IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3476 OF 2026

Jitendra Pandey .. Petitioner
Versus
Directorate of Enforcement & Anr. .. Respondents

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- Mr. Ravindra Kadam, Senior Advocate a/w Mr. Shrey S. Lodha, Mr. Dulraj Jain, Mr. Aryan Kotwal, Ms. Anjali Joshi, Hrutik Chavan and Aarti Nishad i/by D'vocate Legal LLP, Advocates for Petitioner.
- Mr. C.R. Pendse a/w Mr. Atharva S. Jagtap a/w Mr. Amit Mane, Advocates for Respondent No.1 – ED.
- Mr. Amit Munde, APP for Respondent No.2 –State.

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CORAM : MILIND N. JADHAV, J.
DATE : OCTOBER 27, 2026.

JUDGEMENT:

1. Heard Mr. Kadam, learned Senior Advocate for Petitioner; Mr. Pendse, learned Advocate for Respondent No.1 – ED and Mr. Munde, learned APP for Respondent No.2 –State.

2. Present Petition is filed under Article 227 of the Constitution of India and Sections 528 and 529 of the Bharatiya Nagarika Suraksha Sanhita, 2023 seeking to quash and set aside remand orders dated 23.06.2026, 29.06.2026 and 04.07.2026 passed in Remand Application No.903 of 2026 by the learned Additional Sessions Judge, Special Court under Prevention of Money Laundering Act, 2002 (for short '**PMLA, 2002**') at City Civil and Sessions Court, Mumbai. Petitioner is also seeking direction declaring arrest of the Petitioner by

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Respondent No.1 – ED in the subject ECIR No. ECIR/MBZO-I/53/2023 dated 26.12.2023 illegal and violative of Section 19(1) of PMLA, 2002 and Articles 14 and 21 of the Constitution of India.

3. Briefly stated, on 06.10.2023 FIR No.294 of 2023 was registered with Naupada Police Station, Thane for offences punishable under Sections 409, 420, 467, 468, 34 and 120B of Indian Penal Code, 1860 and 66 (C) & 66 (D) of the Information Technology Act, 2000 against the Petitioner and he was arraigned as accused No.4, however no specific role was imputed qua the Petitioner.

3.1. On 26.12.2023, Respondent No.1 – ED registered ECIR No. MBZO-I/53/2023 in relation to predicate offences involved in FIR No.294 of 2023 wherein proceeds of crime were shown to be Rs.1618 crore. However on 08.01.2024 charge-sheet was filed but Petitioner was not chargesheeted. However on 31.03.2024, Petitioner was arrested.

3.2. On 14.05.2024, supplementary chargesheet was filed arraigning Petitioner as Accused No.1 for aforesaid offences. It is alleged that Petitioner in conspiracy with others formed 97 partnership agreements and 18 private limited companies in the names of gullible persons by procuring their KYC under the pretext of giving them loan or job and instead opened 269 mule bank accounts for remitting foreign currency against freight charges. Further it is alleged that

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Petitioner alongwith others forged several documents including invoices, bills of lading, 15CA and 15CB Certificates, A2 Forms which are required to be tendered to Authorized Dealer I Bank for remitting foreign currency. It is alleged that total amount remitted is Rs.7569 Crore and intent to commit the aforesaid offences was to evade customs duty. Further it is alleged that amount remitted abroad was towards the differential payment of the goods imported into India by under-invoicing the value of the goods.

3.3. On 07.06.2024, Petitioner was granted regular bail by learned I/c Judicial Magistrate First Class, Thane. On 02.01.2025 search action under Section 17 of PMLA, 2002 was carried out at the native place in Uttar Pradesh as well as at residence in Mumbai of Petitioner, however no incriminating material was recovered. Between 02.01.2025 to 25.02.2026, Petitioner appeared on 30 occasions before Respondent No.1 – ED and his statements were recorded.

3.4. On 26.02.2026 and 27.02.2026, second search action was carried out at Petitioner's residence in Mumbai and certain movable properties were seized and attached. Between 01.03.2026 to 15.05.2026, Petitioner's statement was recorded on 5 occasions but he was never summoned. On 23.06.2026, Petitioner was arrested from his residence and remanded to Respondent No.1 - ED's custody for 7 days by learned Sessions Court. On 25.06.2026, 26.06.2026 and

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27.06.2026, once again Petitioner's statements were recorded. On 29.06.2026 and subsequently on 04.07.2026, Respondent No.1 - ED filed second and third remand application and sought further custodial interrogation of Petitioner which was allowed by learned Sessions Court. Hence, Petitioner filed present Petition to challenge the legality of his arrest.

4. Mr. Kadam, learned Senior Advocate appearing alongwith Mr. Shrey Lodha, Advocate for Petitioner would submit that Petitioner was arrested despite absence of fresh material or supervening circumstances for his arrest. He would submit that it is well settled that power of arrest under Section 19(1) of PMLA, 2000 is a drastic action and not for the purpose of investigation. He would submit that therefore non-cooperation cannot be a ground to arrest him under the aforesaid Section. He would submit that Respondent No.1 – ED failed to show from the record as to how the Petitioner did not cooperate and/or was evasive notwithstanding that he appeared for recording of his statements on 38 different occasions between 02.01.2025 to 27.06.2026 over 18 months and made all disclosures.

4.1. He would submit that power to arrest can and should wait and power in terms of Section 19(1) of the PMLA, 2000 can be exercised only when the material with the designated officer enables him to form an opinion by recording reasons in writing that arrestee is

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guilty of offence. He would submit that necessity of arrest is a vital factor before arrest is made and old material already in possession of the investigating agency cannot be used to animate a new arrest. He would submit that custodial interrogation cannot be sought merely to facilitate investigation because power to arrest arises only upon recording satisfaction of guilt of the arrested.

4.2. He would submit that the gravity of offence does not deter judicial review of the legality of the arrest of a person under Section 19(1) of the PMLA, 2000. He would submit that legality of "reasons to believe" has to be examined based on what is mentioned and recorded therein and the material on record.

4.3. He would refer to and rely upon the following decisions of the Supreme Court and the High Court of Bombay in support of his submissions for seeking quashing of the remand orders against Petitioner:- ***(i) Arvind Kejriwal Vs. Directorate of Enforcement[1], (ii) V. Senthil Balaji Vs. State of Represented by Deputy Director and Ors.[2], (iii) Shankesh Prithviraj Sanghavi Vs. State of Maharashtra[3], (iv) Radhika Agarwal Vs. Union of India[4], (v) Pankaj Bansal Vs. Union of India and Ors.[5], (vi) Rajendra Narpatmal Lodha Vs. Directorate of Enforcement Mumbai and Anr.[6]***

1 (2025) 2 SCC 248
2 (2024) 3 SCC 51
3 2026 SCC OnLine Bom 4488
4 (2025) SCC OnLine SC 449
5 (2024) 7 SCC 576
6 Writ Petition(Cri) No.1910 of 2026, Judgment dated 21.09.2026.

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4.4. He would submit that account opening deception, forged documents, bank presentation, delivery of foreign exchange and subsequent handling of property are distinct acts having no bearing whatsoever on the generation of the proceeds of crime. He would submit that in the instant case the source of money remitted abroad has no nexus with the criminal activity relatable to the scheduled offences i.e. under Sections 420, 467 and 120B of IPC. He would submit that neither of the acts so committed have led to generation of any money. He would submit that the foundational aspects i.e. there should be proceeds of crime relatable to the scheduled offence and *vice versa* are conspicuously absent. He would submit that there is no compliance with the mandate of Section 19(1) of PMLA, 2000, therefore remand orders dated 29.06.2026 and 04.07.2026 issued against Petitioner are illegal and hence the Writ Petition be allowed.

5. ***PER CONTRA***, Mr. Pendse, learned Advocate for Respondent No.1 - ED would submit that Petitioner controlled bank accounts of shell entities used for fraudulent foreign remittances to the tune of Rs.7358 Crore. He would submit that statements recorded of directors of said shell entities state that Petitioner and his associates approached them to act as dummy directors and that their signatures were forged. He would submit that Petitioner has admitted his complicity in some statements recorded under Section 50 of PMLA, 2000 that he fraudulently remitted money abroad by incorporating dummy firms

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and presenting forged bills of lading, invoices and other banking forms such as A2, 15CA, 15CB etc. He would submit that Petitioner also earned commission for doing so and further integrated the same in formal economy.

5.1. He would submit that Petitioner used services of Sahakari Bank for layering of proceeds of crime earned by him in the bank accounts belonging to him and his family members and close associates. He would submit that in that aspect statements of Mr. Kedar Dighe and Mr. Gaurav Daple corroborate with the facts of the case. He would submit that Petitioner also admitted that he earned Rs.17-18 Crore in the *hawala* set up. He would submit that Petitioner has also disposed off properties acquired through proceeds of crime.

5.2. He would submit that Petitioner was not cooperating with the investigation and giving evasive replies despite having given multiple opportunities. He would submit that Petitioner has not disclosed complete details of persons and entities involved in the illegal remittances, the owner of such funds remitted abroad, names of intermediaries who pumped funds into the bank accounts of the companies controlled by him, and names of the ultimate owners of the funds and has been withholding crucial information.

5.3. He would submit that Petitioner's arrest was not illegal as it was done to trace complete network of dummy firms involved in his

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hawala nexus as the same was not disclosed till date. He would submit that his custody was necessary to trace end use of Rs.7358 Crore remitted abroad and full extent of proceeds of crime earned by him. He would submit that Petitioner's arrest is necessary as he disposed off properties after initiation of investigation under PMLA, 2000. Therefore, he would submit that the action initiated against Petitioner was for identification and ascertainment of role of RTGS Entry Operators, Importers, Traders and other persons who formed part of the *hawala* nexus and hence it cannot be said that procedure as per Section 19(1) of PMLA, 2000 is not complied with. Hence, he would persuade the Court to dismiss the Petition.

6. I have heard the learned Advocates appearing for the respective parties and with their able assistance, perused the record of the case. Submissions made by learned Advocates at the bar have received due consideration of the Court.

7. At the outset it is clearly seen that there are two versions of events narrated by both parties. However, upon perusal of the record of the case, it is evident that the Petitioner has already furnished the information sought from him during the period from 28.02.2026 to 27.06.2026. It is seen that during the said period, Petitioner’s statements were recorded on several occasions as is evident from the compilation of additional documents and as appended from page Nos.

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887 to 1186. It is seen that before Petitioner's arrest on 23.06.2026, his statements were recorded for 5 times on viz., 28.02.2026, 01.03.2026, 09.03.2026, 12.05.2026 and 15.05.2026 and thereafter also on three occasions viz.,25.06.2026, 26.06.2026 and 27.06.2026. Prior thereto his statements were recorded on 30 occasions between 02.01.2025 to 25.02.2026 over a period of 14 months. From perusing the answers given and disclosures effected it is evident that Petitioner cooperated with Respondent No. 1 – ED from time to time.

8. In so far as present matter is concerned the issue before me is very narrow which challenges the legality of arrest of Petitioner thereby challenging the remand orders passed by Trial Court fundamentally on the premise that there is:- (i) no need and necessity to arrest, and (ii) absence of any new or fresh incriminating material, between 15.05.2026 to 23.06.2026 having regard to continued cooperation of the Petitioner. It is seen that Petitioner has appeared before the investigating authority for recording of his statements for over 38 times over a period of 18 months in all 30 times.

9. The present issue can be safely decided on the basis of interpretation of the statutory provisions of Section 19 read with Section 50 of the PMLA. Both the learned Advocates at the bar have laid substantial stress on interpretation of the provisions of Section 19, since the Petitioner has been arrested. For ease of reference, Section 19

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of the PMLA is reproduced hereunder and it reads thus:-

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

10. Sub-section (1) of Section 19 states that "the concerned officer has on the basis of material in his possession, reason to believe that any person has been guilty of an offence punishable under PMLA may arrest such person and shall inform him of the grounds for such arrest." The crucial words occurring in this Sub-section are "……. ***has on the basis of material in his possession***…….". Thus, it is the satisfaction of the Authorized Officer to arrive at the reasons to believe that a person is guilty on the basis of material in his possession (*emphasis supplied*).

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11. In the present case, on the basis of the material in possession with the Authorized Officer, he has infact under the provisions of Section 50 filed an Application for the third time before the Special Court on 04.07.2026 to record the Petitioner's statements as contemplated by PMLA. This Application dated 04.07.2026 is appended at Exhibit – 'O' - page No.833 and both the learned Advocates have taken me through the same albeit attempting to interpret it differently. It is seen that by the remand order dated 04.07.2026 by which Petitioner's judicial custody was extended till 18.07.2026, it is recorded that learned Advocate for the accused has not objected for judicial custody. Remand order dated 04.07.2026 is appended at Exhibit – 'P' at page No.844 of the Petition.

12. At this juncture, it will be worthwhile to note and reproduce the provisions of Section 50 of the PMLA which concern powers of authorities regarding summons, production of documents and to give evidence, etc.. Section 50 of PMLA reads thus:-

> *"50.* ***Powers of authorities regarding summons, production of documents and to give evidence, etc. —*** *(1) The Director shall, for the purposes of section 12, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-*
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> *(a) discovery and inspection;*
>
> *(b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;*
>
> *(c) compelling the production of records;*
>
> *(d) receiving evidence on affidavits;*
>
> *(e) issuing commissions for examination of witnesses and*

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documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not-

(a) impound any records without recording his reasons for so doing; or (b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [2][Joint Director].”

13. Sub-section (2) of Section 50 states that the Authorized Officer shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any record during the course of any investigation or proceeding under PMLA. Sub-section (3) states that all persons so summoned shall be bound to attend in person or through authorized agent as such officer may direct and shall be bound to be examined or make statements and produce such documents as may be required.

14. In view of the above provisions, when the Application dated 04.07.2026 appended at page No.833 is seen, it specifically reads that

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it is made under Section 50(2) and (3) of the PMLA *qua* the Petitioner. In paragraph No.18 of the said Application, it is stated that in statement dated 09.03.2026, Petitioner admitted that over the past few years he was using bank accounts in his name and in the names of his family members for depositing cash and funds generated through his hawala operations, and that these accounts were also used for routing cash through a cheque-discounting mechanism wherein, in exchange for cash, he procured Pay Orders issued from bank accounts maintained in the names of shell/ dummy entities with the said Bank, which were further utilized for acquisition of properties beneficially owned by him.

15. In paragraph No.19 of the said Application, it is further stated that investigation under PMLA has revealed that during the period of the last 4-5 years, Petitioner acquired large number of properties amounting to several crores of rupees, in his name or in names of his family members and close accomplices viz. Kedar Dighe, Ashish Desai and others, and he has purposefully disposed of / sold many immovable properties with the sole intent of layering and laundering the proceeds of crime and hiding the same from legal proceedings such as attachment.

16. In paragraph No.24 of the said Application, it is further stated that in spite of multiple opportunities accorded to Petitioner, he

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has not disclosed the complete details of owners of the funds remitted by him, the foreign recipients and ultimate beneficiaries of such funds, and the intermediaries involved in the alleged illegal remittances. It is averred that Petitioner has disclosed names of some intermediaries who provided the amounts into the bank accounts of entities controlled by him but has not disclosed the ultimate owners of such funds, and is withholding crucial information from investigation and is evasive and non-cooperative

17. As a sequitur of these reasons, in paragraph No.29, Respondent No.1's case is that the Respondent No.1 - ED requires to question the Petitioner and therefore prays for permission to record the statement of the Petitioner. This Application is allowed by the Special Court on the same day vide order dated 04.07.2026.

18. Thus, it is seen that the Application made by Respondent No.1 under the provisions of Section 50 and more specifically for compliance with Sections 50(2) and (3) having been allowed itself shows that the Respondent No.1 has invoked the said statutory provision to confront and question the Petitioner with the material which it has in its possession. It is an admitted fact that from the date of Petitioner's arrest i.e. 31.03.2024 and the ECIR having been filed, Respondent No.1 collected material and recorded various statements which according to them, were required to be confronted with the

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Petitioner. It is also an admitted position which has been duly and candidly admitted by the learned Advocate for ED during his submissions that between 22.05.2026(Petitioner's 5th statement recorded) and 23.06.2026 (when Petitioner was arrested), there was no new, incriminating, or extraneous material or development which was unearthed by Respondent No.1 on the basis of which the Petitioner was arrested. He would however justify this issue by arguing that power under Section 19 is such that once there is satisfaction of the Authorized Officer at any stage and he has reasons to believe that any person is guilty of an offence, he can arrest such person by following the procedure prescribed therein, notwithstanding the fact that, at the time of arrest any other statutory procedural requirement invoked by the Authorized Officer / Agency may have remained pending. I respectfully disagree with this submission made by the learned Advocate for ED for the simple reason that power to arrest is a very drastic and extreme action. In fact, sub-section (1) of Section 19 specifically uses the word 'may arrest' which is again discretionary. Further power to investigate, summon and confront exercised under Section 50(2) and (3) is a statutory power which if invoked cannot be simply wished away, since invoking this power, the Authorised Officer has already made up his mind to investigate and question the accused person on the basis of the very same material in his possession and custody.

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19. However, in the present case, once a very valuable statutory power having been invoked by Respondent No.1 under Section 50 and more specifically under Section 50(2) and (3), then it cannot be open to Respondent No.1 to forego the same and notwithstanding completion of that action invoke Section 19 to arrest the Petitioner, unless a very strong and fresh circumstance and material incriminating the Petitioner is placed on the record before the Court and the Court feels that arrest is absolutely imminent on the basis of such material and records its reasons to believe on the basis of such new found material. This is primarily because sub-section (4) of Section 50 categorically states that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (for short '**IPC**'). Section 193 of the IPC reads thus:-

> *"193. **Punishment for false evidence.**— Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.*
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> *Explanation 1.— A trial before a Court-martial is a judicial proceeding.*
>
> *Explanation 2.— An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice."*
>
> *Illustration A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a*

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> *stage of a judicial proceeding, A has given false evidence.*
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> *Explanation 3.— An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.*
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> *Illustration A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.*

20. Explanation 2 and Explanation 3 to Section 193 *prima facie* apply to the present case. This is so because Respondent No.1 has chosen to invoke the provisions of Section 50(2) and (3) readwith (3) on the basis of the very same material in its possession to interrogate and record the statement of Petitioner which is the same material for effecting his arrest. Therefore, once this satisfaction stands recorded by the first Application filed by Respondent No.1 on 23.06.2026 and the said Application having been allowed by a judicial order of the Special Court, unless and until there is *prima facie* fresh incriminating material or such supervening circumstances which were not there before the Authorised Officer earlier and which came to the knowledge of Respondent No.1 later, Respondent No.1 cannot abandon the exercise which has been permitted by Court by order dated 23.06.2026 and simultaneously invoke the provisions of Section 19 to arrest the Petitioner by furnishing him the ground of arrest on the basis of the very same material which was already in possession of Respondent No.1. It is seen that said remand period was further extended by fresh remand orders dated 29.06.2026 and 04.07.2026 on the basis of very

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same material.

21. Though Mr. Pendse has persuaded me and taken me through the grounds of arrest to argue the gravity of the offence concerned, that will not deter me from linking the said gravity of the offence to the issue which I am required to decide in this Petition, once it is brought to my notice that Respondent No.1 had made up its mind and obtained a judicial order from the Court to investigate, confront and record further statement of the Petitioner which was allowed by the Court. It cannot be lost sight of that prior to this Petitioner has recorded his statements on 38 different occasions for over 18 months and therefore based on the material disclosed by his further statements were to be recorded for which the Application dated 04.07.2026 who made and allowed by the Court. It is also *prima facie* evident from the material placed on record that no new material whatsoever has surfaced between 22.05.2026 and 23.06.2026 so as to take the drastic step of arresting the Petitioner without recording his statement. This has been accepted by Respondent No.1 also during the course of arguments, but it is its contention that the gravity of the offence can authorise such arrest.

22. In the aforesaid background, this Court is called upon to judicially review the legality of the arrest of the Petitioner. It is seen that power to arrest under Section 19(1) is not for the purpose of

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investigation as held in paragraph No.34 of the decision in the case of ***Radhika Agarwal (supra)***. Power to arrest can and should wait and the power in terms of Section 19(1) of the PMLA can be exercised only when the material with the designated officer enables him to form an opinion by recording reasons in writing that the arrestee is guilty. In the present case, when the designated officer has himself filed the first Application dated 23.06.2026 wherein he himself, in paragraph No.31(i) to 31(v), calls upon the Court to allow him to examine, confront the Petitioner with the material in his possession and record his statement on the basis of the submissions made in paragraph Nos.22 to 26 of the said Application appended at Exhibit – 'J' at page No.489 of Petition, then in such a case, by foregoing the exercise of recording the statements, Respondent No.1 cannot arrest the Petitioner. Such exercise of power of arrest shall amount to a colourable exercise of power on the part of Respondent No.1 - ED.

23. It is seen that Petitioner's 5th statement was recorded on 15.05.2026. It is seen that despite having period of more than a month, no attempt was made to question the Petitioner before he was arrested on 23.06.2026. In that view of the matter, Petitioner's non-cooperation or evasiveness would never arise, rather there would be a question mark on the conduct of the Respondent No.1. The Application dated 23.06.2026, does not refer to any supervening circumstances and hence, there was no need and necessity to arrest the Petitioner at

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all.

24. The Division Bench of the Karnataka High Court in the case of ***Deepak Singh Vs. Directorate of Enforcement***[7], the Court has held that necessity of arrest is a vital factor before arrest is made and old material already in possession of the investigating agency cannot be used to animate a new arrest, which should be necessitated by fresh material. The Court has also held that custodial interrogation cannot be sought merely to facilitate investigation, because power to arrest arises only upon recording satisfaction of guilt of the arrested / accused.

25. Reliance is placed on the decision in ***Radhika Agarwal (supra)***, particularly paragraphs 91 to 95 thereof, which read as follows:-

> *" **91.** However, when the legality of such an arrest made under the special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely, to ascertain whether the officer was an authorised officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorised officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.*
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> ***92.** It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and circumstances of each case. The criteria or parameters of judicial review over the subjective satisfaction applicable in service related cases, cannot be made applicable to the cases of arrest made under*

7 2026 SCC OnLine Kar 7332

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the special Acts. The scrutiny on the subjective opinion or satisfaction of the authorised officer to arrest the person could not be a matter of judicial review, inasmuch as when the arrest is made by the authorised officer on he having been satisfied about the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act. Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorised officer, would not be a matter of scrutiny by the courts at such a nascent stage of inquiry or investigation.

93. *As held in Adri Dharan Das v. State of W.B. [Adri Dharan Das v. State of W.B., (2005) 4 SCC 303 : 2005 SCC (Cri) 933] , ordinarily arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the society, etc. For these or such other reasons, arrest may become an inevitable part of the process of investigation.*

94. *It is pertinent to note that the special Acts are enacted to achieve specific purposes and objectives. The power of judicial review in cases of arrest under such special Acts should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the special Acts may frustrate the very purpose and objective of the Acts. It hardly needs to be stated that the offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. Frequent or casual interference of the courts in the functioning of the authorised officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases would be the society at large and the nation itself. With the advancement in technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorised officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts. Such offences are against the society and against the nation at large, and*

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> *cannot be compared with the ordinary offences committed against an individual, nor the accused in such cases be compared with the accused of ordinary crimes.*
>
> ***95.*** *Though, the power of judicial review keeps a check and balance on the functioning of the public authorities and is exercised for better and more efficient and informed exercise of their powers, such power has to be exercised very cautiously keeping in mind that such exercise of power of judicial review may not lead to judicial overreach, undermining the powers of the statutory authorities. To sum up, the powers of judicial review may not be exercised unless there is manifest arbitrariness or gross violation or non-compliance of the statutory safeguards provided under the special Acts, required to be followed by the authorised officers when an arrest is made of a person prima facie guilty of or having committed offence under the special Act."*

26. The power of judicial review in cases of arrest under such Special Acts like the PMLA should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and the society at large. Mr. Pendse would argue that minor procedural lapses on the part of the Authorized Officers may not be seen with a magnifying glass by the Courts in exercise of the powers of judicial review which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the Special Acts. He would contend that such offences are offences against the society and nation at large and cannot be compared with ordinary offences committed against an individual nor can the accused persons in such cases be compared with those accused of ordinary crimes. This submission is based on the observations made in paragraph Nos.91 to 95 which is seen to be the concurring view of Justice Trivedi, which begins from paragraph No.83 of the aforesaid judgement. The majority view is returned by the Honorable the Chief Justice in the said

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judgment. Paragraph Nos.1 to 32 thereof are most relevant and in paragraph No.33, it is held as under:-

> *"**33.** In Arvind Kejriwal [Arvind Kejriwal v. Enforcement Directorate, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] , a combined reading of Pankaj Bansal v. Union of India [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450], Prabir Purkayastha v. State (NCT of Delhi) [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , and Vijay Madanlal Choudhary v. Union of India [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1 : (2023) 21 ITR-OL 1] was adopted by this Court. It was held that the power to arrest a person without a warrant and without instituting a criminal case is a drastic and extreme power. Therefore, the legislature had prescribed safeguards in the language of Section 19 itself which act as exacting conditions as to how and when the power is exercisable. These safeguards include the requirement to have "material" in the possession of DoE, and on the basis of such "material", the authorised officer must form an opinion and record in writing their "reasons to believe" that the person arrested was "guilty" of an offence punishable under the PML Act. The "grounds of arrest" are also required to be informed forthwith to the person arrested."*

27. The aforesaid concussion as observed in paragraph No.33 is on the basis of the decisions of the Supreme Court in the case of ***Arvind Kejriwal (supra), Prabir Purkayastha (supra) and Vijay Madanlal Choudhary (supra)*** and SC held that safeguards include the requirement to have material in possession of Respondent No.1 and on the basis of such material, the Authorized Officer must form an opinion and record in writing the reasons to believe that the person arrested is guilty of the offense.

28. In the present case, such material was admittedly already in possession of Respondent No.1 on the basis of which a previous opinion was already formed by Respondent No.1 and an Application in writing was duly made to the Special Court under the statutory

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provisions of Section 50(2) and 50(3) of PMLA for confronting the said material to the Petitioner and to record his further statement thereon. Once such an opinion was formed in writing and allowed by a judicial order, Respondent No.1 cannot proceed with arresting the Petitioner by supplying him the grounds of arrest invoking Section 19 on the basis of the very same material, which was the basis for forming the earlier opinion. This can only be justified if there is a supervening exigency or fresh material so incriminating in nature arisen or discovered in the interregnum such that the Petitioner is required to be arrested due to the same. Nothing of this nature has arisen so as to warrant arrest by foregoing the earlier stand of confronting the Petitioner with the material available and to record his statement. If such a stance of arresting Petitioner is countenanced in such facts, it will render the definition of investigation under Section 2(na) completely negatory in the facts of the present case. Paragraph No.34 of the aforesaid decision in the case of ***Radhika Agrawal*** is also relevant in this context and it reads thus:-

> ***"34.*** *The contention of the DoE that while "grounds of arrest" were mandatorily required to be supplied to the arrestee, "reasons to believe", being an internal and confidential document, need not be disclosed, was decisively rejected in Arvind Kejriwal [Arvind Kejriwal v. Enforcement Directorate, (2025) 2 SCC 248 : (2025) 1 SCC (Cri) 695] . It was held that "reasons to believe" are to be furnished to the arrestee such that they can challenge the legality of their arrest. Exceptions are available in one-off cases where appropriate redactions of "reasons to believe" are permissible. The relevant portion reads: (SCC pp. 278-79, paras 41-43)*
>
> > *"41. Once we hold that the accused is entitled to challenge his arrest under Section 19(1) of the PML Act, the court to examine the validity of arrest must catechise both the*

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> *existence and soundness of the "reasons to believe", based upon the material available with the authorised officer. It is difficult to accept that the "reasons to believe", as recorded in writing, are not to be furnished. As observed above, the requirements in Section 19(1) are the jurisdictional conditions to be satisfied for arrest, the validity of which can be challenged by the accused and examined by the court. Consequently, it would be incongruous, if not wrong, to hold that the accused can be denied and not furnished a copy of the "reasons to believe". In reality, this would effectively prevent the accused from challenging their arrest, questioning the "reasons to believe". We are concerned with violation of personal liberty, and the exercise of the power to arrest in accordance with law. Scrutiny of the action to arrest, whether in accordance with law, is amenable to judicial review. It follows that the "reasons to believe" should be furnished to the arrestee to enable him to exercise his right to challenge the validity of arrest.*
>
> *42. We would accept that in a one-off case, it may not be feasible to reveal all material, including names of witnesses and details of documents, when the investigation is in progress. This will not be the position in most cases. DoE may claim redaction and exclusion of specific particulars and details. However, the onus to justify redaction would be on the DoE. The officers of the DoE are the authors of the "reasons to believe" and can use appropriate wordings, with details of the material, as are necessary in a particular case. As there may only be a small number of cases where redaction is justified for good cause, this reason is not a good ground to deny the accused's access to a copy of the "reasons to believe" in most cases. Where the non-disclosure of the "reasons to believe" with redaction is justified and claimed, the court must be informed. The file, including the documents, must be produced before the court. Thereupon, the court should examine the request and if they find justification, a portion of the "reasons to believe" and the document may be withheld. This requires consideration and decision by the court. DoE is not the sole judge.*
>
> *43. Section 173(6) of the Code, permits the police officer not to furnish statements or make disclosures to the accused when it is inexpedient in public interest. In such an event, the police officer is to indicate the specific part of the statement and append a note requesting the Magistrate to exclude that part from the copy given to the accused. He has to state the reasons for making such request. The same principle will apply."*

29. In view of what is held above, Courts can judicially review the legality of arrest, since it is inherent in Section 19 in view of the

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safeguards to prevent its misuse.

30. In view of the aforesaid observations and findings, I am of the considered opinion that the Petitioner has made out a case for grant of reliefs as prayed for in the present Petition.

31. The Petition therefore stands allowed in terms of prayer clauses 'a' and 'b' which read thus:-

> *"a. Issue an appropriate writ, order, or direction declaring the arrest of the Petitioner by the Respondent No. 1 in the subject ECIR No. ECIR/MBZO-1/53/2023 dated 26.12.2023 illegal and violative of s. 19(1) of PMLA, and Articles 14 and 21 of the Constitution, and consequently, issue appropriate directions for forthwith release of the Petitioner from Judicial Custody;*
>
> *b. Issue an appropriate writ, order, or direction quashing and/or setting aside the remand order dated 23.06.2026 passed by the Ld. Additional Sessions Judge Designated as Special Court under the PML Act, 2002 City Civil & Sessions Court, Mumbai, remand order dated 29.06.2026 passed by the Ld. I/c Court for the Ld. Additional Sessions Judge Designated as Special Court under the PML Act, 2002 City Civil & Sessions Court, Mumbai, and remand order dated 04.07.2026 passed by the Ld. Additional Sessions Judge Designated as Special Court under the PML Act, 2002 City Civil & Sessions Court, Mumbai in relation to the Remand Application No.903/2026 filed by the Respondent No. 1 in relation to the subject ECIR No. ECIR/MBZO-I/53/2023 dated 26.12.2023, and consequently, also quash the subsequent remand orders, if any, passed by the Ld. Additional Sessions Judge Designated as Special Court under the PML Act, 2002 City Civil & Sessions Court, Mumbai in relation to the Petitioner;*

32. Hence in view of the above order, Petitioner is forthwith directed to be released from prison on the basis of an authenticated copy of this order downloaded from the website of the Bombay High Court.

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33. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

34. After this order is pronounced in open Court, Mr. Pendse learned Advocate appearing for Respondent No.1 – ED persuades the Court to stay the effect the validity of the order for a period of 2 weeks to enable Respondent No.1 – ED to challenge the same before the Supreme Court.

35. Considering the aforesaid order and the concluding directions passed therein with regard to the release of the Petitioner from custody, I have considered the aforesaid request made by Mr. Pendse, however in view of the reasons contained in the order, the request made for stay of this order stands declined.

[MILIND N. JADHAV, J.]

Ajay

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE
Date: 2026.10.27 14:44:34 +0530