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

% ***Reserved on: 03.04.2024***
Decided on: 09.04.2024

\+ **W.P.(CRL) 985/2024 & CRL.M.A. 9427/2024**

ARVIND KEJRIWAL ..... Petitioner

Through: Dr. Abhishek Manu Singhvi, Mr. Vikram Chaudhari, and Mr. Amit Desai, Senior Advocates with Mr. Vivek Jain, Mohd. Irshad, Mr. Rajat Bhardwaj, Mr. Karan Sharma, Mr. Rajat Jain, Mr. Mohit Siwach, Mr. Kaustubh Khanna, Mr. Rishikesh Kumar, Mr. Shailesh Chauhan, Mr. Sadiq Noor, Mr. Mehul Prasad, Ms. Priyanka Sarda, Ms. Sheenu Priya and Ms. Princy Sharma, Advocates.

versus

DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. S.V. Raju, learned ASG with Mr. Zoheb Hossain, Special Counsel for ED, Mr. Annam Venkatesh, Mr. Arkaj Kumar, Mr. Vivek Gurnani, Mr. Hitarth Raja, Ms. Abhipriya Rai, Mr. Kartik Sabharwal, Mr. Vivek Gaurav, Mr. Agrimaa Singh, Mr. Kanishk Maurya and Mr. Ritumbhara Garg, Advocates for ED along with Ms. Bhanupriya Meena, DD, Mr. Gaurav Saini, ALA and Mr. S.K. Sharma, IO for ED.

CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

J U D G M E N T

INDEX TO THE JUDGMENT

SWARANA KANTA SHARMA, J.

EXORDIUM

1. On 21.03.2024, a search was conducted by the Directorate of Enforcement at the official residence of Sh. Arvind Kejriwal, petitioner herein, who is the Chief Minister of the State of Delhi. After the search, he was served with grounds of arrest and was arrested on the same day at 09:05 PM by the Directorate of Enforcement in connection with ECIR No. HIU-II/14/2022 regarding his involvement in the offence of money laundering with regard to Delhi Excise Policy 2021-2022. After arrest, petitioner was produced before the learned Special Judge (PC Act) CBI-09 (MP/MLA Cases), Rouse Avenue Courts, Delhi *('learned Special Court')*, where the Directorate of Enforcement had sought his custody for the purpose of interrogation which was granted *vide* order dated 22.03.2024.

2. During the hearing of the present case, this Court was informed that after filing of the present petition, the learned Special Court was pleased to further extend remand of the petitioner to custody of the respondent *vide* another order dated 28.03.2024 till 01.04.2024. The present petition came up for hearing before this Court initially on 27.03.2024 when the petitioner was running in custody of the Directorate of Enforcement by a judicial order. The Court is informed that the petitioner herein has now been remanded to judicial custody by the learned Special Court *vide* order dated 01.04.2024 till 15.04.2024.

3. The **present petition** under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) **challenges the arrest of the petitioner** by Directorate of Enforcement on the ground that the arrest was in violation of Section 19 of Prevention of Money Laundering Act, 2002 (*'PMLA'*) and it has been prayed that the arrest order dated 21.03.2024 and the proceedings pursuant thereto be declared illegal, *non-est*, arbitrary and unconstitutional. Further, it is prayed that the order *vide* which the petitioner was remanded to custody of Directorate of Enforcement be also quashed on the grounds of it being passed in a mechanical and patently routine manner.

4. Before proceeding further, this Court would clarify at this stage itself that **the present petition is not an application seeking grant of bail, but release on ground of arrest of petitioner being illegal** and in violation of principles laid down by the Hon'ble Supreme Court in case of ***Pankaj Bansal v. Union of India*** *2023 SCC OnLine SC 1244*.

FACTUAL BACKGROUND

5. The brief background of the case is that the present case has been registered by the Directorate of Enforcement in relation to the predicate offence case registered by the Central Bureau of Investigation (*'CBI'*). On 17.08.2022, case bearing RC No. 0032022A0053 had been registered by the CBI for offences punishable under Section 120B read with Section 447A of the Indian

Penal Code, 1860 (*'IPC'*) and Section 7 of Prevention of Corruption Act, 1988, (*'PC Act'*) on the basis of a complaint dated 20.07.2022 made by the Lieutenant Governor, GNCTD and the directions of competent authority conveyed by Director, Ministry of Home Affairs (*'MHA'*), Government of India, through letter dated 22.07.2022 and also based on some sourced information, in relation to the irregularities committed in framing and implementation of excise policy of GNCTD for the year 2021-2022. The CBI had filed a chargesheet dated 25.11.2022, cognizance of which was taken by the learned Special Court on 15.12.2022. Thereafter, on 25.04.2023 and 08.07.2023, two supplementary chargesheets had also been filed before the learned Special Court respectively, against a total of 16 accused persons. It is the case of CBI that while the excise policy of GNCTD was at the stage of formulation or drafting, the accused persons had hatched a criminal conspiracy, in furtherance of which some loopholes had intentionally been left or created in the policy, which were meant to be utilised or exploited later on. Further, huge amount of money was paid as kickbacks in advance to the public servants involved in commission of the alleged offences and in exchange of undue pecuniary benefits to the conspirators involved in the liquor trade. As alleged, kickbacks of around Rs. 20-30 crores in advance were paid to accused Sh. Vijay Nair, Sh. Manish Sisodia and some other persons belonging to the ruling political party in Delhi, and the other public servants involved in conspiracy by some persons in the liquor business from South India (*'South Group'*) and these kickbacks were found to have been returned back to them

subsequently out of the profit margins of wholesalers holding L-l licences and also through the credit notes issued by the L-l licensees to the retail zone licensees (*'L-7Z'*) related to the South liquor lobby. It is further alleged that as a result of criminal conspiracy, a cartel was formed between three components of the said policy, i.e. liquor manufacturers, wholesalers and retailers, by violating provisions and the spirit of liquor policy, and all the conspirators had played an active role to achieve the illegal objectives of the said criminal conspiracy, result in huge losses to the Government exchequer and undue pecuniary benefits to the public servants and other accused involved in the said conspiracy.

6. The present ECIR No. ECIR/HIU-II/14/2022 was registered, as offences under Section 120B and Section 7 of the PC Act are scheduled offences under PMLA. The first prosecution complaint by the Directorate of Enforcement was filed on 26.11.2022 and the cognizance was taken by the learned Special Court on 20.12.2022. Thereafter, Directorate of Enforcement has filed five supplementary prosecution complaints before the learned Special Court.

7. The petitioner Sh. Kejriwal was first summoned under Section 50 of PMLA on 30.10.2023, to appear before the respondent on 02.11.2023. Total nine summons were issued to the petitioner during the period between October 2023 to March 2024, however, the petitioner had failed to join the investigation. The petitioner Sh. Kejriwal was arrested in relation to the present case on 21.03.2024 and was produced before the learned Special Court on 22.03.2024, whereby, he was remanded to custody of Directorate of Enforcement

for a period of 6 days and it was then extended by four days *vide* order dated 28.03.2024.

8. The petitioner is before this Court challenging his arrest in the present case and assailing the order dated 22.03.2024 passed by the learned Special Court *vide* which he was remanded to custody of Directorate of Enforcement for a period of 6 days.

SUBMISSIONS ON BEHALF OF SH. ARVIND KEJRIWAL

9. Sh. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the petitioner argues that the **timing of the arrest** of the petitioner i.e., Sh. Arvind Kejriwal who is the sitting Chief Minister of Delhi, straightaway affects '*the level playing field*' in the upcoming Lok Sabha Elections 2024. Sh. Singhvi further contends that *level playing field* is just not a phrase of words but rather it has three vital components. *Firstly*, it is part of 'free and fair elections', *secondly* 'elections' are part of 'democracy' and *thirdly* 'democracy' in turn is a part of 'basic structure' of the Constitution of India. Thus, the timing of the arrest of the petitioner directly hampers the level playing field of free and fair elections to be conducted throughout the nation as the petitioner is a member of the leading opposition party i.e., the Aam Aadmi Party and his arrest directly violates his right to campaign in the upcoming Lok Sabha Elections. Further, the timing of the arrest ensures that Sh. Kejriwal is unable to participate in democratic activities and the effort is to try and disintegrate his Party before even the first vote is cast. Sh. Singhvi argues that the same is

pretty evident from the fact that the first summons issued against Sh. Kejriwal by the Directorate of Enforcement was in October, 2023 and he was arrested on 21.03.2024 which reeks of *mala fide* and it directly damages the basic structure and the level playing field. As argued, the PMLA is sought to be employed to create a non-level playing field for the impending General Elections scheduled to be held from 19.04.2024.

10. Sh. Singhvi, learned Senior Counsel for the petitioner argues that the Directorate of Enforcement had sent nine (09) summons to the petitioner herein under Section 50 of the PMLA over a protracted period of 6 months. The first summon was sent on 30.10.2024 and the last summon was sent on 16.03.2024. The petitioner herein had preferred a Writ Petition before this Court and that the Hon'ble Division bench of this Court did not grant *ad-interim* order staying all the summons under Section 50 of the PMLA sent by the Directorate of Enforcement to the petitioner in relation to the said ECIR, on 21.03.2024. However, the Directorate of Enforcement, on the very same day had arrested the petitioner at about 09:05 PM under Section 19 of PMLA without any justification. It is argued by Sh. Singhvi that at the stage of issuance of summons under Section 50 of PMLA, there existed no formal document indicative of likelihood of involvement of the petitioner herein as an accused of offence of money laundering as held in case of ***Vijay Madanlal Choudhary v. Union of India*** *2022 SCC Online SC 929.* It is contended that it is only the information and evidence collected during the inquiry under Section 50 of PMLA, which may disclose commission of offence of

money laundering and the involvement of the person so summoned under Section 50 of PMLA. In the present case, it is argued that the Directorate of Enforcement did not even collect any evidence at the stage of issuance of summons under Section 50 of PMLA which could have necessitated a formal accusation against the petitioner, let alone an arrest under Section 19 of PMLA. It is further argued there was no attempt to record statement of the petitioner under Section 50 of PMLA even at the residence of the petitioner. Sh. Singhvi states that this is the *second unique feature* of the present case.

11. Sh. Singhvi, learned Senior Counsel for the petitioner further contends that the allegations that Sh. Kejriwal did not respond to the summons of the Directorate of Enforcement is *red herring*, as Sh. Kejriwal has replied to all the nine summons issued by the Directorate of Enforcement. It is stated that the red herring that the Directorate of Enforcement has sent summons so many times, is no answer to saying that the Directorate of Enforcement has material to arrest Sh. Kejriwal. Further reliance has been placed on ***Pankaj Bansal v. Union of India*** *2023 SCC OnLine SC 1244*, wherein the test of arrest has been kept at a higher pedestal as the investigating agency has to satisfy the threshold of '*necessity to arrest*' under Section 19 of PMLA, which has not been met in the present case. Apart from the fact that the necessity to arrest is occasioned by ulterior motives, the only object is to humiliate, insult Sh. Kejriwal and to disable him from campaigning in the present case, as argued by Sh. Singhiv. Moreover, it is submitted that the replies given to the summons of the Directorate of Enforcement were very detailed. It is

further argued that in the facts and circumstances of the present case, Sh. Kejriwal cannot be said to be a flight risk and there can be no material that can be tampered with by Sh. Kejriwal after one and half years, after the case was actually registered.

12. Sh. Singhvi, learned Senior Counsel for the petitioner further argues that the application of remand of the Directorate of Enforcement itself says that they need to find, one and a quarter year later of the registration of FIR by the CBI and six months after the first summon was issued to Sh. Kejriwal, the role of Sh. Kejriwal which is totally outrageous and that this practice cannot continue. In this regard, reliance has been placed on ***V. Senthil Balaji v. State*** *2023 SCC OnLine SC 932*, wherein the Hon'ble Apex Court had held that to effect an arrest, an officer authorized has to assess and evaluate the *'materials in his possession'* and through such materials, he is expected to form reasons to believe that a person has been guilty of an offence under PMLA. However, in the present case, this exercise will be done after the arrest of Sh. Kejirwal which is violative of his fundamental rights.

13. Learned Senior Counsel for the petitioner vehemently contends that the statements which are being relied upon by the Directorate of Enforcement are of negligible evidentiary value to justify an arrest of Sitting Chief Minister of the Capital of India under Section 19 of PMLA, as it is trite law that statements of co-accused cannot be relied upon against Sh. Kejriwal as the same cannot be a starting point for ascertainment of guilt of an accused. In this regard, reliance has been placed on ***Surinder Kumar Khanna v. Directorate of***

Revenue Intelligence (*2018) 8 SCC 271,* ***Haricharan Kurmi v. State of Bihar*** *AIR 1964 SC 1184* and on a very recent judgment by Co-ordinate Bench of this Court in the case of ***Sanjay Jain v. Directorate of Enforcement*** *2024 DHC 1900.* The other statements on which the Directorate of Enforcement has relied upon are of the approvers who have made many contradictory statements earlier. Sh. Singhvi further submits that the statements relied upon by the Directorate of Enforcements such as of Mr. Raghav Magunta, who is son of an MP from Telugu Desam Party which is member of NDA alliance in the upcoming general elections (the ruling party) i.e. Sh. Magunta Srinivasulu Reddy, are not credible since the statements made by Sh. Raghav Magunta before his arrest by the Directorate of Enforcement does not implicate Sh. Kejriwal and out of total eight statements made by Raghav Magunta, no allegations were made in six such statements implicating Sh. Kejriwal. However, astonishingly when Raghav Magunta was granted bail on 18.07.2023 which was not opposed by the Directorate of Enforcement under Section 45 of the PMLA, he had made vague and blatant statements implicating Sh. Kejriwal. It is further argued that another astonishing fact which has been recently revealed is that Sh. Sarath Reddy has donated to the Ruling Party at Center via Electoral Bonds which is also an alarming concern. Further, Sh. Sarath Reddy was coerced to give a statement contrary to his earlier statements and thus by doing so, he had secured no objection of the Directorate of Enforcement for his grant of bail on medical reasons, which was just a back pain, on 08.05.2022. It is this argued that the barter of liberty for statement

under Section 50 of PMLA is writ large on the very face of it and is a very alarming concern. Similarly, statement of co-accused Buchi Babu is completely hearsay without any material or evidence. Moreover, hearsay evidence cannot be relevant evidence as per ***Kalyan Kumar Gogoi v. Ashutosh Agnihotri*** *(2011) 2 SCC 532.* It is argued that as regards the statement of one Sh. C. Arvind, he in no manner has alleged anything against the petitioner with respect to his role in proceeds of crime. It is also vehemently argued that the Directorate of Enforcement has used a selective approach in relying upon statements i.e., the statements which favour the prosecution have been relied upon and the ones which don't, have been kept in the list of un-relied documents. This approach directly violates principles of natural justice, and Article 14 and 21 of the Constitution of India.

14. Sh. Singhvi, learned Senior Counsel also argues that the species called approver, in our history, whether for good motives or bad motives, the courts have dealt with phrases like '*Jaichand'* and *'Trojan Horses'*. The history looks very harshly at these *Jaichands* and *Trojan horses* as they gave '*daga*' (betrayal) and it cannot be relied upon by the Directorate of Enforcement to suffice material in possession as per Section 19 of the PMLA.

15. It is also argued by Sh. Singhvi that the grounds of arrest given to Sh. Kejriwal alleged that Sh. Kejriwal had generated proceeds of crime to the tune of Rs 45 crores, but interestingly, there is no material on record to show the involvement of Sh. Kejriwal in the process or activity related to proceeds of crime, be it one of

concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Moreover, there is no proof that Aam Aadmi Party had received any funds from South Group which was then utilised in Goa Elections. It is argued that this similar ground was raised during the bail application of Sh. Manish Sisodia and the same had been rejected by the Hon'ble Supreme Court in Para 15 of its judgment i.e. ***Manish Sisodia v. CBI & Ors.*** *2023 INSC 956* while holding that there is no specific allegation of involvement of Sh. Manish Sisodia in the transfer of Rs. 45 crores, and likewise there is no specific allegations or act which has been alleged by the Directorate of Enforcement against Sh. Kejriwal and therefore, there is no offence which is made out under Section 3 of PMLA. Further, the allegation in grounds of arrest relating to the role of petitioner in policy formulation does not in any manner show involvement of the petitioner in any crime much less a crime of money laundering. It is stated that the Excise Policy was made in a transparent manner after deliberation with various secretaries/officers of Excise, Planning, Finance & Law department and thereafter approved by ministers and Hon'ble LG of NCT of Delhi. It was an economic policy decision and not subject to review. The said allegation also does not relate to the Directorate of Enforcement's investigation and goes beyond the remit of them investigating it.

16. Sh. Singhvi, learned Senior Counsel further argues that Petitioner cannot be held vicariously liable for a specific offence under Section 3 of PMLA by virtue of Section 70 of PMLA, which

only relates to companies. It is further argued that Aam Aadmi Party which is a political party under Section 2(f) of Representation of Peoples Act, 1951 cannot be held to be a company as the Directorate of Enforcement alleges on grounds of arrest. Further, there is no specific role or act under Section 3 of PMLA establishing that the petitioner is liable vicariously.

17. Thus, it is argued that the present writ petition deserves to be allowed. Therefore, the arrest of the petitioner be declared illegal, arbitrary, *non-est* and the consequent remand order dated 22.03.2024 be set aside and the petitioner be released.

SUBMISSIONS ON BEHALF OF THE DIRECTORATE OF ENFORCEMENT

18. Sh. S.V. Raju, learned Additional Solicitor General (*'ASG'*) appearing on behalf of the Directorate of Enforcement has raised certain **preliminary objections** in relation to the writ petition in question. It is submitted that the present writ petition has been argued by the learned Senior Counsel for the petitioner as if it is a petition for bail and quashing of the ECIR. It is stated that the petitioner *vide* the present writ petition is challenging his arrest in accordance with Section 19 of PMLA and the first remand order passed by the learned Special Court i.e., order dated 22.03.2024. However, at present there are three remand orders passed by the learned Special Court i.e. order dated 22.03.2024 whereby the petitioner was remanded to six days custody of the Directorate of Enforcement, the second one, i.e., order

dated 28.03.2024, whereby the petitioner was further remanded to four days of custody of the Directorate of Enforcement, and thirdly order dated 01.04.2024, whereby the petitioner was remanded to Judicial Custody till 15.04.2024. In this regard, it is submitted that at present his custody is pursuant to the third remand order dated 01.04.2024, which has not been challenged before this Court and even if that order had been challenged, it would be invalid as per Para 6 of order dated 01.04.2024 whereby the petitioner and his counsel before the learned Special Court has categorically stated that they did not oppose the prayer of the Directorate of Enforcement seeking judicial custody remand of the petitioner. **Therefore, the present case is a clear case of acquiescence and waiver.** He argues that on this very ground alone, the petition ought to be rejected, since, even if the earlier orders are bad in law, unless the subsequent orders are set aside, the petitioner is not entitled to any relief. Sh. S.V. Raju, learned ASG further argues that the remand order under challenge i.e., order dated 22.03.2024 as well as the subsequent remand orders dated 28.03.2024, and 01.04.2024 challenged are reasoned orders.

19. Sh. S.V. Raju, learned ASG appearing on behalf of Directorate of Enforcement argues that the first prayer in the main petition is *akin* to habeas corpus and that the present petition is in fact a bail application in the guise of a writ petition, and has been filed by the petitioner to overcome the rigours of Section 45 of PMLA. In support of the said argument, learned ASG places reliance on the decision of Hon'ble Supreme Court in ***Serious Fraud Investigation Office v.***

Rahul Modi (*2019) 5 SCC 266,* and ***State of Maharashtra v. Tasneem Rizwan Siddiquee (****2018) 9 SCC 745.*

20. Sh. S.V. Raju further contends the fact that the offence of money laundering has taken place is beyond any doubt as the learned Special Court has taken cognizance in all five prosecution complaints and in those cognizance orders there are categorical findings that an offence of money laundering has *prima-facie* been committed.

21. Sh. S.V. Raju, learned ASG further argues that all the procedural requirements of Section 19(1) and 19(2) of PMLA as well as Article 22(1) and (2) of the Constitution of India have been complied with by the Directorate of Enforcement. It is argued that the petitioner was arrested on 21.03.2024 at 09:05 PM, and the grounds for his arrest were informed and furnished to him in writing. Moreover, the written grounds of arrest running into 28 pages were served upon the petitioner at 9:05 PM, and the receipt of the same was duly acknowledged by the petitioner in writing. It is further stated that the intimation of arrest was also given to the wife of the petitioner and his lawyers. It is submitted that the arrest of the present petitioner was made following all procedures prescribed under the law in the presence of two independent witnesses who have signed the arrest memo, arrest order, intimation of arrest and inventory of personal search memo. Furthermore, medical examination of the petitioner was duly conducted as per the directions of the Hon'ble Supreme Court, and medical reports were duly produced before the learned Special Court. It is also submitted that in compliance with Section 19(2) of PMLA, the material as required was duly forwarded

to the learned adjudicating authority of PMLA following due procedure as prescribed under law *vide* letter dated 22.03.2024, and an acknowledgment in this regard was also received. It is also submitted that the petitioner was produced before the learned Special Court, on 22.03.2024 at 2:00 P.M. i.e. well within 24 hours of the arrest. Further, the copy of the remand application was duly given to the petitioner and that his team of lawyers was present before the learned Special Court to oppose the remand application. Therefore, it is evident from the very record that the Directorate of Enforcement had complied with all the necessary conditions as per law and the judgment of Hon'ble Supreme Court in ***Pankaj Bansal's case*** *(supra).*

22. Sh. S.V. Raju, learned ASG appearing on behalf of Directorate of Enforcement further submits that the Directorate of Enforcement has sufficient reasons to believe on the basis of material in their possession which demonstrated that the applicant is guilty of the offence of money laundering as the petitioner herein is the '*kingpin*' and key conspirator of the Delhi Excise Policy Scam in collusion with other co-accused persons. The petitioner was involved in the conspiracy of formulation of the Excise Policy 2021-22 to favour certain persons and is also involved in demanding kickbacks from liquor businessmen in exchange of favours. The same is evident from the statement of Sh. C. Arvind dated 07.12.2022 recorded under Section 50 of PMLA (the then Secretary of Sh. Manish Sisodia i.e., other co-accused persons), statement of Sh. Buchi Babu dated 23.02.2023, statement of Sh. Magunta S. Reddy dated 16.07.2023

recorded under Section 50 of PMLA and his statement dated 17.07.2023 recorded under Section 164 of Cr.P.C, statement of Sh. Raghav Reddy dated 26.07.2023 recorded under Section 50 of PMLA and his statement dated 27.07.2023 recorded under Section 164 of Cr.P.C and the statement of Sh. Sarath Reddy dated 25.04.2023 recorded under Section 50 of PMLA. It is argued that the petitioner was actively involved in the use of *proceeds of crime* which was generated through the formulation of the Excise Policy, in the Goa Election campaign of the Aam Aadmi Party of which the present petitioner is the Convenor and the ultimate decision maker.

23. Sh. S.V. Raju, also argues that as per investigation conducted so far, the proceeds of crime of about approximately Rs. 45 Crores which were part of the amount received from the South Group were used in the election campaign of Aam Aadmi Party in Goa in the year 2021-22. This is supported by statements of various persons engaged in the election campaign activities of Aam Aadmi Party in Goa, and have revealed that cash payments were made to them for their work done as Survey workers, Area managers, Assembly managers etc. These persons have also revealed that these payments were made to them in cash, and were managed by one Sh. Chanpreet. These persons and activities related to the election campaign were overall managed by Sh. Vijay Nair and Sh. Durgesh Pathak, Aam Aadmi Party, MLA in Delhi. This shows the utilisation of proceeds of crime. This is also corroborated by one of the Candidates of Aam Aadmi Party in Goa Elections in 2022 who received funds for election expenses in cash from Aam Aadmi Party volunteers in Goa.

24. Sh. S.V. Raju further argues that there is independent evidence corroborating the statements of the approvers, and since cash transactions are involved in the present offence, the attendant circumstances become relevant. It is argued that veracity of statements of approvers cannot be gone into in the present writ petition as it is well settled law that the question of credibility and reliability of witnesses can only be tested during the trial. Reliance in this regard has been placed on the decision of the Hon'ble Supreme Court in ***Satish Jaggi v. State of Chhattisgarh & Ors.*** *(2007) 11 SCC 195.*

25. Sh. S.V. Raju vehemently argues that the petitioner was given multiple opportunities to cooperate with the investigation being conducted by the Directorate of Enforcement. In the present case, a total of nine (09) summons dated 30.01.2023, 18.12.2023, 22.12.2023, 12.01.2024, 31.01.2024, 14.02.2024, 21.02.2024, 26.02.2024 and 16.03.2024 under Section 50 PMLA had been sent to the petitioner but he chose to intentionally disobey the said summons and did not join the investigation. It is also argued that it is trite law that an accused cannot dictate the manner in which investigation has to be conducted by the investigating agency. Therefore, the argument that the petitioner could have been questioned through Video Conferencing for the purpose of recording statement under Section 50 PMLA, should be rejected on the very face of it.

26. It is also argued that the most important point of consideration at this stage is that Aam Aadmi Party is the major beneficiary of the proceeds of crime generated from the Delhi Excise Policy 2021-22. It

is stated that part of the proceeds of crime to the tune of cash of Rs. 45 crores approx. has been utilised in the election campaign of Aam Aadmi Party in Goa Assembly Elections, 2022. It is argued that in this manner, Aam Aadmi Party has committed the offence of money laundering through the petitioner herein and the offences thus are squarely covered by Section 70 PMLA. To support the said contention, it is stated by learned ASG that Aam Aadmi Party is a political party comprising of *'association of individuals'* registered under Section 29-A of the Representation of People Act, 1951. As under Section 29-A of the Act, only an association or body of individual citizens of India can make an application for registration as a political party and since APP is an association of such individuals it got itself registered under the RP Act. It is stated that the petitioner is liable to be prosecuted under Section 70 PMLA also as he is the National Convenor of Aam Aadmi Party and a member of Political Affairs Committee & National Executive, so the petitioner is ultimately responsible for the funds being used in the election expenses including their generation. As the petitioner not only was the brain behind Aam Aadmi Party but also controls its major activities, he is also involved in demands of kickbacks which have *inter-alia* generated proceeds of crime. He further argues that the Directorate of Enforcement has recorded statements under Section 50 PMLA of members of the Aam Aadmi Party who very categorically stated that the petitioner herein is the National Convenor and is overall incharge of the party.

27. Sh. S.V. Raju lastly submits that the investigation *qua* the petitioner herein is at a very nascent stage and that there are certain statements recorded under Section 50 of PMLA which have not been mentioned in the grounds of arrest by the Directorate of Enforcement for the sake of confidentiality as investigation against the petitioner is still going on. In this regard, reliance has been placed on ***Pankaj Bansal v. Union of India & Ors*** *(supra).*

28. Therefore, considering the above arguments, the present writ petition is strongly opposed by the Directorate of Enforcement and it is argued that the petition is liable to be dismissed.

ISSUES IN QUESTION

29. The issues for consideration in the present case are as under:

> *(i) Whether the arrest of petitioner is illegal and arbitrary and whether the arrest order dated 21.03.2024, and the consequent remand order dated 22.03.2023 passed by learned Sessions Court, are in violation of the decision of Hon'ble Apex Court in case of* ***Pankaj Bansal*** *(supra) and thus, liable to be set aside?*
>
> *(ii) Whether the petitioner is entitled to be released from custody in view of his arrest and remand order being illegal ?*

RELEVANT LAW UNDER PMLA TO ADJUDICATE THE ISSUES IN QUESTION

The Power To Arrest Under PMLA

i. Section 19 of PMLA

30. Since the present petition challenges the arrest of the petitioner, it will be essential to consider the mandate of Section 19 of PMLA. The relevant portion of Section 19 reads as under:

> "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 (the 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.…"

ii. Ingredients of Section 19 of PMLA

31. The following ingredients can be culled out from the reading of Section 19(1) of PMLA:

i. The officer concerned must have some ***'material in his possession'***

ii. On the basis of such material, the officer should have a ***'reason to believe'*** that any person has been ***'guilty'*** of an offence punishable under PMLA

iii. Such reasons should be recorded in ***'writing'*** by the officer concerned

iv. The person so arrested should be ***'informed of the grounds of arrest'***

32. The compliance of these conditions is mandatory, which is also fortified by the explanation added to Section 45 of PMLA, which provides as under:

> "45. Offences to be cognizable and non-bailable.
>
> ***
>
> Explanation. — For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and **accordingly the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfillment of conditions under section 19 and subject to the conditions enshrined under this section**."
>
> (Emphasis supplied)

iii. Judicial Precedents Qua Exercise of Power Under Section 19 of PMLA

33. The Hon'ble Apex Court, while dealing with constitutional validity of certain provisions of PMLA and the procedure followed by Directorate of Enforcement, in case of ***Vijay Madanlal Choudhary v. Union of India*** *2022 SCC OnLine SC 929*, had made the following observations:

> "322. Section 19 of the 2002 Act postulates the manner in which arrest of person involved in money-laundering can be effected. Subsection (1) of Section 19 envisages that the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government, if has material in his possession giving rise to reason to

> believe that any person has been guilty of an offence punishable under the 2002 Act, he may arrest such person. Besides the power being invested in high-ranking officials, Section 19 provides for inbuilt safeguards to be adhered to by the authorised officers, such as of recording reasons for the belief regarding the involvement of person in the offence of money-laundering. That has to be recorded in writing and while effecting arrest of the person, the grounds for such arrest are informed to that person. Further, the authorised officer has to forward a copy of the order, along with the material in his possession, in a sealed cover to the Adjudicating Authority, who in turn is obliged to preserve the same for the prescribed period as per the Rules…"

34. Further, in case of ***V. Senthil Balaji v. The State represented by Deputy Director*** *2023 SCC OnLine SC 934*, the Hon'ble Apex Court has explained the mandate of Section 19 of PMLA by way of following observations:

> "**To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons.** The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception."

35. In case of ***Pankaj Bansal*** *(supra)*, the Hon'ble Apex Court while reiterating the principles laid down in case of ***Vijay Madanlal***

Choudhary *(supra*) has made the following observations on the scope of Section 19 of PMLA:

> "14. …In *Vijay Madanlal Choudhary (supra),* ……It was noted that Section 19 of the Act of 2002 prescribes the manner in which the arrest of a person involved in money laundering can be effected. It was observed that such power was vested in high-ranking officials and that apart, Section 19 of the Act of 2002 provided inbuilt safeguards to be adhered to by the authorized officers, such as, of recording reasons for the belief regarding involvement of the person in the offence of money laundering and, further, such reasons have to be recorded in writing and while effecting arrest, the grounds of arrest are to be informed to that person…"

JURISPRUDENCE OF REMAND UNDER CRIMINAL LAW

36. Since the present petition also seeks setting aside of remand order dated 22.03.2024 on the ground that the same was passed by the learned Special Court in a patently mechanical and routine manner, it will be relevant to take note of the legislative framework and judicial precedents on the issues as to what is remand of an accused, the power of Courts to remand an accused to the custody of police, and the essentials to be considered for grant of remand in cases under PMLA.

Power of Remand under Section 167 of Cr.P.C.

37. Relevant portion of Section 167 of Cr.P.C. reads as under:

> "**167. 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 57, and there are grounds for believing that the accusation or information is wellfounded, 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 Judicial Magistrate a copy of the entries in the diary hereinafter prescribed 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, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; 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:

Provided that–

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph 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 not less than ten years;

(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 XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused

> either in person or through the medium of electronic video linkage;
>
> (c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.
>
> Explanation I.—For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.
>
> Explanation II.—If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be…"

38. Thus, Section 167(2) of Cr.P.C. authorises the detention of an arrestee beyond 24 hours and empowers the Magistrate to remand an accused to police custody, though not exceeding the period of 15 days.

39. In case of ***Satender Kumar Antil v. CBI*** *(2022) 10 SCC 51*, the Hon'ble Apex Court had discussed the object and importance of Section 167(2) of Cr.P.C., and relevant portion of the decision reads as under:

> "39. Section 167(2) was introduced in the year 1978, giving emphasis to the maximum period of time to complete the investigation. This provision has got a laudable object behind it, which is to ensure an expeditious investigation and a fair trial, and to set down a rationalised procedure that protects the interests of the indigent sections of society. This is also another limb of Article 21. Presumption of innocence is also inbuilt in this provision. An investigating agency has to expedite the process of investigation as a suspect is languishing under incarceration. Thus, a duty is enjoined upon the agency to complete the investigation

> within the time prescribed and a failure would enable the release of the accused. The right enshrined is an absolute and indefeasible one, inuring to the benefit of suspect."

40. In ***Satyajit Ballubhai Desai v. State of Gujarat*** *(2014) 14 SCC 434*, the Hon'ble Apex Court had explained the role of a Magistrate while passing an order under Section 167(2) of Cr.P.C. by way of following observations:

> "9. Having considered and deliberated over the issue involved herein in the light of the legal position and existing facts of the case, we find substance in the plea raised on behalf of the appellants that the grant of order for police remand should be an exception and not a rule and for that the investigating agency is required to make out a strong case and must satisfy the learned Magistrate that without the police custody it would be impossible for the police authorities to undertake further investigation and only in that event police custody would be justified as the authorities specially at the magisterial level would do well to remind themselves that detention in police custody is generally disfavoured by law. The provisions of law lay down that such detention/police remand can be allowed only in special circumstances granted by a Magistrate for reasons judicially scrutinised and for such limited purposes only as the necessities of the case may require. The scheme of Section 167 of the Criminal Procedure Code, 1973 is unambiguous in this regard and is intended to protect the accused from the methods which may be adopted by some overzealous and unscrupulous police officers which at times may be at the instance of an interested party also. But it is also equally true that the police custody although is not the be-all and end-all of the whole investigation, yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and, has therefore, permitted limited police custody."

41. In ***V. Senthil Balaji*** *(supra)*, the Hon'ble Apex Court emphasised that the power under Section 167(2) of Cr.P.C. is to be

exercised after applying judicial mind and passing a reasoned order. The observations in this regard read as under:

> "53. ...While authorizing the detention of an accused, the Magistrate has got a very wide discretion. Such an act is a judicial function and, therefore, a reasoned order indicating application of mind is certainly warranted. He may or may not authorize the detention while exercising his judicial discretion. Investigation is a process which might require an accused's custody from time to time as authorised by the competent Court. Generally, no other Court is expected to act as a supervisory authority in that process. An act of authorisation pre-supposes the need for custody. Such a need for a police custody has to be by an order of a Magistrate rendering his authorisation.
>
> 54. The words "such custody as such Magistrate thinks fit" would reiterate the extent of discretion available to him. It is for the Magistrate concerned to decide the question of custody, either be it judicial or to an investigating agency or to any other entity in a given case.

Remand in cases under PMLA

42. In case of ***Vijay Madanlal Choudhary*** *(supra)*, the Hon'ble Apex Court had observed that it is the obligation of the officer concerned to produce the arrestee before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within 24 hours and such production is to comply with the requirement of Section 167 of Cr.P.C. The relevant portion of the decision is extracted hereunder:

> "322. ...Not only that, it is also the obligation of the authorised officer to produce the person so arrested before the Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, within twenty-four hours. This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section

> 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section 19(3), it has to be complied by the authorised officer.

43. Similarly, in ***V. Senthil Balaji*** *(supra)*, the Hon'ble Apex Court has analysed the interplay between Section 167 of Cr.P.C. and Section 19 of PMLA and has held that the Magistrate or Court concerned is duty bound to apply its mind to ensure that provisions of Section 19 have been complied with by the prosecuting agency. The relevant observations in this regard are as under:

> "INTERPLAY BETWEEN SECTION 19 OF THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE, 1973:
>
> 67.We have already touched upon the mandatory function that a Magistrate is to undertake while dealing with a case of remand. He is expected to do a balancing act. As a matter of rule, the investigation is to be completed within 24 hours and therefore it is for the investigating agency concerned to satisfy the Magistrate with adequate material on the need for its custody, be it police or otherwise. This important factor is to be kept in mind by him while passing the judicial order. We reiterate that Section 19 of the PMLA, 2002, supplemented by Section 167 of the CrPC,1973 does provide adequate safeguards to an arrested person. If Section 167 of the CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise.
>
> 68.Such a Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the PMLA, 2002. It is his bounden duty to see to it that Section 19 of the PMLA, 2002 is duly complied with and any failure would entitle the arrestee to get released. The Magistrate shall also peruse the order passed by the authority under Section 19(1) of the PMLA, 2002. Section 167 of the CrPC, 1973 is also meant to give effect to

Section 19 of the PMLA, 2002 and therefore it is for the Magistrate to satisfy himself of its due compliance. Upon such satisfaction, he can consider the request for custody in favour of an authority, as Section 62 of the PMLA, 2002, does not speak about the authority which is to take action for non- compliance of the mandate of Section 19 of the PMLA, 2002. A remand being made by the Magistrate upon a person being produced before him, being an independent entity, it is well open to him to invoke the said provision in a given case. To put it otherwise, the Magistrate concerned is the appropriate authority who has to be satisfied about the compliance of safeguards as mandated under Section 19 of the PMLA, 2002.

***

69.The interplay between Section 19(1) of the PMLA, 2002 and Section 167 of the CrPC, 1973, as discussed, would facilitate the application of the latter after the conclusion of the former. One cannot say that Section 167(2) of the CrPC, 1973 is applicable to an authority when it comes to arrest but not to custody.

70.An external aid would be required only when there is a lacuna, especially when the provisions are pari materia. We are conscious of the fact that in certain statutes like Foreign Exchange Regulation Act, 1973 and the Customs Act, 1962, etc. there is an express provision which confers the powers of police officers upon the authorised officers for the purpose of arrest and then custody to the police. That does not mean that there is no power under the PMLA, 2002 read with the CrPC, 1973 to the Authorised Officer to seek custody. There is a fallacy in the said argument. One cannot apply Section 167(2) of the CrPC, 1973 in piecemeal. There cannot be an application of the provision only for an arrest but not for custody. Such an argument is also dangerous from the point of view of an arrestee as the benefit conferred under the proviso to Section 167(2) of the CrPC, 1973 will not be available. Vijay Madanlal Choudhary (supra):

> “88. ...This production is also to comply with the requirement of Section 167 of the 1973 Code. There is nothing in Section 19, which is contrary to the requirement of production under Section 167 of the 1973 Code, but being an express statutory requirement under the 2002 Act in terms of Section

> 19(3), it has to be complied by the authorised officer. ...”

44. Further, in ***Pankaj Bansal*** *(supra)*, the Hon'ble Apex Court after taking note of its earlier decisions in cases of ***Vijay Madanlal Choudhary*** *(supra)* and ***V. Senthil Balaji*** *(supra)*, and while dealing with the issue as to whether the remand order passed by the Sessions Court therein was liable to be set aside, had observed as under:

> “17. In terms of Section 19(3) of the Act of 2002 and the law laid down in the above decisions, Section 167 Cr. P.C. would necessarily have to be complied with once an arrest is made under Section 19 of the Act of 2002. The Court seized of the exercise under Section 167 Cr.P.C. of remanding the person arrested by the ED under Section 19(1) of the Act of 2002 has a duty to verify and ensure that the conditions in Section 19 are duly satisfied and that the arrest is valid and lawful. In the event the Court fails to discharge this duty in right earnest and with the proper perspective, as pointed out hereinbefore, the order of remand would have to fail on that ground and the same cannot, by any stretch of imagination, validate an unlawful arrest made under Section 19 of the Act of 2002.
>
> 18. In the matter of *Madhu Limaye* was a 3-Judge Bench decision of this Court wherein it was observed that it would be necessary for the State to establish that, at the stage of remand, the Magistrate directed detention in jail custody after applying his mind to all relevant matters and if the arrest suffered on the ground of violation of Article 22(1) of the Constitution, the order of remand would not cure the constitutional infirmities attaching to such arrest.”

ANALYSIS & FINDINGS

I. MATERIAL AGAINST THE PETITIONER COLLECTED BY THE DIRECTORATE OF ENFORCEMENT

45. One of the main grounds on which the petitioner Sh. Kejriwal has sought the declaration of his arrest as illegal and arbitrary is that there was no material in the possession of the Directorate of Enforcement which can lead to an inference that the petitioner is guilty of offence of money laundering under the provisions of PMLA, either in his individual capacity or as convenor of a political party.

46. In this regard, it will be crucial to refer to Section 19 of PMLA. Section 19 of PMLA provides that the officer arresting an individual must have some ***'material in his possession'*** on the basis of which the officer should have a ***'reason to believe'*** that the person being so arrested is ***'guilty'*** of an offence punishable under PMLA. It will therefore be crucial to take note of and examine the material which was in possession of the officer concerned in the present case on the basis of which Sh. Kejriwal was arrested.

The Role of Petitioner in Formulation of Delhi Excise Policy 2021-22

47. The case of the Directorate of Enforcement is that Sh. Arvind Kejriwal was allegedly actively involved in the drafting of the 2021-22 Excise Policy, which aimed to favour the South Group, and this

collaboration involved Sh. Vijay Nair, Sh. Manish Sisodia, and the representatives from the South Group.

A. The Directorate of Enforcement has relied upon the statement of ***Sh. C. Arvind***, former Secretary to Sh. Manish Sisodia, who had revealed on 07.12.2022 that in mid-March 2021, Sh. Sisodia had summoned him to Sh. Arvind Kejriwal's official residence. There, along with Sh. Satyendar Jain, they had presented a 30-page draft document to him, stating it was the foundation for the final Group of Ministers (GoM) report. The document proposed granting wholesale licences to manufacturers' agents, allowing one wholesaler licensee to distribute for multiple manufacturers, and fixing the wholesale profit margin at 12%. These points were not discussed in prior GoM meetings and were first seen in the document received at the petitioner's residence. Sh. C. Arvind had complied with instructions, drafting the initial version based on this document, which was later finalised by the GoM and presented to the Cabinet on 22.03.2021.

B. ***Sh. Buchi Babu***, CA of Ms. K. Kavitha, had given a statement on 23.02.2023 that Sh. Arun Pillai had collaborated with Sh. Vijay Nair on policy formulation, with Sh. Nair offering provisions favouring Ms. Kavitha. It was stated that Sh. Nair used to work for Sh. Arvind Kejriwal i.e. the petitioner herein, and Sh. Manish Sisodia. WhatsApp messages retrieved from Sh. Buchi Babu's phone revealed certain Excise Policy provisions, two days before its finalisation by the GoM and

Council of Ministers. Sh. Buchi Babu claimed that Sh. Vijay Nair had sent these provisions in relation to the new excise policy yet to be introduced to him and to Sh. Arun Pillai.

The Role of Petitioner in Demanding Kickbacks & Petitioner's Meetings with the South Liquor Lobby

48. It is also the case of Directorate of Enforcement that the petitioner had demanded kickbacks from the 'South Group' in exchange of awarding favours to them in the formulation and implementation of the Excise Policy 2021-22.

A. In support of this claim, reliance has been placed on the statement of ***Sh. Magunta Srinivasulu Reddy***, recorded on 16.07.2023 under Section 50 of PMLA and on 17.07.2023 under Section 164 of Cr.P.C. wherein he had revealed that during March 2021, he had sought a meeting with the petitioner Sh. Kejriwal regarding liquor business in Delhi, and the office of the petitioner had communicated to Sh. Magunta S. Reddy that he could meet him on 16.03.2021 at 04:30 PM. During the meeting, Sh. Kejriwal had informed him that Ms. K. Kavitha, had already approached him for carrying out liquor business in Delhi and had offered to pay Rs. 100 crores to Aam Aadmi Party, and that Sh. Magunta Reddy could talk to her about the same. Subsequently, Sh. Magunta Reddy had met Ms. K. Kavitha on 20.03.2021, when she had asked for Rs. 50 crore. Due to his MP duties, Sh. Magunta Reddy had delegated negotiations to his son Sh. Raghav Magunta. Sh. Raghav had

informed Sh. Magunta Reddy that they had agreed to pay Rs. 30 crore to Ms. Kavitha, of which Rs. 25 crore was paid to her associates Buchi Babu and Abhishek Boinpalli.

B. ***Sh. Raghav Magunta***, part of the South Group, revealed in his statement dated 26.07.2023 recorded under Section 50 of PMLA and statement dated 27.07.2023 recorded under Section 164 of Cr.P.C. that he had facilitated a cash transfer of Rs. 25 crores to Sh. Abhishek Boinpally and Sh. Buchi Babu, as per an agreement between him, his father Sh. Magunta Reddy and Ms. K. Kavitha. This cash transaction took place in two instalments: Rs. 10 crores paid on 28.03.2021 and Rs. 15 crores paid in June 2021, both arranged by one Sh. Gopi Kumaran. Sh. Raghav further stated that his family, with a long-standing presence in the liquor business in South India, had been exploring opportunities in Delhi's new excise policy and his father had met the petitioner Sh. Arvind Kejriwal in mid-March 2021 to find out business opportunities in the new Delhi Excise policy. It is stated that Sh. Kejriwal had offered support to his father Sh. Magunta Reddy in the new policy in exchange for funding for upcoming elections in Punjab and Goa, and had asked him to coordinate with Ms. K. Kavitha. He further disclosed that on 20.03.2021, his father Sh. Magunta Reddy had met Ms. K. Kavitha at her residence in Hyderabad and she had told him that Sh. Kejriwal had spoken to her and had asked her to collaborate with others for the upcoming Excise Policy, and in lieu of the same, Ms. K. Kavitha had

asked his father to pay Rs. 50 crores out of Rs. 100 crores demanded by Sh. Kejriwal. He had also stated that Sh. Arvind Kejriwal wanted his father to be the face of new excise policy since he was a reputed businessman in South India. Sh. Raghav Magunta also disclosed in his statement that after subsequent discussions with Ms. K. Kavitha and Sh. Buchi Babu, payments totaling Rs. 25 crores were made, which were facilitated by Sh. Gopi Kumaran, and these funds were borrowed from uncle of Sh. Raghav Magunta i.e, Sh. Sudhakar Reddy.

C. ***Sh. Gopi Kumaran*** had corroborated the statement given by Sh. Raghav Magunta on 08.08.2023.

D. In the statement dated 25.04.2023 recorded under Section 50 of PMLA, ***Sh. Sarath Reddy*** had revealed that he had expressed his desire to Sh. Arun Pillai that he wished to meet the top officials of Delhi Government including Sh. Arvind Kejriwal and Sh. Manish Sisodia, and Sh. Arun Pillai had assured him that he would arrange the meeting through Sh. Vijay Nair. He had further revealed that in July-August 2021, upon arriving in Delhi, he was picked up in a black SUV near the Oberoi Hotel and was taken to a government bungalow, which Sh. Vijay Nair claimed, was close to the residence of the present petitioner. Upon reaching there, Sh. Sarath Reddy had a 10-minute meeting with Sh. Kejriwal i.e. the petitioner herein, during which Sh. Kejriwal had assured him of Sh. Vijay Nair's capabilities in handling any issues related to their business,

which means liquor business. The discussion also touched upon the new liquor policy, which Sh. Kejriwal mentioned would be beneficial for all parties involved.

It will be crucial to note at this stage that Sh. Vijay Nair as per statements of all the witnesses and approvers was a person who was in touch with all concerned from whom kickbacks were demanded and received and he was an alleged link between the majority of the co-accused persons and the present petitioner Sh. Kejriwal.

Petitioner's Association with Co-accused Vijay Nair

49. As per case of Directorate of Enforcement, co-accused Sh. Vijay Nair is a close associate of the petitioner Sh. Arvind Kejriwal. Though, admittedly he had no role or position in the Delhi Government or in Delhi Excise Department, but as per statements of all the witnesses and approvers he acted as a broker/liaison/ middleman on behalf of the top leaders of the Aam Aadmi Party for getting bribes/kickbacks from various stakeholders in the Delhi Liquor business in exchange of favourable outcomes i.e. the changes carried out in the new Excise Policy of 2021-22. It is also alleged that Sh. Vijay Nair had also threatened the stakeholders that the changes suitable/desired by them may not go through entirely if they do not concede to his demands.

50. ***Sh. Vijay Nair*** in his statement dated 18.11.2022 had admitted that he used to live in a government bungalow which was officially allotted to a Cabinet Minister Sh. Kailash Gehlot, without any official

authorization, and this bungalow was situated close to the residence of the petitioner Sh. Kejriwal. He had also disclosed that he used to operate from the camp office of the present petitioner which is inside the official residence of present petitioner Sh. Arvind Kejriwal.

51. The statement of the approvers and the witnesses *prima facie* reveal during investigation, as alleged by the respondent, that Sh. Vijay Nair had received kickbacks to the tune of Rs.100 crores from the South Liquor Lobby, on behalf of the petitioner Sh. Kejriwal and Aam Aadmi Party.

Role of Petitioner, as National Convenor of Aam Aadmi Party, in Utilisation of Proceeds of Crime

52. As per the case of Directorate of Enforcement, the investigation had revealed that proceeds of crime of about Rs. 45 crores, which was part of the bribes received from South Group, was used in the election campaign of the Goa elections.

53. It was revealed by Sh. Dinesh Arora on 01.10.2022 in his statement that on the instructions of Sh. Vijay Nair, he had coordinated a transfer of sum of Rs. 31 crores via hawala transactions, along with Sh. Abhishek Boinpally, Sh. Rajesh Joshi, and Sh. Sudhir. Sh. Abhishek Boinpally represents the South Group, Sh. Dinesh Arora is close to Sh. Manish Sisodia, Sh. Sudhir is linked to Vijay Nair, and Sh. Rajesh Joshi owns **M/s Chariot Productions Media Pvt Ltd, which handled Aam Aadmi Party's Goa election campaign.**

54. Upon scrutinising the **vendors** of M/s Chariot Productions involved in outdoor campaigning of Aam Aadmi Party, it was discovered that several vendors had received payments *'partly in cash and partly through bills'*. For instance, M/s. Grace Advertising, whose employee was **Sh. Islam Qazi** had disclosed in statements dated 12.12.2022 and 23.12.2022 that he had made an invoice for only a partial amount as the remainder was paid to him in cash. Further, he had facilitated the engagement of another vendor, M/s. Sparks Entertainment, with M/s. Chariot Productions, thereby informing one Sh. Aaron Schubert D'souza that payments by the Aam Aadmi Party would be made both in cash and through bills. Furthermore, Sh. Islam Qazi admitted to receiving Rs 6.29 lakhs *via* hawala operators in Mumbai. Subsequent investigations revealed that Sh. Anand Vyas and Sh. Anil Patel served as the Angadiyas in Mumbai, who had provided Rs 4.25 lakhs and Rs 2.45 lakhs in cash to Sh. Islam Qazi, respectively. Sh. Anil Patel disclosed in his statement that he had delivered this amount to Sh. Islam Qazi on the instructions of Sh. Sagar Patel who was an employee of R. Kantilal, Angadiya operator based in Goa. Further examination revealed that the Income Tax Department had raided R. Kantilal's Goa office in January 2022, and the data retrieved and analysed from the IT Department indicated that approximately **Rs. 45 crore had been transferred to Goa through *hawala* channels**. This hawala trail has also been investigated by the CBI, as mentioned in its second supplementary chargesheet filed on 08.07.2023.

55. Further, Sh. Sagar Patel had admitted to disbursing huge amounts of cash in Goa to Sh. Prince Kumar (employee of M/s Chariot Productions Media Pvt Ltd), Sh. Chanpreet Singh (used to work for M/s Chariot Productions Media Pvt Ltd.), and Sh. Rajiv Mondkar (brought in by Sh. Chanpreet Singh to contribute in Aam Aadmi Party campaign in Goa). According to seized records from the IT Department and statements of Sh. Sagar Patel, Sh. Prince Sharma had received Rs 16,08,000/- from Sh. Sagar Patel in Goa. This fact is also corroborated by CDR analysis. Further as per records, Sh. Chanpreet Singh had collected Rs. 17,38,14,500/- in over 18 instances from Sh. Sagar Patel between August 2021 and January 2022, and this is also corroborated by CDR analysis. Similarly, as per records and statements recorded, Sh Rajiv Mondkar had collected Rs 27,00,00,000/- in approximately 16 instances from Sh. Sagar Patel between June 2021 and December 2021, which is also corroborated by CDR analysis.

56. As regards the **association of Sh. Chanpreet Singh with Aam Aadmi Party and M/s. Chariot Productions Media Pvt Ltd**, it has been revealed during investigation that he had served as an employee of M/s. Chariot Productions Media Pvt. Ltd. from 2020, later freelancing for them during the May-June 2021 to March 2022 for Goa election campaign of Aam Aadmi Party, and further that he had **received salary** from Aam Aadmi Party in February 2022. He had also received salary from M/s Wizspk Communications and PR Ltd. which had been engaged by the Govt of NCT of Delhi. Moreover, he had also received funds from OML of Sh.Vijay Nair, and these facts

are *prima facie* reflective of his relationship with the Aam Aadmi Party.

57. On **examining the money trail**, the Directorate of Enforcement has discovered that the statements of Sh. Ashok Patel, Sh. Kiran Bhai Patel, and Sh. Jagdish Sharma revealed that **funds transferred to Goa originated from four routes:** approximately Rs. 12 crore from Sh. Ashok Chandu Bhai of M/s Asheel Corporation (Angadiya), Rs. 7.1 crore from Sh. Devang Solanki of M/s KS Enterprise (Angadiya), Rs. 16 crore from Kirti Amba Lal (Angadiya), and Rs. 7.5 crore from M/s Neelkanth (Angadiya), with an additional Rs. 2 crore from M/s Ma Ambey (Angadiya), which is corroborated by the statements of witnesses recorded under Section 50 of PMLA.

58. Further, Sh. Ashok Chandu Bhai of M/s Asheel Corporation had allegedly received approximately Rs. 12 crore from Sh. Rajesh Joshi, owner of M/s. Chariot Productions and Sh. Damodar Prasad Sharma, an employee of Chariot.

59. One Sh. Devang Solanki had disclosed about receiving Rs. 7.1 crore from Sh. Arvind Singh, who was associated with M/s India Ahead News Channel, owned by Sh. Gautam Mootha and **co-owned by Sh. Abhishek Boinpally** of the South Group. Further, analysis of CDR has confirmed communication between Sh. Arvind Singh and Sh. Devang Solanki, Sh. Chanpreet Singh, and Sh. Prince Kumar.

60. The individuals associated with M/s Kirti Amba Lal, M/s Neelkanth, and M/s Ma Ambey, all Angadiyas, had disclosed about receiving funds from Sh. Chandan Kumar Tripathi, who had further confirmed receiving a total of Rs. 25.5 crores from Sh. Ashish

Mathur and Sh. Tara Singh for transfer to Goa. Further investigation revealed that Sh. Ashish Mathur and Sh. Tara Singh were associates of Sh. Vinod Chauhan, and CDR analysis of Sh. Vinod Chauhan revealed his communication with the former Private Secretary of **Ms. K. Kavitha**, a member of the South Group, namely Sh Ashok Kaushik. Sh. Ashok Kaushik in his statements recorded under Section 50 of PMLA admitted coming into contact with accused Sh. Abhishek Boinpally in 2020, who facilitated his employment at M/s India Ahead News channel. Between June 2021 and August 2021, Sh. Ashok Kaushik had collected cash-filled bags from Sh. Dinesh Arora's office, upon the directions of Sh. Abhishek Boinpally, and had delivered them to Sh. Vinod Chauhan.

61. Therefore, it emerges from the records produced before this Court, i.e. the statements of witnesses recorded by the Directorate of Enforcement, including the *hawala* operators as well as survey workers, area managers, assembly managers etc. engaged by the Aam Aadmi Party, corroborated with CDR analysis and material seized during IT raids, that amount of Rs. 45 crores which is allegedly the proceeds of crime in this case, was utilised by the Aam Aadmi Party in the Goa Elections 2024.

Applicability of Section 70 of PMLA

62. As regards the applicability of Section 70 of PMLA, it was argued on behalf of the Directorate of Enforcement that by virtue of Section 70 of PMLA, a *'company'* also includes within its ambit an *'association of individuals'* and a political party is an association of

individuals/citizens as per Representation of Peoples Act, 1951, and thus, Aam Aadmi Party would be deemed to be a company for the purpose of Section 70 of PMLA, and the petitioner being its National Convenor would be incharge of and responsible for its business, thus, being liable under Section 70(1) of PMLA. Sh. Singhvi, on the other hand, had argued that this argument of the respondent was misplaced and liable to be rejected.

63. With regard to the aforesaid, it will firstly be appropriate to refer to Section 70 of PMLA, which reads as under:

> **"70. Offences by companies.**
>
> (*1*) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, **every person who, at the time the contravention was committed, was in charge of and was responsible to the company, for the conduct of the business of the company as well as the company**, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:
>
> Provided that **nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention**.
>
> ***
>
> *Explanation* 1.—For the purposes of this section,**—**
> **(*i*) "company" means any body corporate and includes a firm or other association of individuals; and**
> (*ii*) "director", in relation to a firm, means a partner in the firm.
>
> *Explanation* 2.—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual."

64. Secondly, it would also be appropriate to reproduce relevant provision of the Representation of Peoples Act, 1951, which are as under:

> **2(f) "political party"** means **an association or a body of individual citizens of India** registered with the Election Commission as a political party under section 29A;
>
> ***
>
> **29A. Registration with the Election Commission of associations and bodies as political parties.**—(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

65. After examining the definitions mentioned above, this Court is of the opinion that the definition of *'political party'* as per Section 2(f) of the Representation of Peoples Act is that a political party means an *'association or body of individuals'*. As per Explanation-1 of Section 70 of PMLA, a *'company'* also means an *'association of individuals'*.

66. The Constitution of Aam Aadmi Party has been relied upon by the Directorate of Enforcement which outlines the organisational structure of the party. Article I of the constitution of the Party provides for the office bearers, and places the National Convenor at the highest rank at the National Level. Thus, it is contended that Sh. Kejriwal is incharge of the Party at the National Level. It has been further contended by the Directorate of Enforcement that Sh. Kejriwal is the main driving force behind the Aam Aadmi Party since he controls all its major activities, and he is ultimately responsible for

the funds being used in the election expenses including their generation. In such circumstances, it has been argued by the Directorate of Enforcement that Sh. Kejriwal was, at the time of commission of offence under PMLA, incharge of and responsible for the 'company' i.e. Aam Aadmi Party, and thus, as per Section 70(1) of PMLA, Sh. Kejriwal shall be deemed to be guilty of offences punishable under Section 4 of PMLA.

67. Reliance has also been placed on the statement dated 16.11.2023 of ***Sh. N.D. Gupta*** recorded under Section 50 of PMLA, member of Rajya Sabha and National Treasurer of Aam Aadmi Party, who has revealed that Sh. Arvind Kejriwal is the overall incharge of the Party. He has further **revealed that no approval/sanction of the National Executive or the Political Affairs Committee is taken for deciding election expenses, and that *prabhari* or state Incharge makes these expenses**. He has further revealed that the National Convenor is the one who decides as to who shall head the state elections for their party.

68. Thus, on the basis of this material, it is the case of Directorate of Enforcement that Sh. Kejriwal has been intrinsically involved in the entire conspiracy of the Delhi Excise Policy Scam wherein the proceeds of crime were used in the election campaign of Aam Aadmi Party for Goa Assembly elections, and all these activities were not only done with his knowledge but also with his active collusion.

69. Therefore, suffice it to say that it is a matter of arguments and trial which may be taken up at the time of framing of charge, or any other appropriate stage. This Court notes that there is sufficient

material on record with regard to Sh. Kejriwal being the National Convenor of the Aam Aadmi Party, and in view of the statement of Sh. N.D. Gupta recorded on 16.11.2023, and other sufficient material on record in light of statements of the *Hawala* operators and the statement of one of the Aam Aadmi Party candidates 'X' who has contested the Goa elections in the relevant year, recorded under Section 50 of PMLA which specifically refers to him, that he had ensured that funds for expenditure during Goa Elections 2022 for his constituency is made available, and similarly for other constituencies also. Thus, at this stage, the material placed on record, the statement recorded under Section 50 of PMLA of Sh. N.D. Gupta and the reply of the petitioner Sh. Kejriwal dated 18.01.2024 to the summons issued by the Directorate of Enforcement *prima-facie* make it clear that Sh. Kejriwal is in charge of and responsible for the conduct of the business of Aam Aadmi Party, and *prima facie* would be liable for affairs of the party so as to attract Section 70(1) of PMLA.

70. However, as per *proviso* of Section 70(1), the petitioner Sh. Kejriwal will have the right to prove, at the appropriate stage, that he did not have any knowledge of the contravention of provisions of PMLA committed by his party or that he had exercised due diligence to prevent the same. This right however is not available as in all other criminal cases at the stage of arrest or remand as per existing law of the country.

Proceeds of Crime

71. It was argued on behalf of the petitioner that there is no recovery of any money nor there is any trail of money to connect the present petitioner with any proceeds of crime, and thus, the complete absence of proceeds of crime or any recovery of money indicates innocence and false implication of Sh. Kejriwal.

72. **This Court in this regard is of the opinion** that having perused the statements of several persons such as survey workers, area managers, assembly managers, *hawala* operators as well as statement of one candidate of Aam Aadmi Party in Goa Elections 2022 namely 'X' recorded on 08.03.2024, which this Court has perused from the case file handed over by the investigating officer. The statement of 'X' recorded on 08.03.2024 mentions about the receipt of a cash amount of about 90 lakhs, payment of which was managed by the Aam Aadmi Party, Delhi office and the assurance which he had received from senior leaders of the party including the present petitioner Sh. Kejriwal that he need not worry about any expenses in relation to the election expenditure for Goa elections.

73. The various statements of *Hawala* operators recorded under Section 50 of PMLA reveal as to how cash amounts were received and sent for Goa Elections. The names and details of some survey workers, area managers, assembly managers and Aam Aadmi Party candidate are not being mentioned in this order since investigation is still pending, evidence is still being collected and mentioning of the

statements in detail may be detrimental to the interest of the petitioner Sh. Kejriwal and the investigating agency at a later stage.

74. Thus, this Court having gone through the documents and the statements handed over to it by Directorate of Enforcement for the purpose of passing of this order to reach a conclusion as to whether Directorate of Enforcement had sufficient material in its possession for the arrest and remand of Sh. Kejriwal including the evidence regarding the money trail, and also having gone through the material as mentioned in the preceding paragraph reaches a conclusion that once the proceeds of crime which were allegedly received in the form of kickbacks through the South Group were spent on Goa Elections, which is corroborated by the statements of the approver who has allegedly given kickbacks for Goa Elections and the statements of *Hawala* operators and the candidate of Aam Aadmi Party itself regarding receipt of cash amount through *Hawala* channels and meeting the petitioner in Goa and their conversation regarding cash amounts for expenditure on Goa elections etc., the absence of or non-recovery of such proceeds in these circumstances can be of little value or importance as part of the money already stands spent as per the statements placed on record of those individuals on whom this money was spent and those who had given the money as well as those through whom the money was sent.

75. Even otherwise, the Hon'ble Supreme Court in case of ***Manish Sisodia v. CBI & Ors.*** *2023 INSC 956* has observed in para no. 21 that one charge was clear from any perceptible legal challenge that in a period of about ten months, the wholesale distributors had earned

Rs. 581 crores as fixed fee, out of which the excess profit earned due to increase of margin from 5% to 12% i.e. Rs. 338 crores was the proceeds of crime, emanating from the Delhi Excise Policy 2021-22. The relevant portion reads as under:

> "21. However, there is one clear ground or charge in the complaint filed under the PML Act, which is free from perceptible legal challenge and the facts as alleged are tentatively supported by material and evidence. This discussion is equally relevant for the charge-sheet filed by the CBI under the PoC Act and IPC. We would like to recapitulate the facts as alleged, which it is stated establish an offence under Section 3 of the PML Act and the PoC Act. These are:
>
> - In a period of about ten months, during which the new excise policy was in operation, the wholesale distributors had earned Rs. 581,00,00,000 (rupees five hundred eighty one crores only) as the fixed fee.
> - The one time licence fee collected from 14 wholesale distributors was about Rs.70,00,00,000 (rupees seventy crores only).
> - Under the old policy 5% commission was payable to the wholesale distributors/licensees.
> - The difference between the 12%; minus 5% of the wholesale profit margin plus Rs.70,00,00,000/-; it is submitted, would constitute proceeds of crime, an offence punishable under the PML Act. The proceeds of crime were acquired, used and were in possession of the wholesale distributors who have unlawfully benefitted from illegal gain at the expense of the government exchequer and the consumers/buyers. Relevant portion of the criminal complaint filed by the DoE dated 04.05.2023, reads:
>
> > "One of the reasons given by Sh Manish Sisodia is to compensate the wholesaler for increased license fee from Rs 5 lacs to Rs. 5 Cr. During this policy period, 14 LI licences were given by Excise Department, by raising the license fee for LI to Rs. 5 Cr in the entire period of operation of the Delhi Excise Policy 2021-22, the Govt. has earned Rs. 75.16 Cr from the license fee of LI (as per Excise department communication dated 11.04.2023) (RUD 34). On the other hand the

> excess profit earned by the wholesalers during this period is to the tune of Rs. 338 Cr. (7% additional profit earned due to increase from 5% to 12%, Rs. 581 Cr being the total profit of LI as informed by Excise department). Therefore there 1s no logical correlation between the license fee increase and the profit margin increase. Whereas this excess profit margin benefit could have been passed on to the consumers in form of lower MRP. Contrary to the claim that the policy was meant to benefit the public or the exchequer, it was rather a conspiracy to ensure massive illegal gains to a select few private players/individuals/entities."

22. The charge-sheet under the PoC Act includes offences for unlawful gains to a private person at the expense of the public exchequer. Reference in this regard is made to the provisions of Sections 7, 7A, 8 and 12 of the PoC Act.

23. Clauses (a) and (b) to Section 7 of the PoC Act apply: (a) when a public servant obtains, accepts or intends to obtain from another person undue advantage with the intent to perform or fail to improperly or to forbear or cause forbearance to cause by himself or by another person; (b) obtains or accepts or attempts to obtain undue advantage from a person as a reward or dishonest performance of a public duty or forbearance to perform such duty, either by himself or by another public servant. Explanation (2) construes the words and expression, "obtains, accepts or attempts to obtain", as to cover cases where a public servant obtains, accepts or intends to obtain any undue advantage by abusing his position as a public servant or by using his personal interest over another public servant by any other corrupt or illegal means. It is immaterial whether such person being a public servant accepts or attempts to obtain the undue advantage directly or through a third party.

24. On this aspect of the offences under the PoC Act, the CBI has submitted that conspiracy and involvement of the appellant – Manish Sisodia is well established. For the sake of clarity, without making any additions, subtractions, or a detailed analysis, we would like to recapitulate what is stated in the chargesheet filed by the CBI against the appellant – Manish Sisodia:

- The existing excise policy was changed to facilitate and get kickbacks and bribes from the wholesale distributors by enhancing their commission/fee from 5% under the old policy to 12% under the new policy. Accordingly, a conspiracy was hatched to carefully draft the new policy, deviating from the expert opinion/views to create an eco-system to assure unjust enrichment of the wholesale distributors at the expense of government exchequer or the consumer. The illegal income (proceeds of crime, as per the DoE) would partly be recycled and returned in the form of bribes.
- Vijay Nair, who was the middleman, a go-between, a member of AAP, and a co-confident of the appellant – Manish Sisodia, had interacted with Butchi Babu, Arun Pillai, Abhishek Boinpally and Sarath Reddy, to frame the excise policy on conditions and terms put forth and to the satisfaction and desire of the liquor group.
- Vijay Nair and the members of the liquor group had meetings on different dates, including 16.03.2021, and had prepared the new excise policy, which was handed over to Vijay Nair. Thereupon, the commission/fee, which was earlier fixed at minimum of 5%, was enhanced to fixed fee of 12% payable to wholesale distributor.
- The appellant – Manish Sisodia was aware that three liquor manufacturers have 85% share in the liquor market in Delhi. Out of them two manufacturers had 65% liquor share, while 14 small manufacturers had 20% market share. As per the term in the new excise policy - each manufacturer could appoint only one wholesale distributor, through whom alone the liquor would be sold. At the same time, the wholesale distributors could enter into distribution agreements with multiple manufacturers. This facilitated getting kickbacks or bribes from the wholesale distributors having substantial market share and turnover.
- The licence fee payable by the wholesale distributor was a fixed amount of Rs.5,00,00,000/- (rupees five crores only). It was not dependant on the turnover. The new policy facilitated big wholesale distributors, whose outpour towards the licence fee was fixed. The policy favoured and promoted cartelisation. Large wholesale distributors with high market share because of extraneous reasons and kickbacks, were ensured to earn exorbitant profits.

- Mahadev Liquor, who was a wholesale distributor for 14 small manufacturers, having 20% market share, was forced to surrender the wholesale distributorship licence.
- Indo Spirit, the firm in which the liquor group had interest, was granted whole distributor licence, in spite of complaints of cartelisation etc. which were overlooked. The complainant was forced to take back his complaint. The excess amount of 7% commission/fee earned by the wholesale distributors of Rs.338,00,00,000/- (rupees three hundred thirty eight crores only) constitute an offence as defined under Section 7 of the PoC Act, relating to a public servant being bribed. (As per the DoE, these are proceeds of crime). This amount was earned by the wholesale distributors in a span of ten months. This figure cannot be disputed or challenged. Thus, the new excise policy was meant to give windfall gains to select few wholesale distributors, who in turn had agreed to give kickbacks and bribes.
- No doubt, VAT and excise duty was payable separately However, under the new policy the VAT was reduced to mere 1%.
- Vijay Nair had assured the liquor group that they would be made distributor of Pernod Ricard, one of the biggest players in the market. This did happen.

25. In view of the aforesaid discussion and for the reasons stated, we are not inclined to accept the prayer for grant of bail at this stage…."

76. Thus, as observed by the Hon'ble Apex Court in ***Manish Sisodia v. CBI & Ors.*** *(supra)* the excess profit which had been earned due to the increase in margin from 5% to 12% i.e. Rs. 338 crores was the proceeds of crime. It is the case of prosecution that this increase in margin was formulated as a part of excise policy to grant favours to certain liquor groups in exchange of receiving kickbacks for funding the elections of Aam Aadmi Party, whose National Convenor is the present petitioner.

77. In a nutshell, once there is *prima-facie* material regarding laundering of the kickbacks on Goa Elections and the money being already spent for the said purpose in the year 2022 itself, the recovery in the year 2024 or non-recovery of any remaining amount will become clear only once prosecution complaint is filed. The Courts in all criminal cases wait for the chargesheet/prosecution complaints to be filed and the entire evidence being placed before it against an accused before giving a finding on a *prima-facie* case for the purpose of cognizance, charge or final acquittal at the appropriate stages of trial and not when the investigation against an accused has begun and chargesheet/prosecution complaint is yet to be filed. A different criteria cannot be adopted in the present case for the said purpose.

78. **To summarise**, the material which has been encapsulated hereinabove reveals that Sh. Arvind Kejriwal had *allegedly* conspired with other persons and was involved in the formulation of Delhi Excise Policy 2021-22, in the process of demanding kickbacks from the South Group, as well as in generation, use and concealment of proceeds of crime. He is *allegedly* involved in the offence of money laundering in two capacities. *Firstly*, in his personal capacity as he was involved in formulation of the Excise Policy and in demanding kickbacks. *Secondly*, in his capacity as the National Convenor of Aam Aadmi Party as per Section 70(1) of PMLA, for use of proceeds of crime of Rs. 45 crores in the election campaign of Aam Aadmi Party in Goa Elections 2022, which are *prima facie* apparent from the material relied upon by the respondent in this regard as well as the statement recorded on 08.03.2024 of one of the candidates of Aam

Aadmi Party in Goa Elections 2022, which has been discussed hereinabove.

II. ARGUMENT REGARDING STATEMENTS OF WITNESSES AND APPROVERS BEING UNRELIABLE AND UNTRUSTWORTHY

Significance of a Statement Recorded under Section 50 of PMLA

79. The statements referred above by this Court, of Sh. C. Arvind, Sh. Buchi Babu, Sh. Magunta S. Reddy, Sh. Raghav Magunta, Sh. Sarath Reddy, Sh. Vijay Nair, as well as those persons whose statements have been recorded with respect to utilisation of proceeds of crime in contesting the Goa Elections 2022 by the Aam Aadmi Party, are all statements recorded under Section 50 of PMLA by the Directorate of Enforcement.

80. As regards the admissibility of statements recorded under Section 50 of PMLA, it is important to note that in the case of ***Rohit Tandon v. Directorate of Enforcement*** *(2018) 11 SCC 46*, three-judge bench of the Hon'ble Apex Court has held that statements recorded under Section 50 of PMLA are admissible in nature and can make out a formidable case about involvement of accused in the offence of money laundering. The relevant observations of the Hon'ble Apex Court are as under:

> " 31. …The prosecution is relying on statements of 26 witnesses/accused already recorded, out of which 7 were considered by the Delhi High Court. **These statements are admissible in evidence, in view of Section 50 of the Act**

> **of 2002. The same makes out a formidable case about the involvement of the appellant in commission of a serious offence of money laundering. It is, therefore, not possible for us to record satisfaction that there are reasonable grounds for believing that the appellant is not guilty of such offence**…"
>
> (Emphasis Supplied)

81. Further, in case of ***Vijay Madanlal Choudhary*** *(supra)*, the challenge to Section 50 of PMLA was rejected by the Hon'ble Apex Court and it was held that statements recorded under Section 50 of PMLA are not in violation of Article 20(3) of the Constitution of India.

82. The aforesaid legal propositions were also reiterated by the Hon'ble Apex Court in case of ***Tarun Kumar*** *(Supra)* with following observations:

> "15. In our opinion, there is hardly any merit in the said submission of Mr. Luthra. In Rohit Tandon vs. Directorate of Enforcement, a three Judge Bench has categorically observed that the statements of witnesses/ accused are admissible in evidence in view of Section 50 of the said Act and such statements may make out a formidable case about the involvement of the accused in the commission of a serious offence of money laundering ..."

83. At the present stage of deciding the writ petition challenging arrest on the parameters of Section 19 of PMLA, when the investigation *qua* the petitioner is not even complete and prosecution complaint has not been filed, this Court would take into consideration the material collected by the investigating agency including statements of witnesses recorded under Section 50 of PMLA, and

keep into consideration that it has been held by the Hon'ble Apex Court that statements under Section 50 of PMLA can make out a strong *prima-facie* case of money laundering against an accused.

Can the Statement of an Approver be Brushed Aside at the Stage of Arrest and Remand of an Accused?

84. Sh. Singhvi, learned Senior Counsel for the petitioner, during the course of arguments, had questioned the **credibility of the statements of approvers** in the present case. It was one his arguments that in their statements, which have been relied upon by the prosecution, these approvers had not implicated the petitioner herein initially but only at a later stage in exchange of ensuring that they get bail and pardon and thus, their statements are unreliable and must not be looked into.

85. Sh. S.V. Raju, had countered the argument of Sh. Singhvi by placing reliance upon the case of ***Suresh Chandra Bahri v. State of Bihar*** *1995 Supp (1) SCC 80* in which it was held that Section 306 of Cr.P.C. lays down a clear exception to the principle that no inducement shall be offered to a person to disclose what he knows, and that the pardon granted to an approver is a legal and judicially recognized inducement.

86. After hearing arguments in this regard, **this Court is of the opinion** that in the present case, among the several statements which have been recorded by the Directorate of Enforcement, the statements of Sh. Raghav Magunta and Sh. Sarath Reddy are the *'statements of approvers'*, which are being termed as unreliable by the petitioner.

The statement of Sh. Raghav Magunta was recorded by the competent officer of Directorate of Enforcement under Section 50 of PMLA on 26.07.2023 and under Section 164 of Cr.P.C. by the concerned Judge on 27.07.2023. Whereas the statement of Sh. Sarath Reddy was recorded under Section 50 of PMLA on 25.04.2023 and under Section 164 of Cr.P.C. on 29.04.2023.

87. To appreciate and adjudicate this argument, this Court deems it appropriate to briefly discuss the difference between statement of a person which is recorded under Section 50 of PMLA by an officer of Directorate of Enforcement and the statement of an approver which is recorded under Section 164 of Cr.P.C. by a Judicial Magistrate. This can be explained in simple words by way of the following table:

	Statement of Witness recorded under Section 50 of PMLA	**Statement of Approver recorded under Section 164 of Cr.P.C.**
1.	Statement of a person is recorded under Section 50 of PMLA by an officer of Directorate of Enforcement for the purpose of collecting information in connection with any investigation or proceedings under the Act.	Statement of an approver is recorded under Section 164 Cr.P.C. by a judicial Magistrate or Special Judge so authorised as per law, where the approver, who is a co-accused, expresses his willingness to disclose the truth about the offence or the conspiracy.

2.	A person whose statement is recorded under Section 50 of PMLA may or may not be an accused.	An approver is always an accused who is granted pardon by the concerned Trial Judge, who appears as a witness for the prosecution during trial.
3.	The proceedings under Section 50 of PMLA are solely by the prosecuting agency without any interference of a Court of law.	The proceedings of recording statement of approver and granting of pardon are judicial proceedings with no interference of the investigating agency.

88. **This Court therefore holds** that, the contents of above paragraph would lead to a conclusion that to doubt and cast aspersions regarding the manner of granting of pardon or recording statement of approver amounts to casting aspersions on the judicial process, since granting of pardon or recording of statement of approver is not the domain of investigating agency. It is a judicial process wherein a judicial officer follows the provisions of Section 164 of Cr.P.C. for recording the statement of an approver and also for granting or not granting pardon to such approver. It will be useful to mention that before recording the confession of an approver, the concerned Judge satisfies himself regarding the confession being voluntary and puts specific questions to the person requesting to make a statement under Section 164 of Cr.P.C. as a co-accused. The learned Judge thereafter records his or her finding in the statement itself as to which questions were put to such person for arriving at conclusion that the person so making a confessional statement was

not under any pressure or threat. Further, the concerned learned Judge also warns the person so making a confessional statement that the same can be used against him. Only thereafter, the learned Judge proceeds to record the statement and at the end of the statement appends a certificate regarding the correctness of the entire proceedings which includes the satisfaction of the judge recorded regarding the person making confessional statement not being under any pressure, coercion or threat.

89. In this context, **it will also be important to note** that an approver is an individual who provides crucial evidence against co-accused in exchange for leniency or immunity from prosecution as per law. However, it is the Court of law that evaluates the credibility and relevance of the evidence presented by the approver and determines whether to accept their testimony or not at the relevant stage of trial. Similarly, bail, which entails the release of an accused pending trial, is a judicial prerogative.

90. While investigating agencies may make recommendations or oppose bail applications based on their findings, the final decision lies with the Court of law which is based on established principles of jurisprudence of bail. These legal processes are integral components of the criminal justice system. **Therefore, without challenging the said process, to hold that the statement of approvers and pardon granted to them was at the behest of the Directorate of Enforcement in this case will be questioning the judicial process which is governed by the law, and not by any government or investigating agency.**

91. **The law of approver is more than 100 years old** *(Section 337 of Code of Criminal Procedure, 1898 i.e. the old Code and Section 306 of the Code of Criminal Procedure, 1973 i.e. the new Code)* **and not one year old** law to suggest as if enacted to falsely implicate the present petitioner and co-accused persons in this case. The law has been in existence even before the birth of many of us who are reading the judgment and the one who is writing it. The law on approver as well as the law on its evidentiary value has been tested by the Privy Council and the Hon'ble Supreme Court in innumerable cases, and has not been struck down to be unconstitutional till date by any Court of law. The present case is neither the first nor the last case wherein the approver's statements have been recorded or have been relied upon by the prosecution.

92. Trials have taken place, are taking place and have ended in conviction or acquittal in which approver's statements have been recorded and relied upon by prosecution.

93. Further, **the question of non-supply and reliance of some earlier statements of the approvers cannot arise at this stage as the documents are not to be supplied at the stage of remand or arrest but at the appropriate stage of trial under Section 207 Cr.P.C., when as a matter of right, the accused will be entitled to all the documents and statements as per law, whether relied or unrelied. Thus, the argument that the Directorate of Enforcement has selectively relied upon the later statements of the approvers and not the earlier ones wherein the petitioner was not named cannot be appreciated at this stage as it is a matter of**

trial, and even the prosecution complaint has not been filed against the petitioner yet. Moreover, whether relied or unrelied, the accused is entitled to receive all the documents at the appropriate stage of trial and the present case will also follow the same course. The fact that the petitioner himself was already in possession of the earlier statements of witnesses or approvers wherein he was not named, rather points out that all these statements have been provided/shown to the co-accused persons at the appropriate stage before the Trial Court and so will the present petitioner be shown or provided with those statements as per law.

94. **Interestingly**, Sh. Singhvi also referred to and equated the approvers in this case to *'Trojan horses'* and *'Jaichands'*, who should not be relied upon for keeping the petitioner in jail as no sanctity can be attached to their statements. The specific arguments in this regard of Sh. Singhvi was that "this species which is called an approver has been dealt with in our history, whether for good motives or bad motives, have been dealt with phrases like Jaichand and Trojan Horses. The history looks very harshly at these Jaichands and Trojan horses. They gave *daga* (betrayal) to their accomplices".

95. This Court wonders that if the learned Senior counsel terms the approvers in the present case as '*Jaichands*', then that would rather amount to saying that the approvers have turned traitors, and further acknowledging that they were part of the same alleged plan which the Directorate of Enforcement alleges that the approver and the petitioner were part of. However, this Court will restrain from further dwelling into this argument.

96. Moreover, in addition to questioning the value of an approver's statement, Sh. Singhvi had also **questioned the credibility of the statement of one of the witnesses Sh. Magunta S. Reddy**, which had been recorded under Section 50 of PMLA as well as before the Magistrate under Section 164 of Cr.P.C, on the ground that his statement was recorded immediately prior to the hearing of bail application of his son Sh. Raghav Magunta and recently, Sh. Magunta S. Reddy has been given a ticket to contest the upcoming Lok Sabha Elections from the alliance of ruling party. **Similarly**, Sh. Singhvi had also argued that the **statement of approver Sh. Sarath Reddy is also not reliable** since it has recently been discovered that he had paid an amount of Rs. 60 crores approximately to the ruling party at Centre through electoral bonds.

97. **In this Court's opinion**, who gives tickets for contesting elections to whom or who purchases electoral bonds for what purpose is not the concern of this Court, as this Court is required to apply the law and the evidence before it as it is and in the context in which it has been placed before it.

98. This Court also wonders as to whether it can, while deciding the present petition seeking declaration of arrest of petitioner as illegal, put fetters on a witness, who is not an accused, to contest elections and question his credibility without there being any material to suggest that his statement is *prima facie* unreliable or untrustworthy, especially when to the contrary, the Directorate of Enforcement has collected material which corroborates the presence of the said witness Sh. Magunta S. Reddy at the office of the

petitioner herein on the date and time as mentioned by the witness in his statement.

99. **Whether Sh. Magunta S. Reddy or Sh. Sarath Reddy gave statements out of their own free will and the reason for coming out with some facts in their statements against the particular person at a particular time cannot be questioned by this Court at this stage, but can be questioned by all means as a matter of right by the accused at the appropriate stage of trial. This Court**, therefore, is of the **opinion** that this question may be relevant or material to decide the case at its appropriate stage of trial when the witness will be in the witness box and Sh. Kejriwal will have the valuable right to cross-examine him as to why he had chosen to give a statement against the present petitioner, after initially giving statements in which he had not implicated him. The said person will have to answer it at that stage and the evidentiary value of that statement will have to be adjudicated by the Trial Court at that stage. **This Court cannot step into the shoes of the Trial Court and conduct a mini trial in a writ jurisdiction** when the prosecution complaint has not even been filed against the petitioner.

100. The petitioner herein wants this Court to conduct a mini trial and give a conclusive finding regarding validity and authenticity of statement of witnesses, test the evidentiary value and intent behind statements of the approvers, which is not permissible in law.

101. In any case, this Court has not examined and relied solely on the statements of these approvers to examine the legality of arrest of the petitioner on the anvil of Section 19 of PMLA as there is other

material collected by the investigating agency also which has been placed before this Court and discussed in preceding paragraphs which reveals the role of the present petitioner in the alleged Delhi Excise Policy scam.

102. **This Court is further of the opinion** that merely because the approver has chosen to reveal some new facts at a later stage, only after initially concealing them including the role of Sh. Kejriwal, the same cannot be a ground to disregard their statements completely. This is because an accused may realise his or her mistake at a later stage and may offer to state the true facts in exchange for securing pardon as per the law.

103. **For example**, consider a case where an accused initially denies involvement in a crime but later, upon reflection and perhaps upon advice from legal counsel, decides to cooperate with authorities and disclose the accurate details of the incident. Similarly, one often sees cases where an accused contests a case for several years on its merits but later apologises to the complainant after realising his mistake or acknowledging his wrongdoing. These instances demonstrate that individuals may evolve in their understanding of their actions and the legal consequences thereof, and these developments even otherwise are covered within the framework of the judicial process and the law of the country.

III. WHETHER THE ARREST OF THE PETITIONER IS IN VIOLATION OF DIRECTIONS OF HON'BLE SUPREME COURT IN CASE OF PANKAJ BANSAL VS. UNION OF INDIA?

104. The prayer in the present petition itself mentions that the challenge to the arrest of the petitioner is on the anvil of judgment of Hon'ble Supreme Court in case of ***Pankaj Bansal*** *(supra)*. In case of ***Pankaj Bansal*** *(supra)*, the Hon'ble Supreme Court has *inter alia* held that the grounds of arrest must be communicated in writing to the person being so arrested through exercise of powers under Section 19 of PMLA, and failure to do so would render the arrest illegal.

105. Insofar as the compliance with the aforesaid directions and the mandate of Section 19 of PMLA is concerned, this Court notes that it is an admitted case of the petitioner that he was supplied grounds of arrest in writing at the time of his arrest. It has also been submitted on behalf of the Directorate of Enforcement that the petitioner was arrested on 21.03.2024 at 09:05 PM and the grounds of his arrest, running into 28 pages, were informed and furnished to him in writing immediately at the same time and the receipt of the same has been acknowledged by the petitioner.

106. A perusal of the record reveals that grounds of arrest running into 28 pages in writing were provided to the petitioner to inform him as to what investigation had been conducted by the Directorate of Enforcement till date in the present case and what material had been collected against the petitioner on the basis of which the officer

concerned was of the opinion that the petitioner was *prima facie* guilty of commission of offence under PMLA and was thus, being arrested. Further, the arrest order dated 21.03.2024, is in the prescribed format as also directed to be followed by the Hon'ble Supreme Court in case of ***Pankaj Bansal*** *(supra)*, and the arrest order specifically records that the authorized officer had reasons to believe that the petitioner was guilty of an offence under the provisions of PMLA.

107. It is also submitted before this Court and the case file also reveals that in compliance of Section 19(2) of PMLA, the material as required therein was forwarded to the Adjudicating Authority of PMLA by way of a letter dated 22.03.2024.

108. As regards the '**material in possession' of the Directorate of Enforcement on the basis of which there were 'reasons to believe' that petitioner was 'guilty' of offence of money laundering for the purpose of Section 19 of PMLA**, this Court has already taken note of this material in the detailed discussion above. There are statements of witnesses (including approvers) namely Sh. C. Arvind, Sh. Buchi Babu, Sh. Maguntra S. Reddy, Sh. Raghav Magunta, Sh. Sarath Reddy, Sh. Vijay Nair recorded under Section 50 of PMLA and Section 164 of Cr.P.C., as well as other material such as entry register of the office of the petitioner, which reflect that the petitioner was *allegedly* personally involved in formulation of the Delhi Excise Policy 2021-22, and *prima-facie* in process of demanding kickbacks from the South Group in exchange of favours. Similarly, material has also been collected by the Directorate of Enforcement, in the form of

statements of witnesses of *hawala* operators, one candidate of Aam Aadmi Party and some survey workers, area managers, assembly managers, who had worked with the Aam Aadmi Party during the Goa Election 2022, alongwith WhatsApp chats between several persons, and other material collected through raids of Income Tax, which reflect that the kickbacks which were received from South Group were utilised by Aam Aadmi Party for funding Goa Elections 2022, whose National Convenor is the present petitioner.

Contention regarding there being no fresh material collected by the respondent since October, 2023

109. One of the grounds mentioned in the petition states that from October 2023 till the arrest of petitioner in March 2024, the investigating agency has not collected any new material whatsoever and the material which was relied upon to summon the petitioner for the first time in October 2023 is now being relied upon to arrest him also.

110. Having gone through the records of the case including the case file handed over by the investigating officer, **this Court is of the opinion** that this argument of the petitioner is misconceived as the Directorate of Enforcement, after October 2023, has carried out further investigation and has recorded statements of several persons, including statement of Sh. N.D. Gupta recorded on 16.11.2023, as well as the statement of one candidate of Aam Aadmi Party for Goa Elections 2022 recorded on 08.03.2024. There are some other statements also, as perused by this Court from the case file, which

have been recorded between the period October 2023 to March 2024, including one statement recorded on 20.03.2024 i.e. a day before the arrest of petitioner which contain material *prima-facie* incriminating *qua* the petitioner.

111. It is on the basis of the aforesaid material and information that the Directorate of Enforcement had conducted a search at the official residence of petitioner Sh. Kejriwal on 21.03.2024 after following due process as envisaged under Section 17 of PMLA.

112. During the search, mobile phones of the petitioner and his wife were also seized and the statement of petitioner was also recorded under Section 17 of PMLA.

113. The **cumulative effect** of the material collected so far by the Directorate of Enforcement regarding the role of the petitioner, both in his personal capacity in formulation of Delhi Excise Policy 2021-22 and demanding kickbacks from the South Group, and in his capacity as National Convenor of Aam Aadmi Party in utilisation of proceeds of crime during Goa Elections 2022, reflecting the *'reasons to believe'* that the petitioner was *'guilty of offence of money laundering'* in terms of Section 19 of PMLA, and the need to interrogate the petitioner and confront him with the statements of witnesses, and other material as well as digital evidence, coupled with the conduct of petitioner of not joining investigation pursuant to service of nine summons for a period of six months, necessitated the arrest of petitioner Sh. Arvind Kejriwal.

114. **Therefore**, *prima facie*, the mandatory provisions of Section 19 of PMLA have been satisfied by the Directorate of Enforcement

while arresting the petitioner Sh. Kejriwal, in compliance of judgment of ***Pankaj Bansal*** *(supra)*, and there is material *at this stage* which points out towards the guilt of the petitioner for commission of offence of money laundering.

IV. WHETHER THE REMAND ORDER DATED 22.03.2024 HAS BEEN PASSED IN MECHANICAL AND ROUTINE MANNER?

115. The second prayer sought by the petitioner Sh. Kejriwal pertains to quashing and setting aside of the remand order dated 22.03.2024 as the same has been passed in a patently routine and mechanical manner by the learned Special Court.

116. In the initial discussion in this judgment, this Court has already referred to the law governing remand of an accused, ordinarily, and also in cases under PMLA. In case of ***V. Senthil Balaji*** *(supra)*, the Hon'ble Supreme Court has emphasised that the Court has a wide discretion for remanding an accused to the custody of investigating agency, and such discretion must be exercised by passing a reasoned order, including ensuring compliance of Section 19 of PMLA in cases where arrest has been made under the provisions of PMLA. Further, the Hon'ble Supreme Court had observed in case of ***Pankaj Bansal*** *(supra)* that the remand orders which had been challenged therein reflected total failure on part of the learned Trial Court in discharging its duty since the remand order did not even record the finding that the Court had perused the grounds of arrest and that there

was proper compliance of Section 19 of PMLA, and the Trial Court therein had merely noted that the custodial interrogation of the accused was required in view of the seriousness of allegations and the stage of investigation.

117. In light of the settled law on the point of examining the legality of a remand order, this Court has perused the contents of remand order dated 22.03.2024 passed in the present case by the learned Special Court. The learned Special Court in the order has firstly satisfied itself regarding the due compliance of provisions of Section 19 of PMLA and the directions issued by the Hon'ble Supreme Court in case of ***Pankaj Bansal*** *(supra)*. The relevant portion of impugned order of remand is extracted hereunder for reference:

> "30. As aforesaid, it is admitted that the copy of grounds of arrest was supplied to the accused against receipt. The case file produced by the IO has also been perused by the court to ensure that the reasons of belief leading to arrest of the accused have also been recorded by IO based on the material in his possession and as collected during investigation, to justify the arrest of accused and as showing his guilt in this case in relation to the alleged offence of money laundering of this case, as per provisions contained U/S 19(1) of the PMLA and as per the spirit of directions contained in the case of Pankaj Bansal (Supra). It is also found that the above reasons were even communicated by the IO to his senior officer for approval, prior to effecting the said arrest. Hence, in view of the facts stated and material placed before the court, this court is of the opinion that provisions of Section 19 of PMLA have been substantially complied with."

118. Further, the learned Special Court has also referred to the material collected by the Directorate of Enforcement against the

petitioner in the impugned remand order and the relevant portion of the remand order dated 22.03.2024 reads as under:

> "31. Further, as stated above, the investigation conducted so far revealed the involvement of accused Arvind Kejriwal in the conspiracy of in formulation and implementation of the Excise Policy 2021--22 with a view to favour certain persons as also his involvement in seeking kickbacks from businessmen in exchange of favour to be granted to what is being referred to as the 'South group' and in collusion with co-accused Vijay Nair, Manish Sisodia and other members/representatives of the 'South group'. In this regard, material by way of statements of C. Arvind, the then Secretary of co-accused Manish Sisodia, Butchibabu and Magunta Srinivas Reddy, Raghav Magunta and P. Sarath Chandra Reddy recorded U/S 164 Cr.P.C. are also on record. Further, as revealed by co-accused Vijay Nair during investigation, he lived in a government bungalow, officially alloted to a Cabinet Minister close to the bungalow of the accused and is alleged to have received kickbacks to the tune of Rs. 100 crores from the 'South group' on behalf of the accused, in exchange for grant of favours in group of M/s. Indo Spirits, even retail zones and L-1 licences.
>
> 32. Further, there are allegations of proceeds of crime of approximately Rs. 45 crores having been allegedly received as part of the bribe from the South group and used in the election campaign of AAP in Goa assembly elections 2021-22. The examination of vendors engaged for out door campaign revealed that they were made payment partly in cash as revealed through various chats between the vendors.
>
> 33. ED has further claimed that the examination of money trail reveals that the money which was transferred to Goa came from four routes through different 'Angadiyas' and the statements of various persons engaged in the elections campaign activities by AAP in Goa are stated to have also revealed that cash payment were made to them for work done as survey workers or managers etc.

34. It is contended that this shows the utilization of the proceeds of crime by the representatives of co-accused Manish Sisodia in Goa Assembly election, which is also corroborated by one of the candidates of AAP as already mentioned above.

35. On the basis of the material placed before the court, it has been sought to be submitted that AAP is the major beneficiary of the proceeds of crime generated in the above manner in Delhi liquor scam and part of proceeds of crime to the tune of Rs. 45 crores was raised in the election campaign in Goa Assembly election in 2021--22 and accordingly in this manner, AAP has committed offence of money laundering through accused Arvind Kejriwal, which is a offence thus covered under Section 70 of the PMLA.

36. It is submitted that totality of facts and circumstances pointed towards the involvement of accused Arvind Kejriwal in the entire conspiracy of Delhi liquor scam in drafting and implementation of the policy for favouring and benefiting the quid pro receiving kickbacks and eventually using part of the proceeds of crime generated out of the scheduled offence in the election campaign for Goa Assembly election."

Why was Remand Sought by the Directorate of Enforcement and Remand Granted by the Special Court in this Case?

119. A perusal of the remand application dated 22.03.2024 reveals that the Directorate of Enforcement had sought the remand of Sh. Kejriwal on the following grounds:

i. The petitioner is required to be interrogated with respect to his role and the statements of witnesses etc. to unearth the remaining proceeds of crime and for this purpose, it is imperative to have custodial interrogation as the petitioner was

non-cooperative in investigation and was defying the summons under Section 50 of the PMLA.

ii. Digital devices seized during the search have to be extracted and the data has to be confronted with the petitioner.

iii. The petitioner is required to be confronted with voluminous material/records seized which is only possible in the custodial interrogation.

iv. The petitioner needs to be interrogated with respect to other associates/entities involved in the Kickbacks given by South Group to the Aam Aadmi Party and its leaders.

v. The petitioner needs to be interrogated to identify the complete modus operandi of the offence.

120. The learned Special Court in the impugned remand order dated 22.03.2024, while allowing the request of Directorate of Enforcement and granting it six days remand of the petitioner, had observed as under:

> "38. Therefore, in view of the above facts and circumstances, the above named accused is hereby remanded to the custody of ED till 28.03.2024 for the purposes of his detailed and sustained interrogation with respect to his role and to unearth the remaining proceeds of crime and for confronting him with data retrieved from digital devices and material seized during investigation..."

121. In case of ***CBI v. Vikas Mishra*** *(2023) 6 SCC 49*, the Hon'ble Supreme Court has observed that the right of custodial interrogation/investigation is a very important right in favour of the investigating agency to unearth the truth.

122. This Court has already noted in the preceding discussion that it has gone through the entire case file produced before this Court by the Investigating officer. In the present case, the Directorate of Enforcement had sought to exercise its right to interrogate the petitioner in its custody since he had to be confronted with the large number of statements recorded by the investigating agency as well as other material collected during the course of investigation, which relates to the alleged role played by the petitioner Sh. Kejriwal in formulation of Delhi Excise Policy 2021-22, demanding kickbacks from the South Group, and his role as National Convenor of Aam Aadmi Party in utilising the proceeds of crime in Goa Election 2022. The Directorate of Enforcement had also sought the remand of the petitioner to confront him with digital devices seized during the search at his residence.

123. **This Court is further of the opinion that the digital evidence is often crucial in modern investigations**, containing valuable information that can corroborate or refute testimonies. Investigation is a scientific process where digital evidence is often collected apart from interrogation of individuals and recording of their statements. Thus, the data of the digital devices which had been seized during the search at the residence of petitioner was also to be extracted and the petitioner had to be confronted with the same, in order **to unearth more layers of the conspiracy** pertaining to the Delhi Excise Policy 2021-22. In this Court's opinion, none of these grounds were unjustified for seeking the remand of petitioner. Further, at that stage, the Directorate of Enforcement would not have

known that Sh. Kejriwal exercising his right of not disclosing the password of his mobile phones, will not disclose it to them and for extracting the data and confrontation with the same, they will have to seek some other remedy.

124. It is also crucial to note that **despite service of 09 summons over a period of six months**, the petitioner had failed to come forward for the purpose of recording his statement under Section 50 of PMLA, or for the purpose of being confronted with the material collected by the investigating agency during the course of investigation i.e. to participate in the inquiry. Therefore, the investigating agency had no other option but to seek his custody through remand from the court of law to make him join the investigation and answer questions which needed to be asked such as confrontation with the statements and documents etc. to conclude investigation.

125. **Therefore**, this Court observes that the contention regarding remand order having been passed in mechanical and routine manner is without any merit, considering the observations made by the learned Special Court including ensuring due compliance of Section 19 of PMLA, taking note of material available against the petitioner and the need for his custodial interrogation.

126. Though not argued before this Court on behalf of the petitioner, **this Court still deems it crucial to note** that though the present petition was filed challenging the first remand order dated 22.03.2024 passed by the learned Special Court, **however, the remand of petitioner Sh. Kejriwal had thereafter been extended**

vide **order dated 28.03.2024 wherein the petitioner himself had submitted before the learned Special Court that he was ready and willing to cooperate with the investigating agency and he had no objection if the custody remand was extended further**.

127. Moreover, **at this point of time**, the **petitioner** is not in the custody remand of Directorate of Enforcement, rather **is in judicial custody by virtue of order dated 01.04.2024 which has neither been challenged till date, nor any application has been filed seeking bail in the present case.** The learned Senior counsel for the petitioner had not raised any objection to the judicial remand of the petitioner when he was remanded to judicial custody on 01.04.2024 by the learned Special Court.

V. TIMING OF ARREST VIS-A-VIS THE CONDUCT OF PETITIONER OF NOT JOINING INVESTIGATION FOR SIX MONTHS DESPITE SERVICE OF 09 SUMMONS

128. Sh. Singhvi, learned Senior had argued that the timing of arrest of the petitioner Sh. Kejriwal is very crucial in this case and the petitioner has not been arrested for any illegality or offence committed by him, but for the mere reason of his being a leader of an opposition party. Sh. Singhvi also emphasised that despite the investigation in the present case being conducted since the year 2022, the petitioner was deliberately arrested on 21.03.2024 to defeat his right of participating in the process of General Elections 2024, thereby not only violating his individual right but also threatening the

larger issue of conducting fair and democratic elections by following fair process.

129. In this regard, **this Court is of the opinion** that since the petitioner has challenged his arrest also on the anvil of timing of arrest, i.e. just before the onset of General Elections 2024, it shall be crucial to first take note of the conduct of the petitioner during the course of investigation in the present case.

Conduct of the Petitioner

130. It is to be noted carefully that **Sh. Kejriwal was not summoned for the first time after General Elections were declared in India or the Model Code of Conduct came into existence, but the first summon was sent to him as far back as in October, 2023**. It was the petitioner himself who had chosen not to join the investigation, but had sent replies to all the summons.

131. Thus, this Court takes into consideration the conduct of the petitioner in relation to his non-cooperation with the investigating agency, which is visible by the fact that he failed to join investigation despite being served with nine summons. The conduct of the petitioner in this regard has been summarised in the form a table, as follows:

S. No.	***Summons***	***Required Date of appearance***	***Reasons Cited by Sh. Arvind Kejriwal for Not Joining Investigation***
1.	30.10.2023 (First Summons)	02.11.2023	*Reply given by petitioner on 02.11.2023* • The summons is not clear as to the capacity in which the petitioner is being called. • The summons fails to provide details in relation to the ECIR. • The summons appears to be motivated and issued for extraneous considerations. • The said summons have been issued at the behest of ruling party at the Centre i.e. BJP • There are elections in five states in the month of November 2023, and the petitioner is the star campaigner of the AAP, and has official commitments.
2.	18.12.2023 (Second Summons)	21.12.2023	*Reply given by petitioner on 20.12.2023* • The petitioner has to attend Vipassana Meditation course. • The timing of summons strengthens petitioner's belief that it is based on a propoganda. • The petitioner further re-iterated that it is not clear that in which capacity the petitioner is being called, and that the summons appears to be motivated.

3.	22.12.2023 (Third Summons)	03.01.2024	*Reply given by petitioner on 03.01.2024* • The petitioner stated that he is held up in the Rajya Sabha Elections. It was also stated that filing of nominations will start from 03.01.2024, and voting will take place on 19.01.2024. • The petitioner further re-iterated that it is not clear that in which capacity the petitioner is being called, and that the summons appears to be motivated. It was also stated that the Directorate of Enforcement has not been replying to the contentions raised in the replies given by the petitioner.
4.	12.01.2024 (Fourth Summons)	18.01.2024/ 19.01.2024	*Reply given by petitioner on 18.01.2024* • The petitioner will be travelling to Goa from 18.01.2024 to 20.01.2024 for the upcoming Lok Sabha Elections. • The petitioner is also occupied in preparing the Budget for Financial Year 2024-25, which is to be presented on 15.02.2024 and requires substantial involvement of the Chief Minister.

			Reply by Directorate of Enforcement to response to summons dated 02.11.2023, 20.12.2023, and 03.02.2024 • It was stated that merely because the petitioner is CM, it does not mean that he is above law. • Further, the petitioner is being called in relation to the present ECIR which pertains to the Delhi Excise Policy Case. • The petitioner has not been called in the capacity of a CM but in capacity as a person summoned to give evidence for the purpose of investigation. • The petitioner is bound to attend in person as per the settled legal position, as given under Section 50 of PMLA.
5.	31.01.2024 (Fifth Summons)	02.02.2024	*Reply given by petitioner on 02.02.2024* • The petitioner is pre-occupied in the budget preparations for GNCTD, which will be presented in the Assembly session starting from 15.02.2024.
6.	14.02.2024 (Sixth Summons)	19.02.2024	*Reply given by petitioner on 19.02.2024* • The budget Session of the Delhi Legislative Assembly is presently going on, and will continue till the first Week of March.

7.	21.02.2024 (Seventh Summons)	26.02.2024	*Reply given by petitioner on 26.02.2024* • The presence of the petitioner in the Legislative Assembly as an MLA and the Chief Minister is important to respond to various issues raised by Hon'ble MLAs. • Further, the petitioner been asked to reply in the Assembly on the motion of thanks to the Hon'ble LG's address.
8.	26.02.2024 (Eighth Summons)	04.03.2024	*Reply given by petitioner on 04.03.2024* • The presence of the petitioner as an MLA and the Chief Minister is important to respond to various issues raised by Hon'ble MLAs. • Further, the petitioner has to be present in person on 04.03.2024 as the annual budget of GNCTD will be presented in the Assembly, and the presence of the petitioner in the Assembly is necessary.
9.	16.03.2024 (Ninth Summons)	21.03.2024	*Reply given by petitioner on 16.03.2024* • The petitioner has challenged the summons given by the Directorate of Enforcement dated 16.03.2024, which is pending before the Hon'ble Delhi High Court. • The petitioner is presently occupied with his duties as Chief Minister of NCT of Delhi and also in planning, preparing, and campaigning for the General Elections of 2024.

132. This Court, therefore, notes that Sh. Kejriwal had sent a reply to every summon and the content of each reply can be summarised for easy understanding that:

i. he was not informed as to why and in what capacity he was being summoned;

ii. he was being summoned at the behest of ruling party at the centre i.e. BJP, to silence the voice of opposition;

iii. he was busy with his schedule, being the Chief Minister of Delhi;

iv. he could be questioned through video-conferencing or by sending a questionnaire.

133. In this regard, **this Court is of the opinion** that the Directorate of Enforcement is not required under the PMLA to inform the person to whom summons are being sent under Section 50 of PMLA as to in which capacity, the person is being called.

134. Further, **this Court is of the opinion that** there is no denying the fact **that Sh. Kejriwal, being the sitting Chief Minister of the State of Delhi will have a busy schedule** and many events and meetings to attend to. However, being the Chief Minister of the State, he was aware that an investigating agency was sending him summons under the provisions of Section 50 of PMLA in ECIR No. HIU-II/14/2022 which was mentioned on each summon. The petitioner himself was thus aware about the case, as many of his co-accused persons were in judicial custody in the same ECIR, and he had knowledge about the statements recorded in the ECIR. Therefore, to

say that he did not attend those summons since he did not know why he was being summoned has no merit.

135. It will also not be out of place to mention that the constitutional validity of Section 50 of PMLA has been upheld by the Hon'ble Supreme Court in case of ***Vijay Madanlal Choudhary*** *(supra)* and in this regard, the recent judgment of Hon'ble Supreme Court has categorically laid down that when a person is called by Directorate of Enforcement under Section 50 of PMLA by sending a summon, such person has to appear before the concerned authority.

136. In case of ***Vijay Madanlal Choudhary*** *(supra)*, the Hon'ble Supreme Court had discussed the scope of Section 50 of PMLA and the power to issue summons therein, by way of following observations:

> "425. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression —proceeding in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. **Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the**

> **2002 Act.** The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established…"

137. The Hon'ble Apex Court in case of ***Directorate of Enforcement v. State of Tamil Nadu,*** *SLP (Crl.) No. 1959-1963/2024*, also explained the power to summon a person under Section 50 of PMLA and consequent duty of the person so summoned to respect and respond to the same. These observations are extracted hereunder:

> 5. Sub-section (3) of Section 50 thereof being relevant, reads as under:-
>
> > "(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."
>
> 6. From the bare reading of the said provisions, **it clearly transpires that the concerned officers as mentioned therein, have the power to summon any person whose attendance he considers necessary, either to give evidence or produce any record during the course of investigation or proceeding under the PMLA**. Since, the petitioner – ED is conducting the inquiry / investigation under the PMLA, in connection with the four FIRs, namely (I) FIR No. 08 2018 dated 23.08.2018 registered by V&AC, Thanjavur, under Sections 120(B), 421, 409, 109 of IPC and Sections 13(1)(c), 13(l)(d) r/w 13(2) of the Prevention of 3 Corruption Act, 1988 (P.C. Act) r/w 109 of IPC etc.; (II) FIR No. 03 2020 dated 20.10.2020

> registered by V&AC, Dindigul under Sections 41, 109 of IPC and Section 7(a) of P.C. Act; (III) FIR No. 02 2022 dated 05.02.2022 registered by V&AC, Theni under Sections 7, 13(c), 13(l)(d)(l), 13(l)(a) r/w 13(2) and 12 of P.C. Act, Sections 120(B), 167, 379, 409, 465, 468, 471, 477 r/w 109 of IPC and Sections 7, 8(1), 13(l)(a) r/w 13(2) and 12 of PC Act, as amended; (IV) FIR No. 68/2023 dated 25.04.2023 registered by Murappanadu Police Station, Thoothukudi District, under Section 449, 332, 302 and 506(2) of IPC, and since some of the offences of the said FIRs are scheduled offences under PMLA, the same would be the investigation/proceeding under the PMLA, **and the District Collectors or the persons to whom the summons are issued under Section 50(2) of the Act are obliged to respect and respond to the said summons**.
>
> (Emphasis supplied)

138. **This Court therefore holds** that it is clear from the reading of Section 50 of PMLA and the aforesaid decisions that the power conferred upon the authorities by virtue of Section 50 of PMLA empowers them to summon ‘any person’ whose attendance may be crucial either to give some evidence or to produce any records during the course of investigation or proceedings under PMLA. The persons so summoned are also bound to attend in person or through authorised agents and are required to state truth upon any subject concerning which such person is being examined or is expected to make a statement and produce documents as may be required in a case.

Replying to Summons issued under Section 50 of PMLA cannot amount to Joining Investigation

139. Sh. Singhvi had defended the petitioner's conduct of not joining investigation pursuant to service of nine summons issued by the Directorate of Enforcement under Section 50 of PMLA, stating that there was no non-compliance by Sh. Arvind Kejriwal of the nine summons as he had responded to each and every summon by way of letters, and thus, no fault can be found with his conduct which necessitated his arrest by the Directorate of Enforcement.

140. The argument as to whether the conduct of Sh. Kejriwal of not joining investigation, despite service of nine summons, was a justifiable contributive cause necessitating his arrest, when tested in light of the judgments of the Hon'ble Supreme Court mentioned above will lead to a conclusion that any person to whom a summon is sent by a competent authority under PMLA is bound to appear before the said authority in person. **In this Court's opinion**, the argument that there was no non-compliance on behalf of Sh. Kejriwal since he had replied to all nine summons has to be rejected since replying to summons is not equivalent to joining investigation under Section 50 of PMLA as there is no procedure prescribed that replying to a summon will suffice joining an investigation or any other proceeding as contemplated under Section 50 of PMLA. Further, replying to summons in this case cannot be equated with joining of investigation as the replies sent by Sh. Kejriwal were counter questioning the investigating agency about its intent and authority to summon him to

join investigation of a pending case, which could not have been done by way of a reply but only through the order of a court of law.

Whether Petitioner was entitled to Special Privileges for the purpose of complying with Summons issued under Section 50 of PMLA?

141. Sh. Singhvi had also argued that even if the petitioner had not personally appeared before the investigating agency pursuant to receipt of summons under Section 50 of PMLA, the respondent agency could have questioned him through video-conferencing, or by sending him a questionnaire or by visiting his residence to record his statement for the purpose of investigation in the present case.

142. **In this Court's opinion**, at the outset, this contention raised on behalf of the petitioner is bound to be rejected since the investigating agencies, under the Indian Criminal Jurisprudence, cannot be directed to conduct investigation in accordance with **convenience or dictates of a person.** The investigation has to take its own course, and in case, the investigating agency would be directed to visit the house of every such person for the purpose of investigation, in that case, the very purpose of investigation would be lost and would end in chaos.

143. **This is not a mere opinion of this Court, but the law laid down by the Hon'ble Apex Court in catena of judgments**. To refer to a few of such judgments, this Court takes note of the decision of Hon'ble Supreme Court in case of ***Himanshu Kumar v. State of Chhattisgarh*** *2022 SCC Online SC 884,* in which it has observed that

the accused cannot dictate the manner in which an investigation has to be conducted. The relevant portion of the decision reads as under:

> "51. In Romila Thapar v. Union of India, (2018) 10 SCC 753, one of us, A.M. Khanwilkar, J., speaking for a three-Judge Bench of this Court (Dr. D.Y. Chandrachud, J. dissenting) noted the dictum in a line of precedents laying down the principle that the accused "does not have a say in the matter of appointment of investigating agency". In reiterating this principle, this Court relied upon its earlier decisions in *Narmada Bai v. State of Gujarat, (2011) 5 SCC 79, Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1, E. Sivakumar v. Union of India, (2018) 7 SCC 365, and Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542*. This Court observed:
>
> > "30…the consistent view of this Court is that the accused cannot ask for changing the investigating agency **or to do investigation in a particular manner including for court-monitored investigation."**
> >
> > (Emphasis supplied)

144. In ***P. Chidambaram v. Directorate of Enforcement*** *(2019) 9 SCC 24* also, the Hon'ble Supreme Court has held that:

> "66…there is a well-defined and demarcated function in the field of investigation and its subsequent adjudication. It is not the function of the court to monitor the investigation process so long as the investigation does not violate any provision of law. I**t must be left to the discretion of the investigating agency to decide the course of investigation.** If the court is to interfere in each and every stage of the investigation and the interrogation of the accused, it would affect the normal course of investigation. **It must be left to the investigating agency to proceed in its own manner in interrogation of the accused, nature of questions put to him and the manner of interrogation of the accused**".

145. In fact, the Hon'ble Supreme Court had settled the above aspect of investigation way back in the case of ***State of Bihar v. P P Sharma*** *1992 Supp. (1) SCC 222,* and ***Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria*** *(1998) 1 SCC 52,* in which it was held that the investigating agency is entitled to decide *"the venue, the timings and the questions and the manner of putting such questions"* during the course of investigation.

146. As regards the issue as to **whether a separate privilege should have been extended to the petitioner**, who is a sitting Chief Minister of a State, for the purpose of investigation, within the parameters of law which exists as on date, there is no separate treatment or protocol which any investigating agency is to follow for the purpose of summoning or questioning of a common man or a Chief Minister of a State.

147. Further, **this Court holds that this Court would not lay down two different categories of laws, one for common citizens, and the other granting special privilege to be extended by investigating agency to a Chief Minister or any other person in power only on the basis of being in that public office since that public office is enjoyed by that public figure due to the mandate of the public.** In the recent case of ***Amanatullah Khan v. Directorate of Enforcement*** *2024 SCC OnLine Del 1658* also, this Bench had observed that there cannot be different set of rules regarding investigation qua 'classes' and 'masses' and that an MLA or a public figure is not above the law of land. The relevant observations of the decision are extracted hereunder for reference:

"**BEYOND PRIVILEGE: UPHOLDING ACCOUNTABILITY OF PUBLIC FIGURES**

74. **This Court cannot allow a new jurisprudence or different sets of rules to prevail regarding investigation qua 'classes' & 'masses'** by each time permitting an excuse or request that being a public figure, being an MLA, Chairman of the Waqf Board and being busy with some activities of his constituency, he could not appear before the investigating agency.

75. **Being a public figure in politics, he is essentially first and foremost in the public service and it is natural that he would have at all times, something or the other happening in his constituency.** It is for the public figure to find time and appear before the investigating agency, when so required as per the law, since the **investigating agencies are also working for the State itself and are working towards public service** being public servants.

76. **Even the lawmakers should know that disobeying the law will get them caught up in legal consequences as envisaged under criminal law as any other common citizen without creating a special class for them as all citizens are equal in the eyes of law.** This is more critical when such persons refuse to assist but rather resist the investigative process, especially the process which has not been struck down by a Court of law as illegal.

77. Undoubtedly, every such person as any other citizen of India is entitled to the protection of law, however, the law will also equally apply to him, subject to any privilege if at all, in a case applicable to him. Needless to say, the protection as per law which is available to all citizens is also available to such members and public figures. **Their standing in lives or being an elected representative of the people does not create a class or elite class entitling them to different treatment being extended under the same law**.

78. Rather an **electorate representative** and his conduct in cooperating with the investigating agencies on public turf has to be equal, if not on a higher pedestal. **Furthermore, the investigating agencies in India have a right to conduct investigation and to perform their duties on behalf of citizens of this country itself as in the present**

> **case, the electorate i.e. citizens of Delhi, without any intimidation, influence or avoidance by the public figure**.
>
> 79. To conclude, **an MLA or a public figure is not above the law of the land**."

148. Even *de hors* the aforesaid observations, this Court also notes that the petitioner herein neither had secured any order of any Court of law in his favour, nor had he approached any Court challenging the summons issued by the Directorate of Enforcement or for seeking any protection from arrest, till filing a petition before the Hon'ble Division Bench of this Court on 19.03.2024. Thus, Sh. Kejriwal himself did not challenge the nine summons issued to him over a period of six months in any Court of law till the filing of aforesaid petition before this Court. In case Sh. Kejriwal was aggrieved by the summons sent by the Directorate of Enforcement or desired that he should be investigated by the Directorate of Enforcement in the manner that he wanted them to interrogate him by extending special facilities to him by virtue of him being the sitting Chief Minister, and distinguishing him from a common man, he should have approached a Court of law. The competent Court of law could have examined his prayer of being interrogated at his home or through a questionnaire or video-conferencing also.

149. Needless to say, the Directorate of Enforcement is not dealing with one case but thousands of cases have been investigated in the past since PMLA came into force. Since the year 2002 when the PMLA came into force, the investigating agency has not extended

any special privilege to any person in absence of any specific order in this regard from a competent court of law. The investigating agency here also was not bound to extend any special privilege to the petitioner in absence of a Court order as the law does not envisage so.

Timing of Arrest and the Argument of Level Playing Field

150. It was the contention of Sh. Singhvi that the arrest of the petitioner is illegal also on the ground of the malafide intention and the arbitrariness reflected in the manner and the timing of the arrest, and his arrest raises serious questions about '*the level playing field*' in the upcoming Lok Sabha Elections 2024, for the reason of petitioner being not able to campaign for the elections.

151. As regards this argument, **this Court is of the opinion** that the petitioner herein has been arrested in a case of money laundering and had been presented before the learned Special Court, and the Courts have to examine his arrest and remand in context of the law concerning arrest and remand, irrespective of the timing of elections. In absence of any malafide intention on part of Directorate of Enforcement apparent on record, accepting this argument would mean that in case the petitioner would have been arrested in October 2023 itself, his arrest would not have been challenged on ground of malafides since elections were not declared at that point of time. **In case this argument is accepted, it would amount to accepting that in case a person delays presenting himself before the investigating agency, he can take advantage of the same and later take a plea of malafides since the time when the investigating**

agency arrests him does not suit him either personally or professionally.

152. **Sh. Kejriwal also must have been aware** about the impending Lok Sabha Election dates which were likely to be declared in the month of March 2024, which has also been mentioned by him in his replies to summons. Sh. Kejriwal would have known that when Lok Sabha Elections are declared, **he would become busier than ever** and would not be able to join the investigation. Despite the same, he neither challenged the summons issued to him under Section 50 of PMLA nor did he join the investigation since October, 2023. He must have been aware as to what can be the consequences of non-joining of investigation and where it can lead to. Further, he also contested, sought adjournment and time in a case filed by Directorate of Enforcement i.e. Complaint Case bearing No. 02/2024 before the learned ACMM, Rouse Avenue Courts, Delhi, regarding willful defiance of summons issued under Section 50 of PMLA. This case is still pending wherein cognizance has been taken against him *vide* order dated 07.02.2024. The said case is not about validity of the summons nor any order has been passed nor any relief has been granted directing Sh Kejirwal not to join investigation or grant of bail. It is noteworthy that even after filing of the said complaint case for non-compliance of summons by Directorate of Enforcement in the month of January/February, 2024 before the concerned Trial Court, the petitioner did not join the investigation. Further summons were again sent by the Directorate of Enforcement to Sh. Kejriwal on 14.02.2024, 21.02.2024, 26.02.2023 and 16.03.2024 as there was no

stay of proceedings nor any direction to not summon the petitioner by the said Court.

153. The **petitioner Sh. Kejriwal had also not preferred to file any application seeking pre-arrest bail** in the present ECIR, even though he had mentioned in his reply dated 18.01.2024 sent to the Directorate of Enforcement in response to their summons, that he believed that he was being summoned repeatedly as the agency wanted to arrest him. The petitioner had finally approached this Court only on 19.03.2024 by way of a Writ Petition No. 937/2024 seeking interim relief from arrest, apart from challenging legality of summons. However, the Hon'ble Division Bench of this Court did not grant him any relief either from appearance before the Directorate of Enforcement or any interim relief in form of pre-arrest bail.

154. In such circumstances, **there was nothing that barred Directorate of Enforcement within the parameters of law** to have searched his residence under Section 17 of PMLA and to have arrested him under Section 19 of PMLA, moreso since he was not joining investigation since October 2023 despite being given repeated opportunities and the Directorate of Enforcement was in possession of material against him regarding which he was being requested to appear before it repeatedly.

155. Therefore, **this Court is of the opinion** that to hold that the timing was chosen by the investigating agency will be accepting a misplaced argument. It was the petitioner himself who had delayed the investigation to the point of time of his arrest, when the Courts had refused to grant him relief from arrest, or from joining

investigation. Therefore, there is nothing before this Court to reach a conclusion that the timing of arrest was deliberate by the Directorate of Enforcement, and that conduct of Sh. Kejriwal was not responsible for a situation in which there was no other option other than to arrest to make him join the investigation.

156. The contention of Sh. Singhvi that the petitioner has been put in jail deliberately so that he is put at disadvantage during an election process is nothing but reiteration, in other words, of the argument that his arrest is malafide and illegal by sheer timing of the arrest and therefore, will invite the same finding as on the subject of timing of arrest. To reiterate, this Court holds that the issue of arrest has to be adjudicated as to whether it was illegal or not within the parameters of law, by application of law and not by political rhetoric.

Was there any Necessity to Arrest the Petitioner?

157. One of the arguments raised on behalf of petitioner was also that to affect an arrest under Section 19 of PMLA, it must be shown that there is a necessity to arrest the person who is allegedly involved in the offence of money laundering.

158. In this regard, a reference can be made to the decision of Hon'ble Supreme Court in case of ***Vijay Madanlal Choudhary*** *(supra*) wherein while explaining the mandate of Section 19 of PMLA and the scope of powers of arrest, the Hon'ble Supreme Court had expressed that the requirement on part of authorised officer to forward the copy of arrest order and material in his possession to the adjudicating authority was to ensure fairness and accountability of

the officer in forming an opinion regarding the *necessity* of arrest. The relevant observations in this regard reads as under:

> "322. …This safeguard is to ensure fairness, objectivity and accountability of the authorised officer in forming opinion as recorded in writing regarding the necessity to arrest the person being involved in offence of money-laundering…"

159. The aforesaid observations of the Hon'ble Apex Court in case of ***Vijay Madanlal Choudhary*** *(supra*) were reiterated in case of ***V. Senthil Balaji*** *(supra)*, and ***Pankaj Bansal*** *(supra)* and it was observed that it is necessary for the officer concerned to record reasons for his belief that a person is guilty of an offence under PMLA and needs to be arrested.

i. Impact of Non-joining of Investigation by the Petitioner on the Trial of Co-accused Persons

160. This Court notes that the Hon'ble Apex Court while denying the application for grant of bail of co-accused Sh. Manish Sisodia had in the judgment dated 30.10.2023 passed in ***Manish Sisodia v. CBI & Ors.*** *2023 INSC 956* had recorded that the Directorate of Enforcement had given an assurance that they shall take appropriate steps to ensure that the trial is concluded within a period of 6-8 months.

161. In this Court's opinion, due to non-joining of investigation by the petitioner, the co-accused persons who are already in judicial custody, were also impacted since his non-joining has in a way delayed the investigation since October, 2023, and all this while, the

Directorate of Enforcement was constantly trying to get the petitioner to join investigation as his name was mentioned in many statements of the witnesses including the approvers. The Directorate of Enforcement needed to question Sh. Kejriwal as the witnesses, approvers, and the record pointed out that his name and role had figured in many statements which warranted his investigation. It was Sh. Kejriwal who himself delayed joining investigation for the last about six months on one pretext or the other. This Court is also of the opinion that the other co-accused(s) who are in judicial custody even their incarceration and each day in jail was prolonged due to delay caused in joining investigation by Sh. Kejriwal, as well as causing delay in conclusion of investigation, as a consequence of which the trial could not commence yet.

162. **The conduct of the petitioner Sh. Kejriwal of not joining investigation left little option with the Directorate of Enforcement other than his arrest for the purpose of investigation of a pending case, in which other co-accused are in judicial custody, and the investigating agency is also running against time in view of the order of the Hon'ble Supreme Court *vide* which it was ordered that the trial in this case should proceed expeditiously**.

ii. Not Joining Investigation as a Contributory Factor

163. It is not in dispute that the petitioner's failure to attend the proceedings under Section 50 of PMLA despite service of nine summons cannot be the sole ground for his arrest. However, the repeated non-compliance of summons for over a period of six months

by the petitioner was indeed a contributing factor in his arrest. Had the petitioner joined investigation pursuant to issuance of summons under Section 50 of PMLA, he could have given his version before the investigating agency against the material which it had collected.

164. It was also argued before this Court that the petitioner was arrested straightaway without even recording any of his statement under Section 50 of PMLA. This Court wonders as to how Directorate of Enforcement could have recorded the statement under Section 50 of PMLA of Sh. Kejriwal when he did not present himself before the investigating agency for the said purpose on nine occasions. After not presenting himself before the investigating agency on nine occasions, he cannot now turn back and argue that his statement has not been recorded under Section 50 of PMLA when it was he himself who refused to present himself before the Directorate of Enforcement that was calling him for exactly the same purpose for the last six months.

165. However, considering the fact that the Directorate of Enforcement was in possession of material on the basis of which it had reasons to believe that the petitioner was guilty of offence of money laundering, it would have had no recourse available but to arrest the petitioner and to seek his remand so as to confront him with the statements of witnesses and approvers and other incriminating material collected during the course of investigation.

CONCLUSION

The State is static, the Governments are at the will of the People

166. While concluding this judgment, **this Court holds that Judges are bound by law and not by politics.** This Court also holds that **judgments are driven by legal principles and not political affiliations.**

167. Learned Senior Counsel appearing on behalf of the petitioner had argued that the arrest made by the Directorate of Enforcement was malafide, and made at the time of elections, and thereby seriously compromising *'free and fair elections'* and thus, also affecting *'democracy'* which in turn is '*basic structure'* of the Constitution of India.

168. **In this Court's opinion**, the Courts of law are one of the **pillars of democracy**. **Judges, as custodians of justice, are bound by the law and not by political considerations**. The independence of the judiciary not only refers to judgments independent of hidden or apparent biases but also independent of the effect of political affiliations of those who appear and are parties before them. **The oath of a judge binds her to the Constitution through its words which always resound in her ears and are etched in her mind**.

169. In this regard, **this Court notes that the judiciary is tasked with interpreting laws and adjudicating matters before it based on the existing laws and precedents alone, rather than the political considerations**. While adjudicating cases, the Courts are tasked with interpreting and applying the law, rather than delving into

the realm of politics. While politics may influence governance, it is not the purview of the Courts to adjudicate political matters. Instead, the judiciary remains steadfast in its commitment to the principles of law and justice, independent of political considerations.

170. At the heart of governance lies the welfare of the people, with the state serving as a static entity and governments subject to the will of the people. The Constitution, as the supreme law of the land, enshrines the rights and interests of the citizens, guiding the actions of both the state and its representatives. In upholding the mandate of the law, Courts prioritise the welfare of the people and the interests of the nation as a whole, ensuring that justice serves the greater good of society.

171. It is essential to recognize that democracy and the democratic process are not contingent upon any single factor or individual but are rooted in a broader framework of legal principles and civic values. While political dynamics may fluctuate, the underlying principles of democracy remain steadfast, anchored in the rule of law and the protection of individual rights. In this context, the judiciary plays a crucial role in upholding democratic ideals, ensuring that legal principles prevail over political considerations and that justice is administered fairly and impartially to all.

State is an Entity and Not Confined to a Person

172. In judicial proceedings where the State is one of the parties involved, the State represents an entity that transcends an individual person or a government or a political party.

173. This **Court observes that political considerations and equations cannot be brought before a Court of law as they are not relevant to the legal proceedings.**

174. In the case at hand, it is important to clarify that the matter before this Court is **not a conflict between the Central Government and the petitioner Sh. Arvind Kejriwal**. **Instead**, **it is a case between the petitioner Sh. Arvind Kejriwal and the Directorate of Enforcement**. **In such legal proceedings, it is crucial for the Court to maintain its focus solely on the legal merits of the case**. **Political factors or dynamics should not and have never influenced the court's deliberations or decision-making process.** The role of the Court is to impartially assess the evidence presented and apply the relevant laws to determine the outcome of the case. Any attempt to introduce political considerations into the proceedings would undermine the integrity of the legal process and could compromise the pursuit of justice. Therefore, it is essential for the court to remain vigilant in ensuring that the case is adjudicated based on legal principles and not influenced by extraneous factors.

175. Though Sh. Singhvi argued that he was not arguing politics but law, however, due to complexity of facts of the case which are intertwined with the political standing of the petitioner and the impending General elections, it was a difficult task. Despite the same, **this Court** has to adhere to its constitutional duty of applying law to the facts of a case, howsoever complex they may be *sans* the political equations between parties as **the issue before this Court does not concern two political parties but an investigating agency on one**

hand and an alleged accused who happens to be a Chief Minister on the other hand.

176. **The Courts have been and are better left untouched by political influences or interferences and their only and sole responsibility and duty is application of law enacted by the Parliament which is the will of the people.**

177. **In a nutshell**, this Court is only following its constitutional duty of following the Constitution and the judicial precedents mandated by the Hon'ble Supreme Court. This Court will therefore decide the case following this constitutional duty and will concentrate on the allegations and material collected by the Directorate of Enforcement placed before it and apply law, which is the only domain in which this Court can tread.

Courts are concerned with Constitutional Morality and not Political Morality

178. **Courts, as the custodians of justice, are primarily concerned with only upholding constitutional morality rather than getting into the issue of political morality of the parties, as the issue of political morality is their concern and this Court cannot form any judgment about the same**. Constitutional morality and political morality represent distinct paradigms that guide decision-making in their respective domains. Constitutional morality is rooted in the principles enshrined within the Constitution, emphasising the protection of individual rights, adherence to the rule of law, and the promotion of justice for all, whereas in contrast,

political morality may be shaped by partisan interests, ideological agendas, or populist sentiments, often fluctuating with changing political dynamics.

179. **When adjudicating legal disputes, the Courts are duty-bound to interpret laws and assess the actions of investigating agencies in alignment with constitutional and legal norms, irrespective of political considerations.** By following constitutional morality, Courts uphold the integrity of legal institutions and ensure that justice is dispensed impartially, free from the influence of political expediency.

180. **The petitioner or the respondent may find the Court to be excessively harsh or lenient in their cases, however, the Court has to dispassionately only keep its concern with application of law and decide the case before it accordingly.** The Courts have to only perform their duty of application of law irrespective of the political or financial standing of any person before it. At the same time, keeping in mind a fair trial and hearing to an accused.

The Decision

181. In view of the aforesaid discussion, and for the reasons recorded by this Court in *para nos. 104 to 114*, this Court is of the opinion that the arrest of petitioner Sh. Arvind Kejriwal was not in contravention with the law laid down by the Hon'ble Apex Court in case of ***Pankaj Bansal*** *(supra)* in respect of Section 19 of PMLA. Similarly, for the reasons recorded in *para nos. 115 to 127*, the

impugned remand order dated 22.03.2024 passed by the learned Special Court does not suffer from any infirmity or illegality.

182. Consequently, since the arrest of the petitioner and the impugned remand order dated 22.03.2024 are held valid, the prayer seeking release of petitioner is also liable to be rejected.

183. Accordingly, the present petition stands dismissed along with pending applications.

184. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case during trial.

185. **This Court places on record its appreciation** for the elaborate arguments addressed by **Sh. Abhishek Manu Singhvi**, learned Senior Counsel for the petitioner and **Sh. S.V. Raju**, learned ASG appearing for the respondent, **and their respective legal teams in Court** and **in their respective offices**, who very **ably assisted** this Court.

186. Copy of this judgment be given *dasti* under the signature of Court Master free of cost to the learned counsel appearing on behalf of the petitioner as the petitioner is in judicial custody.

187. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

APRIL 9, 2024/*NS*
TD/TS/ASB