



2025:HHC:10209

**Gian Chand Vs. State of Himachal Pradesh
& Ors.**

Cr. WP No.2 of 2025

23.01.2025 Present: Mr. Vikram Chaudhari, Sr. Advocate, through Video Conference, Mr. Tara Singh Chauhan, Sr. Advocate with Mr. Surya Chauhan, Ms. Diya Bhagwan and Ms. Mannat Kaur, Advocates, for the petitioner.

Mr. Diwakar Dev Sharma & Mr. Harinder Rawat, Addl. Advocates General with Mr. Manish Thakur and Ms. Niyati Mohan, Deputy Advocates General, for respondents No.1 and 2/State.

Mr. Suryaprakash V. Raju, Addl. Solicitor General of India with Mr. Zohe B. Hussain, Mr. Hitarth Raja and Mr. Suradhish Vats, Advocates, through Video Conferencing, Mr. Balram Sharma, Deputy Solicitor General of India with Mr. Rajeev Sharma, Advocate, for respondent No.3/Union of India.

Status reports dated 20.01.2025 and 22.01.2025 filed by the respondent/State. The same are placed on record. Copy whereof have been supplied to the learned counsel for the petitioner.

List on **25.02.2025**.

Cr. MP No.62 of 2025

Heard counsel for the petitioner. Perused the pleadings.

At the very outset learned Senior Counsel for the petitioner submits that he would not be pressing relief 'C' as is claimed in the petition.

In the case at hand in a nutshell as per the Enforcement Directorate on account of illegal sand/mineral



mining operations conducted by the present applicant in several parts of District Hamirpur and Kangra including the Riverbed of Beas criminal activity relating to scheduled offences under the Prevention of Money Laundering Act (hereinafter for the purpose of brevity referred to as PML Act) has been committed by the applicant. As a consequence of which, it is alleged that proceeds of crime have been generated. From the same, it is contended on behalf of the Enforcement Directorate, the applicant has purchased a stone crusher in Uttarakhand.

Learned counsel appearing on behalf of the applicant submits that since part of the cause of action has arisen within the jurisdiction of this Court, therefore, the present petition is maintainable. In this context, attention of this Court is invited to Article 226(2) which reads as follows:

"226. Power of High Courts to issue certain writs:

(2)The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

In order to buttress the aforesaid submission, reliance has been placed upon 2000 (7) SCC 640 titled



Navinchandra N. Majithia vs State of Maharashtra & Others and 2014 (9) SCC 129 titled ***Dashrath Rupsingh Rathod vs State of Maharashtra & Another.***

Per contra, learned Addl. Solicitor General of India appearing on behalf of the Enforcement Directorate has placed reliance on 2019 (5) SCC 266 titled ***Serious Fraud Investigation Office Vs. Rahul Modi and Another.*** In the judgment cited on behalf of the Enforcement Directorate, the accused had been produced before the Judicial Magistrate, Gurugram. The said Judicial Magistrate had remanded the accused to custody and had further directed that the accused be produced before the Special Court, Gurugram. The arrest in the case at hand was made at Delhi. The accused was kept in custody in Delhi. Based on the aforesaid, it was contended that the High Court at Delhi would be competent to entertain and consider the writ petition preferred. In the same, following reliefs were prayed for:

"8. On 17.12.2018 Writ Petition (Criminal) Nos.3842 & 3843 of 2018 were filed under Articles 226 & 227 of the Constitution of India read with Section 482 of Cr.P.C. by Rahul Modi and Mukesh Modi respectively in the High Court of Delhi. It was submitted that with the expiry of period within which the investigation had to be completed in terms of order dated 20.06.2018, all further proceedings including the arrest of the respondents were illegal and without any authority of law. The Writ Petitions therefore prayed for declaration that



the investigation carried out after 19.09.2018 was illegal and without jurisdiction and also prayed for Writ of Habeas Corpus directing release from illegal arrest made on 10.12.2018. The prayers in both the petitions were almost identical and were as under:

A. "Issue a writ of mandamus or any other appropriate writ/direction/order in the nature of a writ declaring that the power of Respondents No.2 to 4 to carry out investigation under Section 202(2) Companies Act, 2013 after the expiry of the time period is illegal and unconstitutional.

B. Issue a writ of mandamus or any other appropriate writ/direction/order in the nature of a writ declaring that the investigation carried out after 19.09.2018 in File No.SFIO/INV/AOI/2018-19-AGC & L/842-966 vide order No.07/115/2018-CL-II dated 20.06.2018 as illegal and without jurisdiction.

C. Issue a writ/direction/order declaring the arrest of the Petitioner dated 10.12.2018 at New Delhi in the office of Respondent No.2 by Respondent No.3, and proceeding emanating therefrom being without jurisdiction and illegal and the Petitioner Rahul Modi be released forthwith.

D. Issue a writ of Habeas Corpus directing immediate release of the Petitioner herein Sh. Rahul Modi from the illegal arrest dated 10.12.2018 at New Delhi and consequent illegal custody from Respondent No.2 to 4 at;"

In the aforesaid backdrop, the Apex Court after relying on the judgment cited by the applicant noted herein before was of the considered view that the High Court at



Delhi should not have entertained the challenge. Relevant extract of the judgment is being reproduced herein below:

"26. It is true that the decision in Dashrath Rupsingh Rathod was in the context of a criminal complaint under Section 138 of the Negotiable Instruments Act and not while dealing with an issue of maintainability of a writ petition under Article 226 of the Constitution. It cannot, therefore, be said that in the present case, the High Court completely lacked jurisdiction to entertain the petition. However, since the challenge was with respect to the detention pursuant to valid remand orders passed by the Judicial Magistrate and the Special Court, Gurugram, in our considered view, the High Court should not have entertained the challenge. If the act of directing remand is fundamentally a judicial function, correctness or validity of such orders could, if at all, be tested in properly instituted proceedings before the appellate or revisional forum. In the circumstances, even if the arrests were effected within the jurisdiction of the High Court, since the accused were produced before a competent court in pursuance of Sections 435, 436 of the 2013 Act, the High Court ought not to have entertained the writ petition. However, since the High Court considered the matter from the standpoint whether the initial order of arrest itself was valid or not and then found that such illegality could not be sanctified by subsequent order of remand, we may deal with that question now."

Learned counsel for the applicant submits that in the case at hand, from a perusal of relief clause, it is evident that not only has the arrest been challenged, but even the remand orders have been challenged. Besides



the aforesaid, it is submitted by the learned counsel that in view of the law laid down in Criminal Appeal No.2493 of 2024, titled Arvind Kejriwal Vs. Directorate of Enforcement, decided on 12.07.2024, the remand orders in the case at hand cannot validate an illegal arrest. In the aforesaid facts and attending circumstances all that is being examined at this stage is a plea for grant of bail in terms of Section 45 of PML Act with respect to the issue of arrest in the case at hand.

For raising a presumption under Section 24 of the PML Act, the foundational facts as per the law laid down in Arvind Kejriwal's case (supra) which must exist are as follows:

"criminal activity relating to the scheduled offence has been committed; property in question has been derived or obtained directly or indirectly by any person as a result of that criminal activity; and the person concerned is directly or indirectly involved in any process or activity connected with the said property being proceeds of crime, have to be established. It is only on establishing the three facts that the offence of money laundering is committed."

From the perusal of the grounds of arrest and the reasons to believe appended along with petition as Annexure P-34 and P-35 respectively, it is evident that the Enforcement Directorate had received formal complaints and intelligence inputs indicating illegal sand/mineral mining being done by the applicant in the case at hand.



Based on the aforesaid, discreet inquiries were got conducted, details whereof are contained in the *panchnama* report dated 17.06.2024.

By virtue of an amendment made in the year 2019, proviso in Sub-Section 1 of Section 17 of the 2002 Act which required that no search shall be conducted unless in relation to the scheduled offence a report has been forwarded to a Magistrate under Section 157 of the 1973 Code or a complaint has been filed before a Magistrate in regard of such offence stands omitted. In this respect, it would be appropriate to refer to the judgment reported as **2022 SCC Online SC 929, titled Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors.**

"311. However, for strengthening the mechanism, including regarding prevention of money-laundering, the Parliament in its wisdom deemed it appropriate to drop the proviso in sub-section (1) of Section 17 of the 2002 Act, thereby dispensing with the condition that no search shall be conducted unless in relation to the scheduled offence a report has been forwarded to a Magistrate under Section 157 of the 1973 Code or a complaint has been filed before a Magistrate in regard to such offence. As it is indisputable that the 2002 Act is a special Act and is a self-contained Code regarding the subject of searches and seizures in connection with the offence of money-laundering under the 2002 Act, coupled with the fact that the purpose and object of the 2002 Act is prevention of money-laundering; and the offence of money-laundering being an



independent offence concerning the process and activity connected with the proceeds of crime, the deletion of the first proviso has reasonable nexus with the objects sought to be achieved by the 2002 Act for strengthening the mechanism of prevention of money-laundering and to secure the proceeds of crime for being dealt with appropriately under the 2002 Act.”

The aforesaid discreet inquiries got conducted in the case at hand revealed that the applicant is engaged in illegal sand/mineral mining at various place in Kangra and Hamirpur District including the Beas riverbed. Since the aforesaid acts entailed scheduled offences namely Sections 120-B, 411 and 420 of IPC and Section 15 of the Environment Protection Act, 1986. ECIR No.ECIR/HQ/01/2014 was recorded on 02.07.2024 qua offences of money laundering.

During the course of investigation under the PMLA, search proceedings were conducted on 4/5.07.2024, whereupon it transpired that the applicant had purchased a stone crusher in Saharanpur, Uttar Pradesh for a consideration of Rs.4.70 crores in the year 2023-24. Out of Rs.4.70 crores, Rs.1.6 crores were paid in cash generated from the sale of illegal mined minerals in the State of H.P.

On the basis of seizures made at the residential house of one Sanjay Sharma, documents/papers/ledgers relating to sale of illegally mined minerals at the stone crushers owned by the applicant in the State of H.P. were



seized. The aforesaid papers/documents/ledgers did not match with the data available in Tally with respect to the stone crushers owned by the applicant. In the Tally, names of persons were also found to whom illegally mined minerals excavated at the stone crushers in the State of H.P. had been sold. Statements of concerned individuals were also recorded. Besides the aforesaid, relevant material in the shape of challans issued to the applicant by the mining department were also collected.

On 07.11.2024, a FIR bearing No.360 was got registered by the Mining Inspector, Mining Department, District Magistrate Office Saharanpur, Uttar Pradesh under Sections 379, 413, 415, 417, 418, 424, 471 and 120B of the IPC, Section 3(2) of the Prevention of Damage to Public Property Act, 1984 and Sections 4 and 21 of the Mines and Minerals (Regulation and Development) Act, 1957. As a consequence of the aforesaid, in the ECIR bearing No.ECIR/HQ/1/2014 by way of an addendum scheduled offences under Sections 413, 417, 418, 422, 471 and 120B of IPC were added and the FIR bearing No.360 was merged in the aforesaid ECIR. In the aforesaid background, the applicant was arrested under Section 19 of the Act on 18.11.2024 at 8:21 PM. At the time of arrest, both the grounds of arrest and reasons to believe had been supplied to the applicant. The reasons to believe at page 427 of the



paper book contained reasons with respect to custodial interrogation of the applicant.

On account of criminal activity relating to scheduled offences, proceeds of crimes were generated which were used to purchase a stone crusher in Saharanpur, Uttar Pradesh. Prosecution of a person for offences of money laundering under the Act gets triggered if there exists proceeds of crime within the meaning of Section 2(i)(u) of the Act. Prior registration of a FIR with respect to a scheduled offence is not a *sine qua non* for action under the PMLA. In this regard, reference can be made to ***Vijay Madanlal Choudhary Vs. Union of India***.

Relevant extract is reproduced herein below:

"Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any.



On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2000 Act, enabling him to take further action under the Act in that regard."

In view of the aforesaid, the argument raised on behalf of the applicant that relevant material has been ignored i.e. out of six FIRs mentioned in the grounds of arrest, four stand cancelled, the 5th does not pertain to the applicant and the 6th FIR does not deal with any scheduled offence, prima facie is of no consequence at this stage. The aforesaid FIRs were only indicative of the fact that there is rampant illegal mining in the area in question. Besides the aforesaid, quashing of the order of stoppage of one of the stone crushers of the National Green Tribunal (NGT) by the Hon'ble High Court is also of no avail to the applicant at this stage.

At this juncture, the Court cannot go into the correctness of the opinion formed or sufficiency of material on which it is based. The correctness of facts cannot also be enquired into at this stage except where the facts found existing are not supported by any evidence or the finding is so perverse that no reasonable man would say that the



facts and circumstances exists. Facts in the case at hand are duly supported by material on record.

A bare reading of Section 19 reflects the pre-conditions and requirements which must be satisfied prior to the arrest of a person. The conditions are as follows:

- (i) The officer must have material in his possession.*
- (ii) On the basis of such material, the authorized officer should form and record in writing, "reasons to believe" that the person to be arrested is guilty of offence punishable under the PML Act.*
- (iii) The person arrested, as soon as may be, must be informed of the grounds of arrest.*

The facts, in the case at hand, made out from the grounds of arrest and reasons to believe prima facie reflect that the officer, in the case at hand, had material in his possession, on the basis of which in writing reasons to believe were recorded, that the applicant, who is to be arrested is guilty of the offence under the Act. As is the requirement of law, grounds of arrest and reasons to believe were supplied to the applicant upon his arrest. The conclusion drawn prima facie appears to logically flow from the facts. Prima facie neither there exists any error of nor there appears to be any improper exercise of power.

In view of the aforesaid, I am of the considered view that no case for grant of bail has been made out in terms of Section 45 of the PML Act, as there exist reasonable grounds for believing that the applicant is guilty of such offence. Moreover, taking into account the



2025:HHC:10209

antecedent of the applicant, his propensities, the way and manner in which the applicant is alleged to have committed the offence, in my considered view, the applicant is likely to commit similar offences, if enlarged on bail in the future. Necessity of arrest, in the case at hand, has been made out in the reasons to believe (Page 427 of the paper book). No case is made out for grant of bail at this stage.

(Bipin C. Negi)
Vacation Judge

23rd January, 2025
(Gaurav Rawat)