58] where the Supreme

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57 *Dropti Devi* at para 63

58 AIR 1958 SC 119

Court drew on the views expressed by the United States Supreme Court in ***United States vs. Rabinowich***,[59] and observed as follows :

> "*4. ... ...The offences with which the petitioners are now charged include an offence under Section 120-B of the Indian Penal Code. Criminal conspiracy is an offence created and made punishable by the Indian Penal Code. It is not an offence under the Sea Customs Act.* ***The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients****. They are, therefore, quite separate offences. This is also the view expressed by the United States Supreme Court in United States v. Rabinowich [(1915) 238 US 78] . The offence of criminal conspiracy was not the subject-matter of the proceedings before the Collector of Customs and therefore it cannot be said that the petitioners have already been prosecuted and punished for the "same offence". It is true that the Collector of Customs has used the words "punishment" and "conspiracy", but those words were used in order to bring out that each of the two petitioners was guilty of the offence under Section 167(8) of the Sea Customs Act. The petitioners were not and could never be charged with criminal conspiracy before the Collector of Customs and therefore Article 20(2) cannot be invoked.*"
>
> (emphasis supplied)

27. In view of the foregoing position of law as applied to the provisions of FEMA *vis-à-vis* the provisions of IPC, this court is of the view there is no basis to hold that the enactment of FEMA grants to a person immunity for offences under the IPC, since FEMA does not repeal the IPC, either expressly or by implication. Moreover, FEMA and IPC address different and distinct infractions of the law : with

[59] (1915) 238 US 78

FEMA addressing infractions relating to foreign exchange transactions and the IPC dealing with conventional crimes.

28. To be absolutely clear, the offences of criminal conspiracy, cheating, forgery and related offences of which the petitioners are accused under the IPC, do not get obliterated or subsumed or cease to be penal offences, merely because they were the underlying actions for the infractions of foreign exchange regulations. Pertinently, the penal offences were complete in themselves *before* the infraction of the provisions of FEMA took place.

29. In the opinion of this court therefore, the petitioners' submission that they cannot be prosecuted for offences under the IPC cannot be accepted.

Re : Question II

30. The next question which must be addressed relates to registration of the subject FIR *based* on the ED's complaint. The petitioners contend that since the ED's complaint was based on the search and seizure operation conducted by that agency, an FIR could not have been registered based *only* on that complaint. Learned senior counsel appearing for the petitioners has argued that a perusal of the subject FIR would show that the same has been lodged based on a so-called confessional statement of petitioner Manideep Mago recorded under section 37 of the FEMA, which could not have been the basis of registering an FIR.

31. To support this contention the petitioners have placed reliance on what has been held by the Supreme Court in *K.T.M.S. Mohd.*, which decision was rendered in case where a statement recorded under the

provisions of FERA was used for launching prosecution under the IT Act. In that context the Supreme court said this :

> "*29. Therefore, the significance of a statement recorded under the provisions of FERA during the investigation or proceeding under the said Act so as to bring them within the meaning of judicial proceeding* ***must be examined only qua*** *the provisions of FERA but not with reference to the provisions of any other alien Act or Acts such as I.T. Act.*
>
> "*30. If it is to be approved and held that the authorities under the I.T. Act can launch a prosecution for perjury on the basis of a statement recorded by the Enforcement Officer then on the same analogy the Enforcement authority can also in a given situation launch a prosecution for perjury on the basis of any inculpatory statement recorded by the Income Tax authority, if repudiated subsequently before the Enforcement authority. In our opinion, such a course cannot be and should not be legally permitted.*"

(emphasis supplied)

32. Upon considering the foregoing submission, this court is of the view, that for one, a reading of the subject FIR would show that it is *not* based *solely* on Manideep Mago's statement recorded under section 37 FEMA but is also founded on the recoveries made by the ED in the course of its search and seizure operation, including the recovery of invoices, notarial stamps and other material, which was the basis of the allegations of forgery and fabrication under the provisions of the IPC.

33. Besides, as correctly pointed-out by the ED, drawing on the observations of the Supreme Court in ***Central Bureau of***

Investigation vs. V.C. Shukla & Ors.,[60] there is a distinction between a 'confession' and an 'admission'. The following enunciation by the Supreme Court is instructive in this regard :

> "*44. ... ... From a combined reading of the above sections it is manifest that an oral or documentary statement made by a party or his authorised agent, suggesting any inference as to any fact in issue or relevant fact may be proved against a party to the proceeding or his authorised agent as "admission" but, apart from exceptional cases (as contained in Section 21), such a statement cannot be proved by or on their behalf.* ***While on this point the distinction between "admission" and "confession" needs to be appreciated****. In absence of any definition of "confession" in the Act judicial opinion, as to its exact meaning, was not unanimous until the Judicial Committee made an authoritative pronouncement about the same in Pakala Narayana Swami v. Emperor [AIR 1939 PC 47 : (1939) 40 Cri LJ 364] with these words:*
>
> > *"****[A] confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession****, e.g., an admission that the accused is the owner of and was in recent possession of the knife or revolver which caused a death with no explanation of any other man's possession. Some confusion appears to have been caused by the definition of 'confession' in Article 22 of the Stephen's 'Digest of the Law of Evidence' which defines a confession as 'an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed that crime'. If the surrounding articles are examined it will be apparent that the learned author, after dealing with admissions generally, is applying himself to admissions in criminal cases, and for this purpose defines confessions so as to cover all such admissions, in order to have a general term for use in the three following articles, confession secured by inducement, made upon oath, made under a promise of secrecy. The definition is not contained in the Evidence Act, 1872, and in that Act it would*

[60] (1998) 3 SCC 410

not be consistent with the natural use of language to construe confession as a statement by an accused 'suggesting the inference that he committed' the crime."

The above statement of law has been approved and consistently followed by this Court. (Palvinder Kaur v. State of Punjab [(1952) 2 SCC 177 : AIR 1952 SC 354 : 1953 SCR 94] , Om Prakash v. State of U.P. [AIR 1960 SC 409 : 1960 Cri LJ 544] and Veera Ibrahim v. State of Maharashtra [(1976) 2 SCC 302 : 1976 SCC (Cri) 278 : (1976) 3 SCR 672] .)

"*45.* ***It is thus seen that only voluntary and direct acknowledgement of guilt is a confession but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an "admission" under Section 21****. The law in this regard has been clearly — and in our considered view correctly — explained in Monir's Law of Evidence (New Edn. at pp. 205 and 206), on which Mr Jethmalani relied to bring home his contention that even if the entries are treated as "admission" of the Jains still they cannot be used against Shri Advani. The relevant passage reads as under:*

> *"****The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made to a Police Officer, or was made at a time when the accused was in custody of a Police Officer****. If a statement was made by the accused in the circumstances just mentioned its admissibility will depend upon the determination of the question whether it does not amount to a confession. If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly, a statement made by an accused person is admissible against others who are being jointly tried with him only if the statement amounts*

> *to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance."*
>
> *(emphasis supplied)*"

34. In the present case, in his statement recorded under section 37 of the FEMA Manideep Mago does not appear to have *confessed to committing any offence*, and therefore, it would appear that at worst, the statement merely contains some *admissions* on his part. As a result, even if some parts of the subject FIR are based on Manideep Mago's statement recorded under section 37 of the FEMA, that cannot be ground for quashing the subject FIR.

35. Insofar as the contention that the subject FIR could not have been registered since no preliminary inquiry was conducted by the police on their own, and instead, they proceeded solely on the basis of the complaint forwarded to them by the ED, the answer lies squarely in the judgment of the Constitution Bench of the Supreme Court in *Lalita Kumari*, in which the Supreme Court has emphasised the need for conducting a preliminary verification or inquiry *only in cases where no cognizable offence* is made-out on the basis of the information received; and that too for the *limited purpose* of ascertaining whether a cognizable offence is made-out. Attention in this behalf may be had to the following extract of that judgment :

> "*119. Therefore, in view of various counterclaims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is*

> *mandatory. However,* ***<u>if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed</u>****. But, <u>if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR</u>* ***<u>forthwith</u>****. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, <u>what is to be seen is merely whether the information given</u>* ***ex facie discloses*** *<u>the commission of a cognizable offence</u>. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.*
>
> ***Conclusion/Directions***
>
> "*120. In view of the aforesaid discussion, we hold:*
>
> * * * * *
>
> *120.2.* ***<u>If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not</u>***."

(emphasis supplied)

36. In the present case, there can be no cavil that the complaint received by the police from the ED did disclose the commission of cognizable offences; and therefore the law mandated that the police must register an FIR; and they cannot be faulted for having done so.

<u>Re</u> : <u>Question III</u>

37. The petitioners have also questioned their arrest by the ED in the subject ECIR on the ground that their arrest is vitiated since the ED

were liable to furnish to them 'reasons to believe' as required under section 19(1) of the PMLA.

38. This contention must be rejected based on the view taken by a Co-ordinate Bench of this court in *Arvind Dham*,[61] where it has been held that the requirement for furnishing 'reasons to believe' to an arrestee is an additional requirement which arose, *for the first time*, when the Supreme Court pronounced its judgement in *Arvind Kejriwal on 12.07.2024*; and that therefore, that additional requirement is *applicable only for arrests made after that date*. This court would only observe that since what the Supreme Court articulated in *Arvind Kejriwal* was an *additional requirement*, and the Supreme Court was not interpreting an existing statutory requirement, such additional requirement could only be prospective in its operation as of the date that requirement was laid down by the Supreme Court. In the present case, the petitioners, Manideep Mago and Sandeep Sethi, were arrested on 14.06.2024 and 03.07.2024 respectively; and the ED could not possibly have foreseen that it would become mandatory for them to serve 'reasons to believe' upon an arrestee by a subsequent judgment of 12.07.2024.

39. Insofar as the contention raised by the petitioners as to non-compliance with the provision of section 19(2) of the PMLA, it may only be observed that this court is satisfied that the said provision was sufficiently complied with by the ED, since they had sent the requisite information to the adjudicating authority, alongwith copies of the

[61] cf. para 40

arrest orders and other material, within the timeframe stipulated for the purpose, as represented by the ED above.

40. Another argument preferred by the petitioners is that the only basis for arresting them, as indicated in the 'grounds of arrest' served upon them by the ED, was that they had not *co-operated* with the investigation; and the petitioners contend that non-cooperation in investigation could not have been a ground to arrest them, as has been held in *Pankaj Bansal*.

41. A perusal of the grounds of arrest in respect of both petitioners would show however, that certain allegations *specific to the petitioners* have been set-out in them, which sufficiently convey the essential case against them which has made it necessary to arrest them; and non-cooperation with the investigating agency is only one of those grounds and not the sole reason for their arrest. It may be noted that what the Supreme Court has said in *Pankaj Bansal*[62] is that *mere* non-cooperation or failure to respond to a question put by the ED is not *in itself* sufficient to arrest a person; but that cannot be construed to mean that if there are other grounds to arrest a person, those should be ignored. In view thereof, the argument that the petitioners were arrested merely for non-cooperation in investigation, is misconceived and must be rejected.

Re : Question IV

42. That brings us to the last question framed for consideration in these matters *viz.*, whether the petitioners' arrest in the subject FIR is valid

[62] cf. para 33

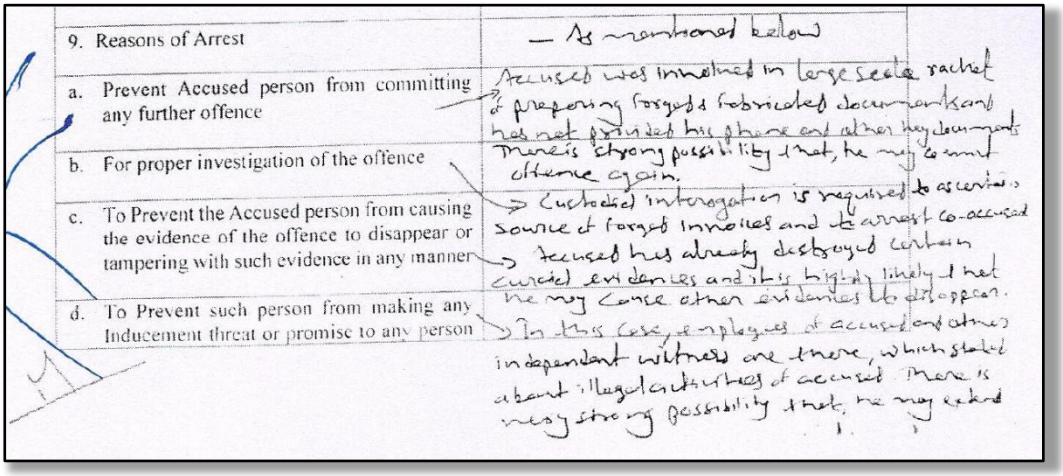
and legal. Insofar as this aspect is concerned, the petitioners' argument is premised on the settled principle for a valid arrest as laid-down by the Supreme Court in *Prabir Purkayastha*, namely that *grounds of arrest* were not served upon them *in writing* by the Delhi Police, which renders their arrest by the Delhi Police invalid and illegal.

43. The Delhi Police have answered this contention by submitting that the Cr.P.C. does not prescribe any specific format in which grounds of arrest are to be served upon an arrestee in writing; and that in the present case, the Investigating Officer had incorporated the grounds of arrest in the arrest memo itself.

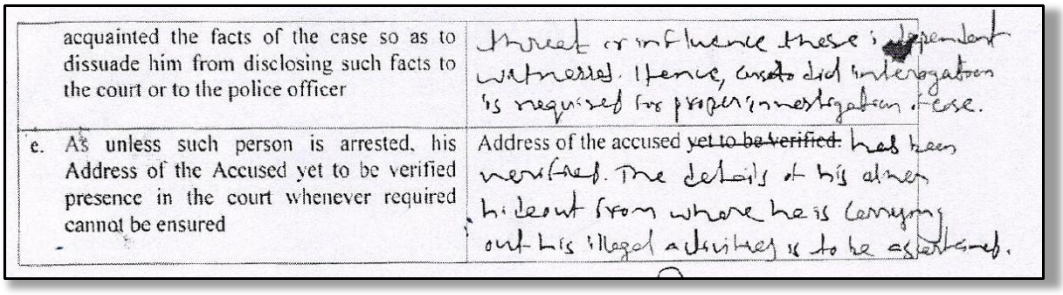
44. The Delhi Police are correct in pointing-out that in a recent decision rendered by this Bench in *Marfing Tamang*, taking cue from the observations of a Co-ordinate Bench in *Pranav Kuckreja*, this Bench has suggested that a column be incorporated in the format of an arrest memo itself, where the investigating officer can set-out the grounds of arrest, to obviate the need for issuing to an arrestee a separate piece of writing, which would also ensure that the grounds of arrest are communicated to an arrestee simultaneously with the issuance of the arrest memo, thereby streamlining the process.

45. That said, a perusal of the arrest memos issued to the petitioners by the Delhi Police would show that in an effort to communicate grounds of arrest, the investigating officer has narrated the following :

For petitioner Manideep Mago



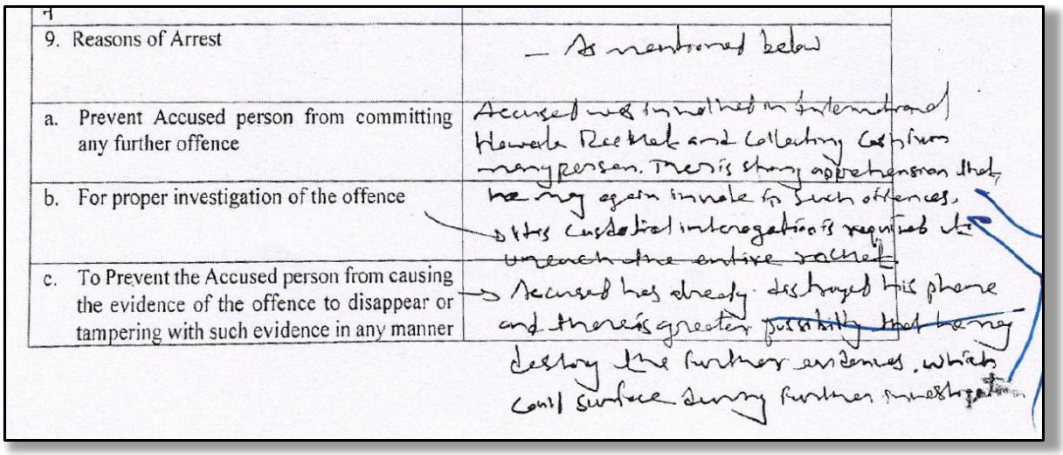
9. Reasons of Arrest	— As mentioned below
a. Prevent Accused person from committing any further offence	Accused was involved in large scale racket of preparing forged & fabricated documents and has not provided his phone and other key documents. There is strong possibility that, he may commit offence again.
b. For proper investigation of the offence	→ Custodial interrogation is required to ascertain source of forged invoices and to arrest co-accused
c. To Prevent the Accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner	→ Accused has already destroyed certain crucial evidences and it is highly likely that he may cause other evidences to disappear.
d. To Prevent such person from making any Inducement threat or promise to any person	→ In this case employees of accused and other independent witness are there, which stated about illegal activities of accused. There is very strong possibility that, he may extend



acquainted the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer	threat or influence these independent witnesses. Hence, custodial interrogation is required for proper investigation of case.
e. As unless such person is arrested, his Address of the Accused yet to be verified presence in the court whenever required cannot be ensured	Address of the accused ~~yet to be verified~~ has been verified. The details of his other hideout from where he is carrying out his illegal activities is to be ascertained.

(extracted from the record)

For petitioner Sanjay Sethi



9. Reasons of Arrest	— As mentioned below
a. Prevent Accused person from committing any further offence	Accused was involved in International Hawala Racket and collecting Cash from many person. There is strong apprehension that he may again involve in such offences.
b. For proper investigation of the offence	→ Hence Custodial interrogation is required to unearth the entire racket.
c. To Prevent the Accused person from causing the evidence of the offence to disappear or tampering with such evidence in any manner	→ Accused has already destroyed his phone and there is greater possibility that he may destroy the further evidences, which could surface during further investigation.

d. To Prevent such person from making any Inducement threat or promise to any person acquainted the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer	Accused is 2nd in command with Mon deep Mago as main kingpin, he may extend threat to crucial witnesses as he is in authority.
e. As unless such person is arrested, his Address of the Accused yet to be verified presence in the court whenever required cannot be ensured	Address of the accused ~~yet to be~~ verified, he is hideout having incriminatory documents to be ascertained

(extracted from the record)

46. In the opinion of this court, what have been set-out in the Delhi Police arrest memos are *not* 'grounds of arrest' but *only* 'reasons for arrest' against column No.9 of the arrest memos. A perusal of that column shows that the investigating officer has only mentioned general reasons for which *any* person may be sought to be arrested *viz.*, that the person's custodial interrogation is required; that the person is likely to destroy evidence; that the person is likely to influence witnesses; and that the person's presence cannot be ensured unless he is arrested, namely that he is a flight-risk.

47. What has been recorded in the arrest memos are not grounds of arrest since these do not spell-out the specific roles alleged against the petitioners; nor do they refer to the specific incriminating circumstances that can be attributed to a particular petitioner in relation to the offences alleged.

48. The petitioners' arrest *by the Delhi Police* is therefore clearly *not in compliance* with the mandate of the Supreme Court in *Prabir Purkayastha*.

CONCLUSIONS

49. As a sequitur to the foregoing, this court would summarise the answers to the questions set-out above in the following manner :

49.1. The enactment of FEMA *does not grant* to a person immunity from prosecution for offences under the IPC even if the offences alleged arise from the same underlying actions or omissions that led to infractions of FEMA;

49.2. The registration of the subject FIR by the Delhi Police, based on the complaint filed by the ED, arising from the search and seizure operation conducted by the (latter) agency, is *not invalid or illegal* merely because the FIR is based on the ED's complaint. It may be observed however, that this court has not examined the legal tenability of the subject FIR on the touchstone of the grounds for quashing enunciated by the Supreme Court in *Bhajan Lal*;

49.3. The petitioners' arrest by the ED in the subject ECIR for violations of the provisions of PMLA *is valid and legal* and in compliance of the requirements of the law, including the requirements of the Supreme Court verdict in *Prabir Purkayastha* and section 19 of the PMLA; *however*

49.4. The petitioners' arrest by the Delhi Police in the subject FIR *is not valid*, since those are in violation of the mandate of the Supreme Court in *Prabir Purkayastha*. *The petitioners' arrest in the subject FIR is therefore quashed*. Accordingly, the petitioners – **Manideep Mago s/o Neeraj Mago** *and* **Sanjay Sethi s/o late Chuni Lal** – are liable to be released from

custody *in the subject FIR* upon furnishing personal bond in the sum of Rs. 05 lacs *each* with 02 sureties in the like amount from family members, to the satisfaction of the learned trial court.

50. It is clarified that nothing in this judgment would stand in the way of the petitioners' applying for bail, as may be permissible, in accordance with law.

51. The petitions are disposed-of in the above terms.

52. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J.

MAY 15, 2025
ak/ds/ss