



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

% **Reserved on: 17th March, 2026**
Pronounced on: 29th May, 2026

+ **CRL.M.C. 4134/2025, CRL.M.A. 6465/2026**

THOKCHOM GYANESHOR

Aged about 46 years,

S/o Late Th. Ibotombi Singh,

R/o Mayang, Konchak Mamang

Leikai Imphal, Manipur– 795132

.....Petitioner

Through: Mr. Siddhartha Borgohain, Mr.
Aditya Giri, Mr. Watitemjen Jamir
and Mr. Rahul Tainguria, Advocates.

versus

1. DIRECTORATE OF ENFORCEMENT

Through its Director General,

Pravartan Bhawan, APJ Abdul Kalam Road,

New Delhi- 110011

2. SHRI AMIT KUMAR

Assistant Director (STF),

Directorate of Enforcement, Delhi,

Pravartan Bhawan, APJ Abdul Kalam Road,

New Delhi- 110011

.....Respondents

Through: Mr. Zoheb Hossain, Spl. Counsel for
DoE with Mr. Vivek Gurnani, Panel
Counsel and Mr. Pranjal Tripathi,
Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T



NEENA BANSAL KRISHNA, J.

1. Criminal Miscellaneous Petition under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS, 2023”) has been filed on behalf of the Petitioner for declaration that Remand Orders commencing from 17.10.2024 culminating on 05.12.2024, under Section 187 BNSS; and Order dated 03.12.2024 of the learned Trial Court, is in violation of Section 197 BNSS read with Section 44 of the Act, 2002, to be declared illegal. It is further submitted that the *Order of Cognizance dated 18.12.2024* and the subsequent Remand Orders passed post cognizance, under S. 346 BNSS be declared as illegal and violative of Article 14, 21 and 22(1) Constitution of India.

2. The ***brief facts*** as stated in the Petition, are that the Central Government on receiving reliable information in respect of transnational conspiracy hatched by Myanmar based leadership of terror outfits who are operationally active in North-Eastern Indian States, to exploit the current ethnic unrest in the State of Manipur, to wage war against the Government of India and to execute terrorist attacks thereby exacerbating the current security situation in the State of Manipur, the MHA in exercise of its powers conferred under sub-Section 5 of Section 6 read with Section 8 of National Investigation Agency Act, 2008, directed NIA to take the investigations, *vide* Order dated 19.07.2023.

3. In compliance thereof, NIA registered ***FIR No. RC/23/2023/NIA/DLI under Section 120B, 121A & 122 IPC read with Section 18, 18B and 39 of the UAPA, 1967.*** The NIA claimed that acting on credible information



received from the reliable source, the NIA was successful in apprehending the Petitioner along with other accused, and arrest them on 13.03.2024 at 11:45 AM from Bir Tikendrajit International Airport, Imphal, Manipur.

4. On 14.03.2024 the Petitioner along with other accused, were produced before the learned Special Court and *10 days police custody was granted to NIA*.

5. There being serious irregularities in the arrest process of the Petitioners and non-compliance of Article 21 & 22(1) Constitution of India, the *Criminal Writ Petition No.975 of 2024*, was filed before this Court. After addressing arguments at length, the Petition was withdrawn, with liberty to agitate these issues before the competent forum.

6. The Petitioner then filed a *Writ Petition (Crl.) No.1929 of 2024* under Article 226 Constitution of India before this Court and challenged the illegal arrest of the Petitioner, on 13.03.2024 and also the remand Orders passed by learned Special Judge.

7. This Court in *Writ Petition (Crl.) No.1929 of 2024*, vide Order dated 20.02.2024 declared the arrest of the Petitioner along with other accused by the NIA, as illegal for non-furnishing grounds of arrest in writing and further set aside the Remand Order dated 14.03.2024 and all other subsequent remand, being non-est in law and directed release of the Petitioner forthwith, in the RC.

8. Supplementary Chargesheet was filed by the NIA, against the Petitioner under Section 120-B, 121A, 122 & 411 IPC; Section 17, 18, 18A, 18B, 20 and 38 of the UA(P) Act, 1967 and Section 25(1) of the Arms Act, 1959, in FIR No.RC-23/2023/NIA/DLI.



9. An ECIR was recorded by the Respondent *vide* ECIR No. ECIR/STF/15/2024 and thereafter, Addendum was issued and Respondent initiated investigation against the Petitioner and the other accused, based on the Supplementary Chargesheet in the NIA RC.

10. An Application under Section 50 of the Act was filed by the Respondent on 18.09.2024 and again on 08.10.2024, seeking permission to examine/record the statement of the Petitioner, which were allowed by the Court.

11. Thereafter, the Petitioner was formally arrested in the ECIR by the Respondents in Central Jail, Rohini where he was in judicial custody in connection with RC/23/2023/NIA/DLI.

12. The Petitioner was produced before the learned JMFC, Patiala House Court on 17.10.2024, without an Order under Section 302 BNSS, seeking custody of the Petitioner for ten days. This illegality, however, was overlooked by the learned JMFC, who granted remand of one day to Judicial Custody. It was further directed that the Application be put up, before the concerned Court on 18.10.2024.

13. The Petitioner was presented before the Special Court on 18.10.2024, on the allegations of being involved in the offence of money laundering, as defined under Section 3 PMLA. *Eight days custody of the Petitioner*, was granted to the Respondent. Thereafter, the Petitioner was produced before learned Link Judge on 26.10.2024 and was remanded to 14 days Judicial Custody.

14. **The Order of first Remand dated 17.10.2024, has been challenged** on the ground that it is violative of Section 302 and 187 BNSS, 2023. The



Petitioner was arrested on 16.10.2024 at Rohini Jail at 12:55 PM, while he was in the Judicial Custody, in the RC case. It is settled law that a Police Officer can formally arrest a person in relation to an offence while he is already in custody in a different offence, as per Section 302 BNSS (Section 267 Cr.P.C.). The Respondent wanted the production of the Petitioner and also his custody for ten days.

15. He was thereafter, produced on 17.10.2024, without an Order of a Competent Court, as required under Section 302 BNSS. It clearly demonstrates that learned JMFC erred in not appreciating that the Petitioner could not be produced on the day, prior to allowing the Application under Section 302 BNSS. The question thus, arises under what authority of law the Petitioner was produced, prior to an Order of the Court.

16. It is further submitted that Section 187(2) BNSS deals with the power of the Magistrate to grant remand, irrespective of whether he has or not, jurisdiction to try the case. Likewise, Section 19(3) of the Act, 2002 mandates that every person arrested under Sub-section (1) shall be within twenty-four hours, produced before Special Court having appropriate jurisdiction. This is for the reason that the liberty is paramount and any delay would amount to its curtailment. While exercising such power, the Magistrate has discretion, but such act is a judicial function and, therefore, a reasoned Order indicating application of mind, is certainly warranted.

17. The law as expounded in the case of Dhanraj Aswini vs. Amar S. Mulchandani (2024) 10 SCC 336, Anwar Ali Sarkar and A.R Antulay (supra) is a procedural law, which is sacrosanct and cannot be tweaked or sabotaged by the Investigating Agencies or the Courts.



18. It is further asserted that the subsequent Remand Orders passed by the Court commencing from 18.10.2024, are non-est in law, being in violation of Articles 14, 21 & 22(1) of the Constitution of India and 187 BNSS. Also, from the chronology of subsequent Remand Applications which commenced from 26.10.2024, it emerges that they were all non-est in law. Reliance is placed on Natabar Parida vs. State of Orrissa (1975) 2 SCC 220; Singeshwar Singh & Ors. vs. State of Bihar (1975) SCC OnLine Pat 58; and Pramod Kumar vs. State of U.P 1990 SCC OnLine All 713.

19. Reliance is also placed on Kantaru Rajeevaru (Sabarimala Temple Review-5 J.) vs. Indian Young Lawyers Assn., (2020) 2 SCC 1, wherein the interplay between Article 141 and Article 144 of Constitution of India, was explained, that where the Apex Court settles a position of law or declares through its Judgment, it has to be strictly followed throughout the territory of India and all the authorities are bound to act in aid and to give effect to the letter and spirit of the law, as declared by the Supreme Court.

20. In the facts of present case, it is clearly demonstrated that the Respondents did not comply with Section 187 BNSS, thereby violated the constitutional rights of the Petitioner. The Special Court also acted in a cavalier/ routine manner which breached the fundamental of Judicial Discipline and struck at the heart of the Constitution.

21. The **second ground for challenge** of Remand is that the Remand Application dated 17.10.2024 under Section 187 BNSS, demonstrates *that the entire allegations and the acts were allegedly committed in the State of Manipur*, which was also recorded by the learned Trial Court. Therefore,



the proper approach would have been to file a transit remand before the nearest Magistrate, which has not been done in the present case.

22. Section 44(1)(a) of the PMLA, 2002 mandates that the offence of money laundering under Section 4 and related offences, must be tried by the Special Court constituted for the area, where money laundering is committed. Mere registration of ECIR at Delhi, based on the Supplementary Chargesheet filed by NIA in RC-23/2023/NIA/DLI, does not confer jurisdiction on the Delhi Courts. If the proceeds of crime have been handled elsewhere, then Special Court designated for that area, would have the jurisdiction. ***The Special Court, PMLA thus, lacked the jurisdiction to entertain the Complaint filed by the Respondents.*** Since the Special Judge lacked territorial jurisdiction, it could not have exercised lawful authority over the matter. All the Remand Order from 17.10.2024 onwards, were non-est in the eyes of law. Reliance is placed on Rajendra Ramchandra Kavelkar vs. State of Maharashtra AIR 2009 SC 1792, Rana Ayyub vs. Directorate of Enforcement (2023) 4 SCC 357.

23. The Petitioner then filed an Application under Section 197 BNSS (erstwhile Section 177 Cr.P.C) read with Section 44(1) of the Act on 08.11.2024, seeking transfer of the case to the appropriate Special Court having territorial jurisdiction in terms of Vijay Madanlal Choudhary vs. Union of India (2023) 12 SCC 1 and Rana Ayyub vs. Directorate of Enforcement (2023) 4 SCC 357, as alleged offences were committed outside the territorial jurisdiction of the learned Court.



24. The response was filed by the Respondent on 21.11.2024 stating that the investigations in ECIR was underway and the prosecution Complaint was yet to be filed.

25. **The Application under Section 197 BNSS was dismissed by the learned Special Judge, on 03.12.2024.**

26. The next aspect under challenge is that the **Order of Cognizance dated 18.12.2024, is bad in law as no pre-cognizance hearing was given to the Petitioner.**

27. *It is stated that the Prosecution Complaint under Section 44 read with Section 45 of the PML Act was filed on 13.12.2024, against the Petitioner and the other accused. It is asserted that the cognizance was taken on the Complaint by the learned Judge on 18.12.2024, without due compliance of Section 223 BNSS.*

28. **The Order on cognizance of the offence, dated 18.12.2024, has been challenged, as non-est in law.** It is asserted that Act 2002 is a *sui generis legislation* which provides the manner in which the Special Court created under the Act, is required to take cognizance of the offences under Section 22 of the Act. It is stated that; **firstly**, the learned Special Judge has re-legislated a new procedure with respect to taking cognizance under the PMLA Act; and **secondly**, the cognizance has been taken in contradiction of the judgments in Kushal Kumar Agarwal vs. Directorate of Enforcement 2025 SCC OnLine SC 1221; Yash Tuteja vs. Union of India 2024 SCC OnLine SC 533 and Tarsem Lal vs. Enforcement Directorate 2024 7 SCC 61.



29. The Order of Cognizance breaches the fundamental judicial discipline and strikes at the heart of the Constitutional structure, and has to be struck down.

30. The Petitioner has further challenged the ***Remand Orders post cognizance***, on the ground that once a cognizance is shown to be bad in law, any subsequent Order of remand passed while exercising the power under Section 346 BNSS, also becomes non-est in law. This provision is a statutory safeguard to prevent prolonged incarceration, without proper judicial scrutiny. Section 346(2) BNSS expressly mandates that no Accused can be remanded to Judicial Custody, exceeding 15 days at a time. However, the Remand has been granted beyond the permissible statutory limit, rendering the Order ex-facie illegal and unsustainable in law.

31. **The prayer is, therefore,** made that the pre-cognizance Remand Orders commencing from 17.10.2024 and culminating on 05.12.2024 made under Section 187 BNSS, be declared as illegal. Further, the Order dated 03.12.2024 concluding that Delhi Court has jurisdiction, be declared non-est in law. Likewise, *Order dated 18.12.2024 of taking Cognizance on the Complaint*, be declared as violative of Section 223 BNSS. Further, declare the post cognizance Remand Orders, under Section 346 BNSS, as illegal and violative of Article 21 of Constitution of India.

32. **The Respondent filed a Counter-Affidavit**, wherein a *preliminary objection* was taken that the impugned Orders are amenable to Revisional jurisdiction and the present Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed solely to circumvent the limitation prescribed for a Revision Petition.



33. The present Petition to challenge to Cognizance Order dated 18.12.2024 and Remand Order dated 17.10.2024, has been filed on 20.06.2025 i.e. after a delay of more than 6 months and 8 months respectively, without any explanation, whatsoever. *The present Petition is liable to be dismissed, on this ground itself.*

34. Even otherwise, it is well settled that *unexplained delay and laches* applies equally to Petitions invoking inherent jurisdiction of the Court and the Petitioner cannot get away with the un-explained delay of 6/8 months, merely by mischaracterizing the Petition, as one under Section 528 BNSS.

35. There is a statutory remedy under Section 397 and 401 Cr.P.C/438 and 440 BNSS available and therefore, this inherent jurisdiction cannot be invoked as an alternative.

36. Reliance is placed on Vipin Sahni vs. CBI 2024 SCC OnLine SC 511 wherein it was observed that while there is no limitation period for invocation of inherent power of High Court under Section 482 Cr.P.C. and it can be exercised at any time. However, an Order discharging the Appellant in the first instance, is a revisable Order. Long after the expiry of limitation period of 90 days, the CBI chose to invoke jurisdiction under Section 482 Cr.P.C., which was obviously to get over the period of Limitation, in filing the Revision under Section 397 Cr.P.C. *It was held that when an Order is not interlocutory in nature and can be assailed in revisional jurisdiction, then there is a bar in invoking the inherent jurisdiction of the High Court.*

37. Reliance is also placed on the case of Mohit @ Sonu vs. State of U.P. (2013) 7 SCC 789, it was observed that the inherent powers of the Court can be exercised, when there is no remedy provided in the Code of Criminal



Procedure for the impugned Order to be challenged, to address the grievance.

38. A reference is also made to Padam Sen vs. State of U.P AIR 1961 SC 218 wherein the Apex Court, in the context of inherent powers under Section 151 CPC, it was observed that “*it is well recognized that the inherent power is not to be exercised in a manner which will be contrary to or different from the procedure expressly provided in the Code.*”

39. The Constitutional Bench in the case of Manohar Lal Chopra vs. Seth Hiralal AIR 1962 SC 527 held that the inherent power of the Court to make Orders *ex debito justitiae* is undoubtedly, affirmed by Section 151 of the Code, but it cannot be exercised so as to nullify the provisions of the Code. Where there exists a particular Section, then such provision should normally be regarded as exhaustive.

40. Moreover, under the pretext of challenging the cognizance and remand Orders, the Petitioner is seeking Bail, which is not permissible under Law.

41. Reliance is also placed on Sanyam Bhushan vs. State of NCT of Delhi 2024 DHC 4868, Sushilabai vs. The State of Maharashtra & Ors. CrI. Writ Petition No.1703 of 2018 decided by Bombay High Court on 28.09.2022, Neeraj Bhargava vs. State of NCT, Delhi CrI. M.C. No.3844/2015 decided on 28.09.2015, Gopal Chauhan vs. Smt. Satya, 1979 Cri.L.J. 446 Himachal Pradesh High Court, wherein it was held that a prayer for Bail is not maintainable under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Article 227 Constitution of India, when a specific statutory remedy exists.



42. It is asserted that the prayer of the Petitioner for Bail under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is wholly misconceived. The statutory remedy is provided under Section 439 Cr.P.C./483 BNSS/ 45 PMLA; invocation of supervisory jurisdiction under Article 227 for seeking Bail, is impermissible in law. Reliance is placed on *Surendra Singh vs. State of Bihar* 1990 SCC OnLine Pat 246.

43. It is further submitted that the Petitioner has challenged the Remand Orders, Order dated 03.04.2024 of the Special Court disposing of the Application of the Petitioner for committal, and Order of Cognizance dated 18.12.2024, as well as Release on Bail. The Petition is liable to be dismissed, *for mis-joinder of cause of action*.

44. **On merits**, it is stated that there is no illegality in any of the Remand Order, sought to be challenged. Moreover, the only method for the Petitioner to seek relief from custody, is by way of Application for Bail, which would be judicially adjudicated by applying the rigors of Section 45 PMLA. Reliance is placed on *Pragyna Singh Thakur vs. State of Maharashtra* (2011) 10 SCC 445; *Pranab Chatterjee vs. State of Bihar* (1970) 3 SCC 926, *Vijay Madanlal Chaudhary & Ors.* (supra) and *Tarun Kumar vs. Enforcement Directorate* 2023 SCC OnLine SC 1486.

45. Even otherwise, it is well settled that legality or otherwise, of the custody of any person, can be considered when the Notice is made returnable and the Respondent files a Counter-Affidavit. The Petitioner as on today, is in custody pursuant to valid subsequent Remand Orders, which are not under challenge and, therefore, the custody of the Petitioner cannot be termed as illegal. Reliance is placed on *Serious Fraud Investigation*



Office vs. Rahul Modi (2019) 5 SCC 266 and State of Maharashtra vs. Tasneem Rizwan Siddiquee (2018) 9 SCC 745.

46. It is explained that the *learned Special Judge vide* Order dated 08.10.2024, had allowed ED to examine the Accused in Jail and directed that the Order shall remain enforceable for 10 days. During the process of examination, Petitioner was formally arrested under Section 19 PMLA in ECIR on 16.10.2024 at 12:55 P.M. As per Section 19(3) PMLA after his arrest, he was produced before Special Judge, within 24 hours. The Respondent Office had sent email dated 16.10.2024 to the Superintendent of Jail to produce the Petitioner before the Duty Magistrate, Patiala House Court on 17.10.2024.

47. Accordingly, Application dated 17.10.2024 was moved before the Principal District & Sessions Judge, PMLA, PHC, New Delhi seeking production and ED custody of the Petitioner. The judicial custody was granted by learned Duty Magistrate *vide* Order dated 17.10.2024, for one day, with direction to place the Application before the Court concerned.

48. In regard to the *territorial jurisdiction*, it is submitted that the Special Judge *vide* detailed Order dated 03.12.2024, has come to the conclusion that the Delhi Court has jurisdiction. The same issue cannot be raised in this Petition, challenging the remand and the cognizance.

49. **On merits**, all the ground taken in the Writ Petition are denied. It is submitted that there is no merit in the present Petition which is liable to be dismissed.

50. The **Rejoinder-Affidavit** was filed on behalf of the Petitioner, wherein the averments made in the Petition were re-affirmed.



Submissions heard and record perused.

I. Whether the Present Petition under S.482, is maintainable against the Impugned Order:

51. The *preliminary objection* which has been taken on behalf of the Respondent ED is that the *Order on Cognizance*, is a *revisable Order* and cannot be challenged by resorting to Section 482 Cr.P.C.

52. Reliance is placed on the decision of the Constitution Bench in the case of Manohar Lal Chopra (supra) had noted that when a Revision is instituted in the High Court, but is found to be not maintainable on one ground or the other, the High Court may treat it as a Petition under Section 482 Cr.P.C in order to do justice in that case. However, the reverse is not applicable as it would not be open to the High Court to blindly convert or treat a Petition under Section 482 Cr.P.C., as one filed under Section 397 Cr.P.C without reference to other issues including limitation. When a specific remedy of Revision is available to the CBI, it could not have been ignored and a Petition under Section 482 Cr.P.C filed.

53. This aspect was considered *in the case of* Madhu Limaye v. The State of Maharashtra (1977) 4 SCC 551, wherein the Apex Court held that the label of a petition filed by an aggrieved party is immaterial. The High Court can always examine the controversy in an appropriate case in exercise of its inherent powers.

54. This proposition of law was re-affirmed *in the case of* Prabhu Chawla v. State of Rajasthan and Another (2016) 16 SCC 30. While examining the scope of Section 482 CrPC and Section 397 CrPC, the Apex



Courtheld that nothing inCrPC, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482 CrPC. The inherent powers should not invade areas set apart for specific powers conferred under CrPC but there is no total ban on the exercise of inherent powers where abuse of process of Court or other extraordinary situation warrants exercise of inherent jurisdiction. The limitation is self-restraint, nothing more. Availability of alternative remedy of criminal revision under Section 397 CrPC, by itself, cannot be a good ground, to dismiss an application under Section 482 CrPC.

55. Similar observations were made by the Apex Court, in the case of Dhariwal Tobacco Products Ltd. v. State of Maharashtra (2009) 2 SCC 370. It was held that only because a revision petition is maintainable, the same by itself would not constitute a bar for entertaining an Application under Section 482 of the Code. Even where a Revision Application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908, the Apex Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See *Surya Dev Rai v. Ram Chander Raif.*) Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session, is barred under Section 397(2)- of the Code, the inherent power of the Court has been held to be available.

56. In CBI v. Ravi Shankar Srivastava, 2006 (7) SCC 188, the Supreme Court while opining that the High Court in exercise of its jurisdiction under



Section 482 of the Code does not function either as a court of appeal or revision, held:

"7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely,

(i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. The courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their



constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle `quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest' (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of



the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

57. Likewise, in the recent judgement of Akanksha Arora v. Tanay Maben, 2024 INSC 962, while referring to the above discussed Judgements, the Supreme Court revisited this aspect and reiterated that the mere availability of a revisional remedy under Section 397 CrPC, cannot be a ground to dismiss a petition under Section 482 CrPC. The Court held that the nomenclature of a petition is immaterial and that the High Court, in the interest of substantive justice, ought to either entertain the Petition under its inherent jurisdiction or convert it into an appropriate proceeding, such as a revision. The dismissal of a Petition solely on the ground of availability of an alternative remedy, was characterised as hyper-technical and unsustainable, because the same has unnecessarily compelled the appellant to approach this court by way of this appeal filed under Article 136 of the Constitution of India, which approach cannot be appreciated. The judicious approach would have been to convert the petition under Section 482 Cr.P.C. into a revision under Section 397 Cr.P.C. and decided the same as per law.



58. Indisputably, issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. While generally, the Petitioner must follow the remedy of Revision, in accordance with law as held in the case of Vipin Sahni (supra), Mohit @ Sonu(supra), Manohar Lal Chopra (supra), and Padam Sen (supra), however, in the light of the aforesaid judgements, the Petitioner cannot be non-suited on technical grounds, especially when the challenge is to the violation of fundamental rights and involves personal liberty of the petitioner. This objection, therefore, has no merit.

II. Challenge to Arrest on 17.12.2024 and Pre-cognizance Remands:

59. It has been contended on behalf of the Petitioner that he was in Judicial Custody in the FIR case. It was claimed that the Police Officer can formally arrest a person in relation to an offence, while he is already in custody in a different offence, as per Section 302 BNSS. He was arrested in this ECIR on 16.10.2024, and produced on 17.12.2024 in Rohini Court.

60. The Petitioner asserted that he could not have been arrested in this ECIR on 16.10.2024, without the Order of the Competent Court as required under Section 302 BNSS. Therefore, the initial arrest of the Petitioner was without prior Application under Section 302 BNSS, and was bad in law.

61. Furthermore, Section 19(3) PMLA maintains that every person arrested under Sub-Section 1, shall be produced before the Special Court within 24 hours. However, neither of the procedures were followed and therefore, the remand Orders commencing from 16.10.2024, are non-est in law.



62. It has been explained by the Enforcement Directorate that learned Special Judge vide Order dated 08.10.2024, had allowed ED to examine the Petitioner in Jail and the Order was enforceable for ten days. During the process of examination, the Petitioner was formally arrested under Section 19 PMLA in ECIR on, 16.10.2024. In terms of Section 19 (3) PMLA, he was produced before the Duty Magistrate on 17.10.2204, i.e. within 24 hours. The *learned Duty Magistrate* granted one day judicial remand till 18.10.2024, on which date the Petitioner was duly produced before the learned Special Judge, PMLA.

63. The chronology of the event as explained by the ED, clearly shows that due procedure as envisaged under Section 302 BNSS, had been duly complied with and the remand Orders subsequent to the arrest of the Petitioner, cannot be termed as illegal.

64. In the case of Pragyna Singh Thakur (supra), it was observed that even if it is assumed for the sake of arguments that there was any violation by the Police in not producing the Appellant within 24 hours of arrest, the Appellant cannot seek to be set at liberty, on the ground of non-compliance with Article 22(2) or Section 167(2) Cr.P.C. by the Police.

65. Therefore, this contention of the Petitioner, is without merit and does not enure to his benefit.

III. Challenge to the Order of Cognizance dated 18.12.2024:

66. The *next challenge* raised by the Petitioner, is that the Order dated 18.12.2024 taking cognizance on the Complaint under Section 3 & 4 PMLA is bad in law, since the of Ld. Special Judge, PMLA declined to give Notice under Section 223 BNSS, before taking cognizance on the Prosecution



Complaint under PMLA, by observing that PMLA takes precedence over the general statute and has a different process, which mandates that a pre-cognizance hearing to the Accused was not necessary. It is submitted that because the Petitioner has been denied a pre-cognizance hearing under Section 223 BNSS; the impugned Order of Cognizance is bad in law.

67. *The central issue is: whether the Ld. Special Judge was required to comply with Section 223 of BNSS, 2023, before taking cognizance of the Prosecution Complaint filed by the ED.*

68. In order to appreciate this legal contention it would be pertinent to first refer to the relevant Sections of PMLA as well as BNSS.

69. Section 44 PMLA provides that offences under PMLA shall be triable by the Special Courts. Section 44(1)(b) empowers the Authority to file a Complaint before a Special Court, without the Accused being committed to it for trial. Under the *proviso to Section 44(1)(b)*, it is open to the Authority to submit a Closure Report before the Special Court, if no offence of money laundering is made out, upon conclusion of the investigation.

70. *Section 44(1)(c) PMLA* gives an option to the Authority to file a Complaint, to seek committal of a case relating to a scheduled offence, which is pending before the Competent Authority to the Special Court by way of an Application. If and when the Application is filed, the Court dealing with the Scheduled offence, has to commit the same to a Special Court, which shall thereafter, proceed to deal with it from the stage at which it is committed.

71. Section 44(1)(d) PMLA is relevant for the present controversy, which reads as under :



“44. Offences triable by Special Courts

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session.”

72. Section 44(1)(d) makes the Cr.P.C (now BNSS) applicable to the trial before the Special Court, as if it was a Court of Sessions.

73. Section 46 PMLA treats the Special Court to be deemed Court of Sessions, wherein the provisions of Cr.P.C. (now BNSS) shall apply to the proceedings under PMLA. Section 65 PMLA makes the provisions of Cr.P.C (now BNSS), applicable to the proceedings under the PMLA.

74. Therefore, from the aforesaid provisions, it is evident that Cr.P.C (now BNSS) is applicable, for the offences triable under PMLA. It now becomes relevant to refer to the **Section 223 of BNSS**, which provides for examination of the Complaint and the procedure for taking cognizance on the Complaints. The relevant part of **Section 223 of BNSS, 2023** reads as follows:

“223. Examination of complainant -

(1) A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard:



.....”

75. A perusal of the impugned Order dated 18.12.2024, reveals that the Ld. Special Judge observed that Section 223 BNSS is not applicable to PMLA Complaints, on the premise that PMLA is a special Act and the Complainant therein, does not have the same capacity as a private complainant under BNSS.

76. This reasoning of the Ld. Special Judge is contrary to the law settled by the Supreme Court. The Supreme Court in the case of Tarsem Lal (supra) and Yash Tuteja (supra), held that when a Complaint under Section 46 PMLA is filed, provisions of Section 205 Cr.P.C. shall be applicable to it.

77. In Kushal Kumar Agarwal (supra), the Apex Court clarified that the provisions of Chapter XVI of BNSS, including Section 223, apply to Complaints under Section 44(1)(b) of the PMLA filed after 01.07.2024. The Supreme Court specifically held that a Complaint filed by Enforcement Directorate under Section 44(1)(b) PMLA, will be governed by Section 200 to 204 Cr.P.C. Therefore, provisions of Chapter 16 containing Section 223 to 226 shall also apply to a Complaint under Section 44 PMLA. Proviso to Sub Section 1 of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by a Magistrate, without giving the Accused an opportunity of being heard. It was held:

“The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.”



78. This aspect has been recently considered in the case of Parvinder Singh vs. Directorate of Enforcement, 2026 INSC 59 decided by the Apex Court on 19.02.2026, wherein the aforesaid judgments have been endorsed and it has been reaffirmed that before taking cognizance on a Complaint under PMLA, a pre-cognizance Notice has to be mandatorily issued to the Accused.

79. In the present case, the Prosecution Complaint was admittedly filed on 13.12.2024, i.e., well after the enforcement of BNSS. Therefore, the Ld. Special Judge was duty-bound to afford the accused an opportunity of being heard, before taking cognizance. The failure to do so and the specific finding that Section 223 is inapplicable, renders the Order dated 18.12.2024 legally unsustainable.

80. *The Order dated 18.12.2024 of taking cognizance on the Complaint, is hereby, set aside and the Special Judge (PMLA) is hereby, directed to give a pre-cognizance hearing to the petitioner.*

IV. Challenge to Post-Cognizance Remand from the date of Cognizance on 18.12.2024 and thereafter:

81. ***The Petitioner has also challenged*** the Order dated 01.05.2025 whereby he was remanded to judicial custody for a period of two months.

82. It is contended that as per Section 346 BNSS which deals with post-cognizance remand, *the Petitioner could not have been remanded to Judicial Custody for more than 15 days at a time, while in this case each remand was more than two months. Such remand was bad in law, on this account.*

83. The first proviso to Section 346(2) reads as under:

“346.----- ...



***Provided that no Court shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:
... ”***

84. However, it may be noted that once the Order taking cognizance has been set aside, the remand order dated 01.05.2025 is not governed by the provision relating to post-cognizance remand; rather it is going to be governed by the provision relating to pre-cognizance remand. The relevant provision is thus, S. 187 BNSS (previously 167 Cr.P.C), which is extracted, as under:

“187. Procedure when investigation cannot be completed in twenty-four hours.

(1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2)The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has not been released on bail or his bail has been cancelled, authorize, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or



commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3)The Magistrate may authorize the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this sub-section for a total period exceeding-(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of ten years or more;(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

(4)....”

85. However, a bare perusal of this provision reveals that the statutory mandate, is unambiguous. The power to remand is restricted to a maximum of fifteen days at one time. The Ld. Special Judge’s Order remanding the Petitioner for a period of two months, is in patent violation of the express statutory provision contained in Section 187 of BNSS, 2023. Such an order is *ex-facie* illegal and cannot be sustained.

86. Now, once the remand Order is set aside, there are two consequences that necessarily follow.

87. *First and foremost*, after the cognizance is taken, the Petitioner was necessarily required to be remanded to judicial custody, under Section 346 BNSS. When the Order of Cognizance is set aside, the post- cognizance remand under Section 346, cannot be held to be bad in law.



88. This was explained by the Supreme Court in the case of Suresh Kumar Bhikamchand Jain vs. State of Maharashtra (2013) 3 SCC 77 in the context of default being under Section 167(2)(a)(ii), that the powers for remand pre-cognizance was under Section 167 Cr.P.C., while post-cognizance it was under Section 309 Cr.P.C. It was held that if the cognizance is not taken and the person is remanded to custody beyond a period of 60 days, this power is deemed to have exercised under Section 167 Cr.P.C.

89. The Supreme Court in, Natabar Parida & ors. v. State of Orissa, (1975) 2 SCC 220 held that, once cognizance is taken or the trial commences, the power to remand the accused shifts from Section 167 [corresponding to section 187 B.N.S.S.], to Section 309(2) [corresponding to section 346(2) B.N.S.S.], of the Code. Under the first proviso to Section 309(2), no single remand may exceed fifteen days at a time. Further, the custody contemplated by Section 309 is judicial custody alone and not police custody, the object being that after the commencement of inquiry or trial the accused ought not to remain under police influence.

90. The **second aspect** is what are the consequences of the remand being more than 15 days, at one instance. It may be noted that there was no objection taken to the long remand by the Petitioner, despite being presented on every date. Secondly, it may observed that under the old Cr.P.C., the post-cognizance remand was under Section 309 Cr.P.C, wherein there was no limitation on the period of remand provided. The Court of Sessions could give post-cognizance remand for any number of days. The Sessions Judge under the PMLA enjoys the status of Sessions Judge.



91. It is no doubt, true that the position of law has been changed by the Section 346 BNSS, which has put an embargo on post-cognizance remand by any Trial Court being more than 15 days and, therefore, on account of change of law apparently, there still remains some confusion with the Trial Courts. Be as it may, this can never be a ground to discount any specific provisions of law.

92. In the given circumstances, the Accused may claim a right to Bail; but till then, his Judicial Custody has to be extended, in accordance with law.

93. In the present case, the Petitioner had not been granted Bail, and in such a situation there was no option, but to remand him to Judicial Custody. There may have been a *violation of the number of days*, but it cannot be held to be a patent illegality or a ground of release. It is a *mere irregularity on which the Petitioner may seek Bail*, but no such relief can be granted in exercise of the jurisdiction under Section 482 Cr.P.C.

94. The Petitioner is at liberty to move an Application for Bail on the ground of the over-extended post-cognizance remand, for a period beyond the period specified by the Legislature.

95. The Counsel for the Respondent has also argued that **the delay and laches on the part of the Petitioner**, while invoking the inherent jurisdiction of this Court, is also as aspect to be considered.

96. In the case of State of U.P. vs. Sudhir Kumar Singh (2021) 19 SCC 706, it was observed that no prejudice is caused to a person complaining of the breach of natural justice, which such person does not dispute the case against him. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in



which the Court finds on facts, that no real prejudice has been caused to the person complaining of breach of natural justice.

97. The petitioner, herein has been transferred to Guwahati, *vide* Order dated 23.07.2025, wherein he is in judicial custody of the Guwahati Court. The Petitioner may have been remanded for extended period between January, 29 till he was shifted to Guwahati, beyond 15 days, as is permitted, but neither the Petitioner had raised any objection nor any prejudice has consequently, been caused to the Petitioner. There exists no ground to quash the Complaint.

V. Whether petitioner is entitled to be released on Bail:

98. The Petitioner has contended that since his fundamental rights under Article 14, 21 and 22(1) have been violated, he be released on Bail.

99. In this context, reference be made to Union of India vs. Kanhaiya Prasad 2025 SCC OnLine SC 306, wherein it has been reiterated that Section 45 of PMLA starts with a non-obstante clause and has an overriding effect on the general provisions of the Code of Criminal Procedure in case of conflict between them. Section 45 imposes *two conditions* for the grant of bail to any person, accused of an offence punishable under PMLA which are : (i) the prosecutor must be given an opportunity to oppose the application for bail; and (ii) the Court must be satisfied that there are reasonable ground to believe that the accused person is not guilty of such offence and that he is not liable to commit any offence while on bail.

100. Similar observations have been made by the Three Judge Bench in the case of Vijay Madan Lal Choudhary (supra) that PMLA is a special legislation to deal with the subject of money laundering activities, having



trans-national impact on the financial systems including sovereignty and integrity of the country. It is no ordinary offence. To deal with such serious offence, stringent provisions are provided in 2002 Act including for attachment and confiscation of proceeds of crime and to prosecution the person involved in the process or actively connected with the proceeds of crime. *The twin conditions under Section 45 PMLA* though restrict the right of the accused to grant of Bail, but it cannot be said that these conditions impose absolute restraint on the grant of Bail. The Court while dealing with the Application for Bail, need not get deep into the merits of the case, but will have to weigh the evidence to conclude whether the twin conditions of Section 45 PMLA are satisfied while granting Bail.

101. Similar observations have been made by the Supreme Court in *Tarun Kumar vs. Directorate of Enforcement* 2023 SCC OnLine SC 1486.

102. Therefore, no Bail can be granted in the present facts and circumstances, but the Petitioner is at liberty to move an appropriate Application for Bail and agitate these grounds, for seeking Bail.

103. It is also significant to refer to Lakshay Vij vs. Directorate of Enforcement CrI. M.C.246/2025; Gaurav Khurana and Anr. vs. E.D. CrI.M.C.2412/2025, Radhika Chanana vs. ED CrI. M.C.3164/2025; Hemant Dahiya & Anr. vs. Directorate of Enforcement CrI. M.C.351551/2025; Mudit Aggarwal vs. Directorate of Enforcement CrI. M.C.3564/2025; Jaspreet Singh Bagga vs. Directorate of Enforcement CrI. M.C.1458/2025 while setting aside the Order on Cognizance on the ground of no hearing granted under Section 223 BNSS, it has been observed that the Bail



Applications, if any, may be moved by the Petitioner in the Trial Court, which shall be decided on their own merits.

104. It is evident that while the remand has been challenged, it cannot be a ground to forthwith release of the Petitioner for which he is at liberty to move the Bail Application.

Conclusion:

105. In view of the aforesaid, the Order dated **18.12.2024**, taking cognizance on the Complaint, is **hereby, set aside** and the Id. Special Judge (PMLA) is directed to give a hearing to the Petitioner, before proceeding to take cognizance. The petitioner is at liberty to seek bail, in accordance with law. The pending Application(s) are disposed of, accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

MAY 29, 2026/va