IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.196 of 2025

Arising Out of PS. Case No.-4 Year-2024 Thana- E.C.I.R (GOVERNMENT OFFICIAL) District- Patna

==========

Uttam Daga @ Uttam Kumar Daga S/o Hariratan Daga R/o C.F-374, Salt Lake City, Sector-1, P.S. Bidhannagar (M), District North 24 Parganas, West Bengal

... ... Petitioner/s

Versus

1. The Union of India through the Assistant Director, Enforcement Directorate, Patna Zonal Office Bihar
2. The Assistant Director, Enforcement Directorate, Patna Zonal Office, Patna Bihar
3. Superintendent of Prisons, Beur Jail, Kisan Colony, Anisabad, Patna, Bihar, 800002 Bihar

... ... Respondent/s

==========

Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate
		Mr. Harsh Singh, Advocate
For the Respondent/s	:	Mr. Dr. Krishna Nandan Singh (ASG)
For the ED	:	Mr. Zoheb Hossain, Spl Counsel
		Mr. Manoj Kumar Singh, Spl. PP
		Mr. Prabhat Kumar Singh, Spl. PP
		Mr. Pranjal Tripathi, Advocate
		Mr. Ankit Kumar Singh, Advocate

==========

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT
Date : 08-04-2025

1. Times without number, the scope and purport of Article 22 of the Constitution of India, specially Article 22(2) came up for judicial interpretation and consideration in relation to the question as to whether it is obligatory for the arresting officer / agency to produce

the arrested person before the nearest Magistrate within 24 hours of his arrest or the term “nearest Magistrate” extends to jurisdictional Magistrate in relation to production of the accused within 24 hours of his arrest.

2. The instant writ petition raises the same question of law in addition to the second question as to whether remand order is amenable to writ jurisdiction specially when statutory indictment is alleged to have been not considered by the learned Magistrate while remanding the accused in police custody or in custody of special investigating agency.

3. Now the facts.

4. In connection with ECIR No. PTZO/04/2024, dated 14th March, 2024 (Directorate of Enforcement, Patna v. Sanjeev Hans and others) an FIR No. 18 of 2023, dated 9th of January, 2023, registered in Rupaspur Police Station, Patna against the above-named Sanjeev Hans, a member of IAS; Gulab Yadav, EX MLA, RJD; and others, ED, conducted raid in the house of Uttam Daga, petitioner herein, to investigate his role

in money laundering at premises CF-374 Salt Lake City, Sector-1, Kolkata-700064 on 25th of January, 2025. The officers of DOE conducted search in the house and others places, owned and possessed by the petitioner and during search they had reason to believe on the basis of the materials collected by them that the petitioner is *prima facie* guilty of committing offence under the Prevention of Money Laundering Act, (hereinafter described as "PMLA"). Accordingly, he was arrested at about 03:30 P.M.

5. It is the grievance of the petitioner that in terms of Section 187 of the BNSS read with Article 22(2) of the Constitution of India, the DOE did not produce the petitioner before the nearest Magistrate immediately after arrest. On the contrary, he was flown to Patna after his arrest on the same day and at about 09.00 P.M., the accused was produced before the learned CJM, Patna, who remanded him to the custody of the DOE by passing an order at about 09.00 P.M of the same day.

6. The petitioner has challenged the entire process of his arrest, his production before the CJM, Patna and failure on the part of DOE to produce him before the “nearest Magistrate” immediately after arrest, allegedly in violation of Article 22(2) of the Constitution of India. It is also alleged that the DOE violated the provisions of Sections 58 and 187 of the BNSS.

7. By filing a supplementary affidavit, it is alleged that the order passed by the learned CJM, Patna, dated 25th of January, 2025, is bad in law, as the order of remand was passed without any consideration as to whether the DOE came to the *prima facie* satisfaction with regard to existence of Section 19 of the PMLA. According to the petitioner, the impugned order, dated 25th of January, 2025, is illegal, inoperative and violative of Article 22 of the Constitution of India.

8. On the above facts, the petitioner has filed the instant writ petition, praying for the following reliefs:-

"a) For seeking a declaration that the detention of the Petitioner pursuant to Petitioner's arrest on 25.01.2025 3:30 p.m. at Kolkata, West Bengal and subsequent production before the Learned C.J.M. Patna at 21:00 hours in the absence of Petitioner being produced before or any order of transit remand being sought from the nearest Magistrate at Kolkata, West Bengal as illegal and violative of Articles 21 and 22 of the Constitution of India and Section 187 of the B.N.S.S (pari materia to Section 167 Cr.P.C.).

b) For leave to produce certified copy of the order dated 25.01.2025 C.J.M. .., Patna, which has passed by Learned been applied for by filing requisites on 27.01.2025, as and when the same is made available to the Petitioner, whereby and whereunder Petitioner has been remanded to judicial custody and for consequentially setting aside the same, as an illegal detention violative of Articles 21 and 22(2) of the Constitution of India and Section 187 of the B.N.S.S. (pari materia to Section 167 Cr.P.C.) cannot be validated by an order of judicial remand.

c) For directing the Petitioner to be released forthwith in connection with ECIR

No. PTZO/04/2024 (hereinafter referred to as the "ECIR") pending before the Court of Learned Sessions Judge cum Special Judge (PMLA) Patna.

d) For an ad-interim direction for releasing the Petitioner connection with ECIR No. PTZO/04/2024 (hereinafter referred to as the "ECIR") pending before the Court of Learned Sessions Judge cum Special Judge (PMLA) Patna during the pendency of the instant writ application.

e) For any other relief(s) to which the Petitioner may be found entitled to in the facts and circumstances of the case."

9. Mr. Jitendra Singh, learned Senior Counsel appearing on behalf of the petitioner, at the outset, refers to Article 22 of the Constitution of India for the sake of proper adjudication of the case. It is important to reproduce Article 22 of the Constitution of India hereinbelow.

"22. Protection against arrest and detention in certain cases

(1)No person who is arrested shall be detained in custody without being informed, as

soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2)Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3)Nothing in clauses (1) and (2) shall apply—

(a)to any person who for the time being is an enemy alien; or

(b)to any person who is arrested or detained under any law providing for preventive detention.

(4)No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a)an Advisory Board consisting of persons who are, or have been, or are

qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b)such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5)When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6)Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7)Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4)

(b)the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c)the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4).”

10. Referring to the provisions of Clause (2) of Article 22, it is submitted by Mr. Singh that the requirement of Article 22(2) that the person arrested must be produced before the nearest Magistrate within a particular time is definitely not tethered to the test of territoriality with reference to the place of commission of offence or the place were the connected criminal case might have been registered. The mandate of the

Constitution is that the person arrested and detained in custody in connection with any offence or criminal case that might have been committed or registered even elsewhere will have to produced before the nearest Magistrate i.e., the Magistrate nearest to the place of arrest and detention, irrespective of the question that offence might have been committed or the criminal case might have been registered at a different and far away place within the territorial jurisdiction of another Magistrate or Court. The very purpose of production before the nearest Magistrate after arrest is to give the arrested person an opportunity to place himself at the disposal of an independent and responsible authority, namely, Magistrate so that the Magistrate can examine the matter and pass such order as may be considered necessary or warranted in accordance with law regarding the detention, custody, production or release of arrested person on bail or otherwise. A person who is arrested and produced or brought before a Magistrate in connection with non-bailable offence may pray for bail under Section 480 of the BNSS and it will be for the

Magistrate concerned to consider the prayer for bail in accordance with law. The Magistrate may also reject the prayer for bail and order of detention of the arrested person for proper custody in accordance with law.

11. Section 3(2) of the BNSS makes it clear that where under any law, other than the BNSS, the function exercisable by a Magistrate relate to matters which involved the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this BNSS, be exercisable by a Judicial Magistrate or if the function exercisable by a Magistrate relate to matters which are administrative or executive in nature, such as, the granting of a license, the suspension or cancellation of a license, sanctioning a prosecution or withdrawing from a prosecution, they shall subject, as aforesaid, be exercisable by an Executive Magistrate. Since the very purpose of production of an arrested person before a

Magistrate in compliance of Article 22(2) is to place the arrested person at the disposal of the Magistrate requiring the Magistrate to consider and decide whether he should be directed to be detained in custody and if so, in whose custody or to be produced before any other Court or whether he should be released on bail or otherwise, the requirement of the said Article 22(2) cannot be satisfied by producing him before a nearest Judicial Magistrate, having territorial jurisdiction to try the case.

12. It is also contended by Mr. Singh that Section 187 of the BNSS also contemplates and requires production of the arrested person (whether arrested with warrant or without warrant) before the nearest Judicial Magistrate and empowers such Judicial Magistrate, whether he has or has not jurisdiction to try the case to authorize the detention of the accused in proper custody for a trial not exceeding 15 days in the whole, and if such Magistrate has no jurisdiction to try the case or commit it for trial, he may order the accused to be forwarded before a Magistrate having such jurisdiction.

This provision, according to Mr. Singh, clearly shows that the nearest Magistrate before whom an arrested person has to be produced in compliance with the mandate of Article 22 (2) as well as of the requirement of Section 187 need not necessarily be the Magistrate having jurisdiction to try the case or commit it for trial. In other words, he tried to impress upon this Court that it is the incumbent duty of the Arresting Officer/Agency to produce an arrested person before the nearest Magistrate. Even if he does not have territorial jurisdiction either to try or commit the case for trial. The provision is contemplated in the Constitution as well as the Cr.P.C., now BNSS, to give an opportunity to the accused at the earliest to challenge his arrest and to pray for bail. The term “nearest Magistrate” cannot be supplemented by term “Jurisdictional Magistrate”.

13. To elucidate his argument further, Mr. Singh next draws my attention to the relevant portions of the debate of the Constituent Assembly on the point of introduction of “New Article 15A” which is at present codified in the Constitution as Article 22. In Constituent

Assembly debate, it is recorded: “We are therefore now, by introducing Article 15A, making, if I may say so, compensation for what has been done then in passing Article 15. In other words, we are providing for the substance of the law of “due process” by the introduction of Article 15-A.

“Article 15-A. merely lifts from the provisions of the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international justice. It is quite true that these two provisions contained in clause (1) and clause (2) are already to be found in the Criminal Procedure Code and therefore probably it might be said that we are really not making any very fundamental change. But we are, as I contend, making a fundamental change because what we are doing by the introduction of Article 15-A. is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislature not to abrogate these two provisions, because they are now introduced in our Constitution

itself.”

14. Therefore, it is submitted by Mr. Singh that an arrested person has the fundamental right to be produced before the nearest Magistrate within 24 hours of such arrest. According to Mr. Singh, every arrest violates the right to life and personal liberty of an arrested person, if such arrest is made except according to procedure established by law. So, an accused must get an immediate opportunity to agitate that his arrest was not in accordance with due process of law for violation of any or all of the provisions under which he is arrested. This is the purpose for introduction of Article 22 (2). Therefore, the DOE violated the constitutional provisions by not producing the accused before the nearest Magistrate.

15. In other words, Mr. Singh submits that term “nearest Magistrate” cannot be supplemented by a term “jurisdictional Magistrate”.

16. On the issue of interpretation of the provision contained in Article 22(2), Section 187 of the

BNSS, Section 58 of the BNSS and other provisions relating to production of accused after arrest within 24 hours, the learned Senior Counsel appearing on behalf of the petitioner first refers to the decision of the Hon'ble Supreme Court in ***Madhu Limaye and Others***, reported in ***(1969) 1 SCC 292***. Paragraph 10 of the said judgment is referred to by learned Senior Counsel for the petitioner with great stress and the same is quoted below:-

> *"10. Article 22(1) embodies a rule which has always been regarded as vital and fundamental for safeguarding personal liberty in all legal systems where the rule of law prevails. For example, the 6th amendment to the Constitution of the United States of America contains similar provisions and so does article 34 of the Japanese Constitution of 1946. In England whenever an arrest is made without a warrant, the arrested person has a right to be informed not only that he is being arrested but also of the reasons or grounds for the arrest. The House of Lords in Christie v. Leachinsky [[1947] A.C. 573 :*

(1947) 1 All ELR 567] went into the origin and development of this rule. In the words of Viscount Simon if a policeman who entertained a reasonable suspicion that X had committed a felony were at liberty to arrest him and march him off to a police station without giving any explanation of why he was doing this, the prima facie right of personal liberty would be gravely infringed. Viscount Simon laid down several propositions which were not meant to be exhaustive. For our purposes we may refer to the first and the third:

"1. If a policeman arrests without warrant upon reasonable suspicion of felony, or of other crime of a sort which does not require a warrant, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself or to give a reason which is not the true reason. In other words, a citizen is entitled to know on what charge or on suspicion of what crime he is seized.

2. * * *

3. The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if

the circumstances are such that he must know the general nature of the alleged offence for which he is detained."

17. The Hon'ble Supreme Court in Madhu Limaye (Supra) observed in the foregoing paragraph in the context of the petitioner's detention without informing him the grounds of arrest. The arrest of the petitioner was effected by the police officers for offences under Section 188 of the IPC which were non-cognizable. Therefore, the officers did not give the arrested persons the reason for their arrest of the offence for which they had been taken into custody. Under such background, the Hon'ble Supreme Court held that Clause (2) of Article 22 provides the most material safeguard that the arrested persons must be produced before a Magistrate within 24 hours of such arrest so that an independent authority exercising judicial powers might without delay apply its mind to his case.

18. In the instant case, it is submitted by the learned Senior Counsel for the petitioner that the petitioner's right to be produced before the nearest

Magistrate within 24 hours was violated and the term "nearest Magistrate" must be given its literal meaning and no contextual meaning is permitted to be made to extend the scope of Article 22 (2).

19. Mr. Singh next refers to a Constitution Bench decision in the case of ***Union of India & Anr. v. Tulsiram Patel***, reported in ***(1985) 3 SCC 398***. This decision deals with the scope of Article 311 (2) of the Constitution of India which states that no person in the service under the Union and the States shall be dismissed or removed or reduced in rank, except after an inquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. In other words, without departmental inquiry by formulation of articles of charge and giving opportunity to the delinquent employee of being heard, he shall not be dismissed, removed or reduced in rank. While interpreting Article 311 (2) of the Constitution, the Hon'ble Supreme Court held in paragraph 70 as hereunder:

> *"70. The position which emerges from the above discussion is that the keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause shall not apply" is mandatory and not directory. It is in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication. The maxim "expressum facit cessare tacitum" ("when there is express mention of certain things, then anything not mentioned is excluded") applies to the case."*

20. Coming to the instant case, it is submitted by the learned Senior Counsel appearing on behalf of the petitioner that above principle of interpretation of statute is applicable in Article 22(2) also. According to him, "nearest Magistrate" means the Magistrate who sits

nearest to the place of arrest without having regard to the question as to whether he has territorial jurisdiction or not.

21. While extending his argument, Mr. Singh refers to another decision of the Hon'ble Supreme Court in case of ***Subramanian Swamy v. Election Commission of India***, reported in ***(2008) 14 SCC 318***.

22. This case relates to freezing of symbol of a political party who was allotted with a reserved symbol earlier but in view of loss of recognition subsequently, the symbol was freezed. The factual aspect of the above decision is entirely different from the facts of this case. The appellant before the Hon'ble Supreme Court challenged the judgment passed in a writ petition by the High Court freezing the symbol of a political party under Para 10-A of the Election Symbols (Reservation and Allotment) Order, 1968, issued by the Election Commission of India. The Symbols Order deals with symbols of political parties. Marginal heading of Para 10-A points that this para deals with "Concession to

candidates set up by an unrecognised party which was earlier recognised as a national or State party." The material provision of Para 10-A, runs thus:-

"If a political party, which is unrecognised at present but was a recognised national or State party in any State or Union Territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union Territory, whether such party was earlier recognised in that State or Union Territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognised national or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union Territory, on the fulfilment of each of the following conditions...."

23. While interpreting Para 10 A of the said order in the light of the other provision, the Hon'ble Supreme Court held as hereunder:-

"28. *This Court in Philips India Ltd. v. Labour Court [(1985) 3 SCC 103 : 1985 SCC (L&S) 594] observed in para 15 as under: (SCC p. 112)*

*"15. No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (see Attorney General v. Bastow [(1957) 1 QB 514 : (1957) 2 WLR 340 : (1957) 1 All ER 497]) and as a 'settled rule' (see Poppatlal Shah v. State of Madras [(1953) 1 SCC 492 : AIR 1953 SC 274 : 1953 SCR 677]). The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke [**Ed.**: In Lincoln College case, (1595) 76 ER 764 : 3 Co. Rep 58b] laid down that: 'it is most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers'. [Quoted*

with approval in Punjab Beverages (P) Ltd. v. Suresh Chand [(1978) 2 SCC 144 : 1978 SCC (L&S) 165 : (1978) 3 SCR 370] .]"

Para 10-A, therefore, cannot be interpreted in isolation as prayed for by the appellant. It has to be read in terms of other connected provisions like Paras 5, 6, 6-A, 6-B and 6-C and also the objects on the Preamble which also has been quoted by us above. The conjoint reading of all this would clearly bring out a position that Para 10-A would have to be read and interpreted so that it does not harm the other provisions of the statute.

29. *Again a Constitution Bench of this Court in Union of India v. Elphinstone Spg. and Wvg. Co. Ltd. [(2001) 4 SCC 139] in para 21 has made the following observations: (SCC p. 169)*

"21. ... though it is no doubt true that the court would be justified to some extent in examining the materials for finding out the true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the

statute unworkable or the very purpose of enacting the statute would get frustrated. But by no stretch of imagination, would it be open for a court to expand even the language used in the Preamble to extract the meaning of the statute or to find out the latent intention of the legislature in enacting the statute. As has been stated earlier…"

These observations would succinctly bring out a position that since the language of Para 10-A is extremely clear and its plain meaning does not, in any manner, bring out any absurd results, we would have to rely upon the plain meaning which is the only meaning emerging out of the plain language of the provision. It is for this reason that we were not in a position to read down the provision so as to ignore the words "six years" in Para 10-A.

30. Another argument which was pressed into service was that Para 8 should recognise a third category i.e. a party which was once a recognised party but has lost its status as such so that it retains its old symbol for ever and can rightfully claim it. That para makes it mandatory that a candidate set up by a national party shall chose the symbol

reserved for that party and no other symbol. So also a candidate set up by the State party shall chose and shall be allotted only the symbol allotted to that party and no other symbol. Para 8(3) provides that a reserved symbol shall not be chosen by or allotted to any candidate other than a candidate set up by the national party or a State party for whom such symbol has been reserved. The provision is extremely clear. Dr. Swamy, however, wanted us to create a third category as has been stated earlier. That is not possible. If the arguments were to be accepted, then we would have to read something which is not there in the provisions and this includes Paras 5, 6 and 8 as also the impugned Para 10-A. Such an exercise would amount to this Court treading dangerous path of legislature. We do not think that such a course is possible. We are, therefore, not inclined to accept that argument."

24. Mr. Singh, learned Senior Counsel for the petitioner, next refers to the case of ***Vinubhai Mohanlal Dobaria v. Chief Commissioner of Income Tax & Anr.***, reported in ***2025 SCC Online SC 270*** to contend that Court cannot read anything into a statutory provision

which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. The Statutes should be construed, not as theorems of Euclid', the avoid the danger of a prior determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation. While interpreting a provision the court only interprets the law and cannot legislate it.

25. He specially refers to paragraph 16 of ***D. R. Venkatachalam v. Dy. Transport Commissioner***, reported in ***(1977) 2 SCC 273***, which states as hereunder:

> *"16. Two principles of construction- one relating to casus omissus and the other in regard to reading the statute as a whole- appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of*

clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. 'An intention to produce an unreasonable result', said Danckwerts L.J. in Artemiou v. Procopious, 'is not to be imputed to a statute if there is some other construction available'. Where to apply words literally would 'defeat the obvious intention of the legislation and produce a wholly unreasonable result, we must 'do some violence to the words' and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC25) where at AC page 577 he also observed: This is not a new problem, though

our standard of drafting is such that it rarely emerges"

26. Referring to the case of ***Kunhayammed & Ors. v. State of Kerala & Anr.***, reported in 2000 6 SCC 359, Mr. Singh has advanced the argument on the doctrine of merger. This Court, however does not find any scope to apply common law of doctrine of merger while disposing of the issues in the instant case. Therefore, this Court refrains from dealing with the submission made by Mr. Singh in this regard.

27. Similar principle, laid down in the decision of ***Manisha Nimesh Mehta v. Board of Directors***, reported in ***(2024) 9 SCC 573***, is also not applicable in the instant case.

28. Mr. Singh next refers to the decision rendered in ***Priya Indoria v. State of Karnataka & Ors.***, reported in ***(2024) 4 SCC 749***. In this case, the Hon'ble Supreme Court held that it is permissible to grant extra territorial transit or interim anticipatory bail for an offence committed outside the territorial jurisdiction of the High Court or Court of Sessions. It is held by the

Hon’ble Supreme Court in Priya Indoria (supra) that if a person commits an offence in one State and the FIR is lodged within the jurisdiction where the offence was committed but the accused resides in another State, he can approach the Court in the other State and seek transit anticipatory bail of limited duration. It was also held by the Hon’ble Apex Court that the accused could approach the competent Court in the State where he is residing or is visiting for a legitimate purpose and seek a relief of limited transit anticipatory bail although the FIR is not filed in the territorial jurisdiction of the district or State in which the accused resides, or is present, depending upon the facts and circumstances of each case. This issue has not raised in the instant writ petition.

29. Power and authority of the High Court or a Court of Sessions to grant extra territorial transit anticipatory bail for a limited duration is not the subject matter of this writ petition. Therefore, in considered view of this Court, the ratio laid down in Priya Indoria

(supra) is also not applicable in the instant case.

30. Mr. Singh next refers to paragraph 102 of ***Gautam Navlakha v. National Investigation Agency***, reported in ***(2022) 13 SCC 542***. Paragraph 102 of the aforesaid decision explains the scheme of Section 167 in the following words: -

> *"102. There is a scheme which is unravelled by the Code regarding detention of an accused. The starting point appears to be the arrest and detention of the person in connection with the cognizable offence by a police officer without a warrant. He can detain him and question him in the course of the investigation. However, the officer cannot detain the accused beyond 24 hours excluding the time taken for the journey from the place of arrest to the place where the Magistrate who is competent to try the case sits. If he cannot so produce the accused and the investigation is incomplete, the officer is duty-bound to produce the arrested person before the nearest Magistrate. The nearest Magistrate may or may not have jurisdiction. He may order the continued detention of the*

arrested person based on the request for remand. He would largely rely on the entries in the case diary and on being satisfied of the need for such remand which must be manifested by reasons. The Magistrate can order police custody during the first 15 days (in cases under UAPA, the first 30 days). Beyond such period, the Magistrate may direct detention which is described as judicial custody or such other custody as he may think fit. It is, no doubt, open to a Magistrate to refuse police custody completely during the first 15 days. He may give police custody during the first 15 days not in one go but in instalments. It is also open to the Magistrate to release the arrested person on bail."

31. Paragraph 147 of the aforesaid decision states as follows: -

"147. The scheme of the law (CrPC) is that when a person is arrested without warrant in connection with a cognizable offence, investigation is expected to be completed within 24 hours from his arrest. If the investigation is not completed, as is ordinarily the case, the accused must be produced before the

Magistrate who is nearest from the place of arrest irrespective of whether he is having jurisdiction or not. The Magistrate on the basis of the entries in the case diary maintained by the officer is expected to apply his mind and decide whether the accused is to be remanded or not. If the police makes a request for police custody which is accepted then an order is to be passed and reasons are to be recorded under Section 167(3). Police custody is an important tool in appropriate cases to carry on an effective investigation. It has several uses. It includes questioning the accused with reference to the circumstances, and obtaining if possible, statements which are relevant in the future prosecution. Custodial interrogation in some cases is clearly a dire need to give a prosecution and therefore the courts a complete picture. The contention of the appellant that it is always open to the Magistrate to order only judicial custody and even exclusively with 90 days of judicial custody alone, an application for default bail would lie cannot be disputed. Whatever be the nature of the custody as long as it falls within the four walls of Section 167, if the requisite

number of days are spent in police/judicial custody/police and judicial custody that suffices."

32. It is also submitted by the learned Sr. Counsel appearing for the petitioner that the impugned order of remand is absolutely silent regarding the reason as to why the accused was remanded to the custody of DOE. It is also not stated in the impugned order on what ground custodial interrogation of the petitioner was necessary during investigation of the case. So the impugned order is bad in law under the provisions of Section 187 of the BNSS read with Article 22(2) of the Constitution of India.

33. Mr. Singh next refers to another decision of the Hon'ble Supreme Court in the case of ***State of U. P. & Anr. v. Synthetics and Chemicals Ltd. & Anr.***, reported in ***(1991) 4 SCC 139*** to advance an argument on the doctrine "*sub silentio*" and "*per incuria*". Both the doctrines are applicable in respect of a decision made by the High Court or the Hon'ble Supreme Court.

34. It is held by the Hon'ble Supreme Court

that a decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. The exception to the rule of precedents is rule of sub-silentio. A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind.

35. This issue is also not relevant for the purpose of deciding the instant writ petition.

36. It is submitted by Mr. Singh that the term “nearest Magistrate” used in Article 22(2) and various provisions of the BNSS stated hereinabove ought to be

interpreted while bearing in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

37. In support of his contention, he refers to the case of ***National Insurance Company Limited and Anr. v. Kripal Singh,*** reported in ***(2014) 5 SCC 189.***

38. The learned Sr. Advocate appearing on behalf of the petitioner next refers to the case of ***Pankaj Bansal v. Union of India & Ors.***, reported in ***(2024) 7 SCC 576***.

39. In Pankaj Bansal (supra), the only issue for consideration before the Hon'ble Supreme Court was whether the arrest of the appellant under Section 19 of the PMLA was valid and lawful, and whether the impugned orders of remand passed by the learned Vacation Judge/Additional Sessions Judge, Panchkula,

measure up. The Hon’ble Supreme Court held that mere passing of an order of remand would not be sufficient in itself to validate the appellants' arrests, if such arrests are not in conformity with the requirements of Section 19 PMLA. Though judgments were cited by ED which held to the effect that legality of the arrest would be rendered immaterial once the competent court passes a remand order, those cases primarily dealt with the issue of a writ of habeas corpus being sought after an order of remand was passed by the jurisdictional court and it was held by the Hon’ble Supreme Court that the said ratio has no role to play under the facts and circumstances of the case of Pankaj Bansal (supra).

40. The Hon’ble Supreme Court in paragraph no. 21 of the above-mentioned decision held as hereunder:-

> *“21. In terms of Section 19(3) PMLA and the law laid down in the above decisions, Section 167CrPC would necessarily have to be complied with once an arrest is made under Section 19 PMLA. The court seized of the exercise under Section 167CrPC of*

remanding the person arrested by ED under Section 19(1) PMLA 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 PMLA."

41. Mr. Singh next refers to the various provisions of Money Laundering Act such as:- " investigation define in Section 2(na) which includes all the proceedings under this PMLA conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence.

42. Section 16 of the PMLA deals with the power of survey. Section 16 of the PMLA is quoted below:-

***"16. Power of survey**.—(1) Notwithstanding anything contained in any*

other provisions of this Act, where an authority, on the basis of material in his possession, has reason to believe (the reasons for such belief to be recorded in writing) that an offence under section 3 has been committed, he may enter any place—

(i) within the limits of the area assigned to him; or

(ii) in respect of which he is authorised for the purposes of this section by such other authority, who is assigned the area within which such place is situated,

at which any act constituting the commission of such offence is carried on, and may require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, such act so as to,—

(i) afford him the necessary facility to inspect such records as he may require and which may be available at such place;

(ii) afford him the necessary facility to check or verify the proceeds of crime or any transaction related to proceeds of crime which may be found therein; and

(iii) furnish such information as he

may require as to any matter which may be useful for, or relevant to, any proceedings under this Act.

Explanation—For the purposes of this sub-section, a place, where an act which constitutes the commission of the offence is carried on, shall also include any other place, whether any activity is carried on therein or not, in which the person carrying on such activity states that any of his records or any part of his property relating to such act are or is kept.

(2) The authority referred to in sub-section (1) shall, after entering any place referred to in that sub-section immediately after completion of survey, forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed.

(3) An authority acting under this section may—

(i) place marks of identification on the records inspected by him and make or

cause to be made extracts or copies there from,

(ii) make an inventory of any property checked or verified by him, and

(iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act."

43. Section 17 is next important provision relating to search and seizure under the said Act. The said provision runs thus:-

***"17. Search and seizure**.—(1) Where 1 [the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—*

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering,1 [or] 1

[(iv) is in possession of any property related to crime,] then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or 1 [property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

3 [(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under sub-section (1) may seize such property.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure 3 [or upon issuance of a freezing order], forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

4 [(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority."

44. Then comes the power of the authorized officer to arrest an offender under Section 19 of the PMLA. The provision of Section 19 is quoted below:-

"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.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section (1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall, within twenty-four hours, be taken to a 1 [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours

shall exclude the time necessary for the journey from the place of arrest to the 2 [Special Court or] Magistrate's Court."

45. Referring to these provisions, it is submitted by the Learned Senior Counsel for the petitioner that Unlike BNSS, an accused cannot be arrested only on credible suspicion about his involvement in a cognizable offence. Section 19 creates a mandatory obligation upon the Director, Deputy Director, Assistant Director or any other person authorized in this behalf by the Central Government by General or Special order to arrest a person who has on the basis of material in his possession, "reason to believe" (the reason for such believe to be recorded in writing) that any person has been guilty of an offence punishable under this Act. It is also the bounden duty of the concerned officer to inform him of the grounds of such arrest. So there are two preconditions contained in Section 19 before arresting a person. The Authorized officer on the basis of the material in his possession must have the reason to believe that the person has been guilty of an offense

punishable under this act. Secondly, such reason to believe shall be recorded in writing and thirdly the arrested person shall be informed forthwith the grounds of arrest.

46. In the instant case, it is contended by the Learned Senior Counsel for the petitioner that the Learned Chief Judicial Magistrate, who remanded the petitioner to the custody of DOE, failed to consider as to whether fundamental requirements of Section 19 of the PMLA was complied with or not.

47. Section 46 of the PMLA states that the provisions of CrP.C., now BNSS, shall apply to the proceedings before the Special Court, and for such purpose a Special Court shall be deemed to be a Court of Session. Thus, the learned Magistrate, while passing the impugned order of remand, ought to be alive of the essential requirements of Section 19 of the PMLA.

48. He also refers to Section 65 of the PMLA where the provisions of Cr.P.C./BNSS is directed to apply as they are not inconsistent with the provisions of

this Act to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the PMLA.

49. Referring to all the above-mentioned decisions of the Hon'ble Supreme Court and various provisions of the statute, it is submitted by Mr Singh that the Respondents failed to comply with the constitutional safeguard by not producing the accused before the nearest Magistrate of the locality where he was arrested. So, the entire action of the ED and subsequent order of remand by the Learned Magistrate violates Article 22(2) of the Constitution and requires reconsideration by this Court.

50. Lastly, it is pointed out by the learned Senior Advocate for the petitioner that, as per the case made out by the ED, raid was conducted in the house of the petitioner, located at CF-374 Salt Lake City, Sector-1, Kolkata-700064 at 07.55 p.m. and the accused was arrested on 25th of January 2025. On the same day, DOE purchased flight ticket to bring the accused to Patna at

about 08.35 a.m. Therefore, without completion of search and seizure and without forming the reason to believe, as stated in Section 19 of the PMLA, the DOE decided to arrest him, which is not only illegal but an absurd and premeditated step taken by the DOE. They visited the house of the petitioner in the morning of 25th of January, 2025, only to arrest him without forming any opinion/ subjective satisfaction about his involvement in the offence, by forming a reason to believe that the accused is guilty of committing an offence under the PMLA.

51. To conclude, Learned Senior Counsel, on behalf of the petitioner, also refers to the decision of the ***Directorate of Enforcement v. Subham Sharma,*** reported in ***2025 H.C.C. Online H.C.240***, which held that non-production of the respondent/accused before the nearest Learned Magistrate within 24 hours from 11 a.m. on 5th of March, 2022, violates Clause (2) of Article 22 of the Constitution of India. Thus, the continuation of the petitioner in custody without producing him before the nearest Magistrate within the stipulated time

of 24 hours is completely illegal and it infringes fundamental rights under Clause (2) of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22 (2) of the Constitution of India. Even this fundamental right to liberty, guaranteed under Article 21, has been violated.

52. Mr. Zoheb Hossain, the learned Special Public Prosecution on behalf of the DOE, first refers to the relevant portion of the constitutional debate with regard to introduction of Article 15A, which is now Article 22, and the following excerpt of the reply of Dr. B. R. Ambedkar is placed before this Court with great relevance and command. The relevant paragraph runs thus:-

> *"Now, Sir, I come to clause (2). The principal point is that raised by my Friend Mr. Pataskar. So far as I was able to understand, he wanted to replace the word "Magistrate" by the words "First class Magistrate". Well, I find some difficulty in accepting the words suggested by him for*

two reasons. We have in clause (2) used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for a longer period on the ground that a particular Magistrate to whom he wanted to- take the accused, or the Magistrate who would be ultimately entitled to try the accused, was living at a distance far away and therefore he bad a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words "the nearest Magistrate". Now supposing, we were to add the words "the nearest First Class Magistrate" : the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice : whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near about, or Whether we should go in search of a First Class

Magistrate. I think"the nearest Magistrate" is the best provision in the interests of the liberty of the, accused. I might also point out to my Friend, Mr. Pataskar, that even if I were to accept his amendment-"the nearest First Class Magistrate" it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it."

53. It is specifically argued by Dr. Ambedkar that Clause (2) of Article 15A of the draft Constitution used very important words, namely, the nearest Magistrate. The reason being, had it not been safeguarded by a constitutional provision, it would enable a police officer to keep a man in custody for a longer period on the ground that a particular magistrate to whom he wanted to take the accused or the magistrate who would be ultimately entitled to try the accused was living at a distance far away and therefore he had a

justifiable ground for detaining him for the longer period. So, according to the father of the Constitution "nearest Magistrate" is the best provision in the interest of the liberty of the accused.

54. It is urged by Mr. Hossain that it is now a trite law that nearest Magistrate may be a Magistrate without having jurisdiction to try the case but the constitutional requirement is to produce the accused before a Magistrate either nearest to his place of arrest or if possible before the Magistrate having territorial jurisdiction to deal with the accused. The dispute is not on the terms of "nearest Magistrate" and the "Jurisdictional Magistrate". The fundamental and statutory right of an accused rest on his right to be produced within 24 hours. If any other meaning is tried to be introduced by judicial pronouncements, this will make the obligation of the arresting agency to produce an accused within 24 hours otiose.

55. Referring to the decision of the Hon'ble Supreme Court in the case of ***S. R. Chaudhuri v. State***

of Punjab & Ors., reported in (***2001) 7 SCC 126***, it is contended by the Mr. Hossain that the debates of the constituent assembly may be relied upon as an aid to interpret a constitutional provision.

56. In this regard, this Court reminds the beautiful observation made by the Hon'ble Mr. Justice V.R. Krishna Iyer, in the case of ***Samsher Singh v. State of Punjab & Anr***., reported in ***(1974) 2 SCC 831*** at paragraph 104, which reads as hereunder:-

> *"104. Not the Potomac, but the Thames, fertilises the flow of the Yamuna, if we may adopt a riverine imagery. In this thesis we are fortified by precedents of this Court, strengthened by Constituent Assembly proceedings and reinforced by the actual working of the organs involved for about a 'silver jubilee' span of time."*

57. Mr. Hossain next draws my attention to paragraph no. 467 of ***Vijay Mandanlal Choudhary v. Union of India***, reported in (***2022) SCC Online SC 929***. Paragraph 467 is quoted below:-

<u>Conclusion</u>

In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms: -

(i) The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew.

(ii) The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.

(iii) The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.

(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(v) (a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity

indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money- laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent

jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.

(viii) The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central

Government may take necessary corrective steps to obviate confusion caused in that regard.

(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.

(xi)Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

(xii) (a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.

(b) We do not find merit in the

challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.

(xiii) (a) The reasons which weighed with this Court in Nikesh Tarachand Shah706 for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in Nikesh Tarachand Shah707 distinguishing the enunciation of the Constitution Bench decision in Kartar Singh708; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.

(c) The provision in the form of Section 45 of the 2002 Act, as applicable

post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

(d) As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

(xiv) The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.

(xv) (a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India. (xvi) Section 63 of the

2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.

(xvii) The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder. (xviii) (a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the

relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering. (xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously. (xxi) The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected."

58. It is also contended by Mr. Hossain, learned

Special Public Prosecutor appearing on behalf of D.O.E that Madhu Limaye Case (supra) is distinguishable on facts because there the petitioner was arrested for having committed a non-cognizable offence without any FIR having been recorded and was not informed on the grounds of arrest. Therefore, judicial intervention under Articles 226 and 32 of the Constitution were warranted only in exceptional cases, where on arrest a detention is found to be mala fide, influenced by extraneous factors or in violation of statutory provisions. Both the High Court as well as Supreme Court assess the nature of the rights infringed, the legislative intent and the balance between individual right and societal interest. However, Madhu Limaye Case (supra) did not decide like an appellate or divisional Court as to whether there were errors of law or fact in the impugned order.

59. In the instant case, the petitioner wanted quashment of the impugned order dated 25th of January 2025 on the ground that the essential requirements of PMLA was not considered by the learned Magistrate before passing an order of remand. This issue is not

amenable to the writ jurisdiction and in case of grievance against the impugned order, the petitioner shall have the remedy to approach the higher Court under the Code of Criminal Procedure.

60. In other words, it is contended by Mr. Hossain that writ petition is not amenable under the facts and circumstances of the case.

61. In order to advance his argument further, on the issue discussed hereinabove, Mr. Hossain refers to Section 46 of the PMLA on the point of application of Code of Criminal Procedure, 1973 to proceed before the Special Court. He also refers to Section 47 of the PMLA which deals with the provision of appeal and revision under the said Act and states that Code of Criminal Procedure, 1973, now BNSS, is applicable in the Special Court, as if a Special Court within the local limits of the jurisdiction of the High Court where a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

62. It is contended by Mr. Hossain, placing

reliance on ***Rana Ayyub v. Directorate of Enforcement through its Assistant Director,*** reported in ***(2023) SCC OnLine SC 109*** and ***Subhash Sharma v. Directorate of Enforcement***, (MCRC No. 5288 of 2022) as well as an unreported decision by the Hon'ble Supreme Court in ***Directorate of Enforcement v. Subhash Sharma*** (Special Leave Petition (Criminal) No. 1136 of 2023) that violation of Article 22(2) renders arrest of an accused under PMLA completely illegal for his non-production before the nearest Magistrate within the stipulated time of 24 hours and there is no inconsistency between the provision of PMLA and Section 57, now 58 of the BNSS in this regard. Thus, by virtue of Section 67 of the PMLA, Section 58 of the BNSS applies to the proceedings under the PMLA. A conjoint reading of the above-stated provisions of PMLA, Cr.P.C. and BNSS mandates DOE to produce an accused before the nearest Magistrate within 24 hours of his arrest.

63. It is further argued by Mr. Hossain that the nearest Magistrate may be a Magistrate having territorial jurisdiction or a Magistrate having extra

territorial jurisdiction. It is incumbent upon the arresting authority to produce an accused before the nearest Magistrate within 24 hours. If the arresting authority finds that it would not be possible to produce the accused before the jurisdictional Magistrate went to long distance between the place of arrest and the place of having jurisdiction to try the case. When the arresting authority considers that the arrested person cannot be produced within 24 hours of his arrest before the jurisdictional Magistrate, considering the time of travel required for production of the accused before him, it is obligatory for the arresting officer to produce him before the nearest Magistrate. However, if the arresting officer finds that he could be produced before the jurisdictional Magistrate within 24 hours of his arrest, such production cannot be questioned in the teeth of Article 22(2) of the Constitution of India.

64. The next limb of argument advanced by Mr. Hossain, learned counsel appearing on behalf of DOE is that the PMLA, while investigating a national investigating agency does not incorporate any territorial

limitation like that of the Cr.P.C. while dealing with the offences under the IPC.

65. In support of his contention, he refers to the case of ***Abhishek Banerjee & Anr. v. Directorate of Enforcement***, reported in ***(2022) 2 HCC (Del) 27*** and also reported in ***(2024) 9 SCC 2022***.

66. The pith and substance of the argument advanced by Mr. Hossain is that transit remand of an accused is not required where an accused can be produced before the jurisdictional Magistrate within 24 hours of his arrest.

67. In support of his contention, the learned Special Public Prosecutor refers to the case of ***Gautam Navlakha v. National Investigation Agency***, reported in ***(2022) 13 SCC 542***.

68. Thus, the Hon'ble Supreme Court clearly states that the nearest Magistrate may or may not have jurisdiction, meaning thereby, the DOE did not violate the fundamental right of the accused of being produced before the jurisdictional Magistrate if DOE finds that he

can be produced within 24 hours of his arrest.

69. Same principle has been laid down by Delhi High Court in ***Sat Parkash Yadav v. State (Govt. of NCT of Delhi)***, reported in 2014 ***SCC OnLine Del 3012***; ***Anand Agarwal v. Union of India & Ors.***, reported in ***2018 SCC OnLine Del 11713*** and an unreported decision in the case of ***Ram Kotumal Issrani v. Directorate of Enforcement***, delivered by the Hon'ble Delhi High Court in ***Criminal Writ Petition (Stamp) No. 15417 of 2023***.

70. Mr. Hossain also refers to various other decisions to substantiate the instant point, this Court thinks that reference of the decisions would be sufficient for the purpose of our case without detailing out the observations made therein, in view of the fact that the ratio has conclusively been decided in paragraph 102 of Gautam Navlakha (supra). The case cited by Mr. Hossain are : -

(i) ***Haryana Financial Corporation & Anr***., reported in ***(2008) 9 SCC 31.***

(ii) ***State of Karnataka v. Kuppuswamy Gownder & Ors.***, reported in ***(1987) 2 SCC 74***

(iii) ***Fertico Marketing And Investment Private Limited & Ors. v. Central Bureau of Investigation & Anr.,*** reported in ***(2021) 2 SCC 525***

71. Mr. Hossain also makes an elaborate argument on Section 19 of the PMLA with reference to the decisions rendered by the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary*** (supra), ***Senthil Balaji*** (supra) and ***Arvind Kejriwal v. Directorate of Enforcement***, reported in ***2024 SCC OnLine SC 1703***.

72. In paragraph 39 of Arvind Kejriwal (supra), Hon'ble Supreme Court had an occasion to deal with the scope and ambit of judicial review to be exercised by the Court. The Hon'ble Supreme Court held that judicial review does not amount to a mini trial or a merit review. The exercise is confined to ascertain whether reasons to believe are based upon material which established that the arrestee is guilty of an offence under the PMLA. If adequate and due care is taken by the DOE to ensure

that the reasons to believe justified the arrest in terms of Section 19(1) of the PMLA, the exercise of power of judicial review would not be a cause of concern. Doubts will only arise when the reasons recorded by the authority are not clear and lucid and therefore a deeper and in-depth scrutiny is required. Now, it is also held by the Hon'ble Supreme Court that if the remand Magistrate fails to consider, the parameters of Section 19 in connection with the facts and circumstances of the particular Court, it is for the higher forum to consider the said fact while reviewing the order of remand Magistrate. The higher Court cannot take a short-cut process finding fault upon the order of the remand Magistrate for his failure to consider the provisions under Section 19 of the PMLA.

73. On the contrary, the higher Court is in obligation to consider independently for prima facie satisfaction at the stage of investigation that the Investigating Agency had reasons to believe under the facts and circumstances of the case, the accused is guilty

of offence under the PMLA.

74. Mr. Hossain next takes me to the application under Section 187(2) of the BNSS read with Section 65 of the PMLA filed before the learned Magistrate where the DOE explained in detail involvement of the petitioner in money laundering. In order to layering of proceeds of crime, the accused and his associates transferred, converted, used and concealed illegal proceeds of money in the manner that can be well appreciated from the following flow chart: -

"An amount of Rs. 30 lakhs were transferred in a circuitous manner from M/s Prerna Smart Solutions Private Limited (Accused No. 6) to M/s Mining and Engineering Corporation (Accused No. 16) and a related entity, with the intent to layer and conceal the proceeds of crime, thereby projecting it as untainted.

M/s Prerna Smart Solutions

Rs. 30 Lakhs on 27.01.2024

M/s Mining & Engineering Corp

Rs. 30 Lakhs on 27.01.2024

M/s Jagannath Financial

(An entity owned by Uttam Daga)

Rs. 30 Lakhs on 27.01.2024

M/s Prerna Smart Solutions

An amount of Rs. 55 lakhs were transferred in a circuitous manner from M/s Prerna Smart Solutions Private Limited (Accused No. 6) to M/s Mining and Engineering Corporation (Accused No. 16) and a related entity, with the intent to layer and conceal the proceeds of crime, thereby projecting it as untainted.

M/s Prerna Smart Solutions

Rs. 55 Lakhs on 23.02.2024

M/s Mining & Engineering Corp

Rs. 55 Lakhs on 23.02.2024

M/s Jagannath Financial
(An entity owned by Uttam Daga)

Rs. 55 Lakhs on 23.02.2024

M/s Prerna Smart Solutions

An amount of Rs. 95 lakhs were transferred in a circuitous manner from M/s Prerna Smart Solutions Private Limited (Accused No. 6) to M/s Mining and Engineering Corporation (Accused No. 16) and a related entity. Ultimately, Rs. 47.5 lakhs each were received by Pushpraj Bajaj (Accused No. 5) and Sunita Bajaj, with the intent to layer and conceal the proceeds of crime, thereby projecting it as untainted.

M/s Prerna Smart Solutions

Rs. 1 Crores on 01.03.2024

M/s Mining & Engineering Corp
(Business conducted by Uttam Daga)

Rs. 95 Lakhs on 01.03.2024

M/s Jagannath Financial
(An entity owned by Uttam Daga)

Rs. 47.5 Lakhs on 01.03.2024 Rs. 47.5 Lakhs on 01.03.2024
Pushpraj Bajaj Sunita Baja

75. While concluding his argument, Mr. Hossain submits that there is a well-known maxim that an act of Court prejudices none.

76. Mr. Singh, learned Sr. Counsel appearing on behalf of the petitioner strenuously argued that arrest of the petitioner by DOE was premeditated in view of the fact that the DOE conducted search and raid in the house of the petitioner and almost simultaneously with the beginning of search, the DOE purchased air ticket in the name of Uttam Daga, petitioner herein, at about 08.35 a.m. on the same date for the Indigo Flight to Patna which started at 05.40 p.m. from Kolkata, so before search, before forming any opinion under Section 19 of the PMLA, DOE decided to arrest the petitioner.

77. In this regard, it is contended by Mr. Hossain that the time of purchase of air ticket in the name of the petitioner is of no consequence because the ED officials had reasons to believe that the accused is guilty of doing offence under the PMLA even before his

arrest.

78. In support of his contention, Mr. Hossain refers to Section 17 of the PMLA that before commencement of search and seizure, the authorized officer of the ED must form an opinion with regard to reasons to believe that any person - (i) has committed any act which constitutes money laundering (ii) or is in possession of any proceed of crime involved in money laundering or (iii) is in possession of any records relating to money laundering and (iv) is in possession of any property related to crime.

79. Thus, before search and seizure, the authorised officer shall have the reasons to believe about the existence of clauses (i) to (iv) of Section 17(1) of the PMLA. Subsequent search and recovery of tainted money, records or documents emboldens the authorized officer to arrest the offender in terms of Section 19(1) of the PMLA.

80. The petitioner has not disputed that the arresting officer recorded reasons for such believe under

Section 19 (1) of the PMLA in black and white, prepared and served copy of ground of arrest to the accused and entire fact was elaborately stated in the remand order for consideration of the learned CJM, Patna. The impugned order was passed on the basis of the application filed by the ED and the documents regarding “reasons to believe” “grounds of arrest” etc.

81. Therefore, failure on the part of the learned Chief Judicial Magistrate to state the magic word “reasons to believe” contemplated in Section 19 (1) of the PMLA ought to be considered as an inadvertent omission and not an error which touches the root of the case.

82. Moreover, it is submitted by the learned Sr. Advocate appearing on behalf of the petitioner that against the order of remand, efficacious remedy of the petitioner lies in approaching the learned Special Court or the High Court with prayer for bail. The Writ Court has no authority to quash a judicial order under Article 226 of the Constitution of India when efficacious

remedy is available otherwise.

83. Law on this point is no longer *res integra*. An order, rejecting a bail application, can be challenged by filing a writ petition under Article 226 of the Constitution of India on the following grounds: -

(i) When it violates the principles of natural justice;

(ii) When it is based on irrelevant and inadmissible evidence;

(iii) When the order is arbitrary or capricious;

(iv) When it amounts to misuse of power by the Lower Court;

(v) When the order does not consider the specific circumstances of the case; and

(vi) Last but not the least when the order of rejection of bail is based in violation of the fundamental rights enshrined under the Constitution of India.

84. In such cases, the petitioner can not only challenge the impugned order of remand by way of

rejection of bail praying for a writ of certiorari or mandamus, but also pray for writ in the nature of habeas corpus.

85. However, the alternative relief of the petitioner lies in approaching the Special Court or the High Court for grant of bail.

86. In ***Neelam Manmohan Attavar v. Manmohan Attavar*** reported in ***(2021) 16 SCC 536***, the Hon'ble Supreme Court held that when an alternative efficacious relief is available to the accused, extraordinary jurisdiction under Article 226 of the Constitution is not applicable. Paragraph No. 11 is relevant for the purpose and is reproduced hereinbelow:

> *"11. Having heard the petitioner who appears in person and Mr Balaji Srinivasan, learned counsel appearing on behalf of the Legal Representatives of the original respondent, we are of the view that a writ petition under Article 226 of the Constitution would not be maintainable in order to challenge an order which has been passed by the High Court in the exercise of*

its judicial powers. In the present case, the High Court has exercised its revisional jurisdiction. Merely assailing the order as an order which is void would not enable a litigant to avoid the consequences which emanate from the order, by instituting a writ petition under Article 226. A litigant is not without her remedies. An order which has been passed by the High Court can either be assailed in a letters patent appeal (in those cases where the remedy of a letters patent appeal is available in law) or by way of a review (where the remedy of a review is available in a certain class of matters). A remedy is available to a litigant against a judicial order of the High Court passed in revisional proceedings, under Article 136 of the Constitution before this Court."

87. My observation gets support in a very recent decision by the Hon'ble Supreme Court in the case of Radhika Agarwal v. Union of India & Ors. (Writ Petition (Criminal) No. 336 of 2018, decided on 27th of February, 2025. It is laid down in paragraph nos. 9 and 10 of the said decision: -

"9. However, when the legality of

such an arrest made under the Special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely to ascertain whether the officer was an authorized officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorized officer or not, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.

10. It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and

circumstances of each case. The criteria or parameters of judicial review over the subjective satisfaction applicable in Service related cases, cannot be made applicable to the cases of arrest made under the Special Acts. The scrutiny on the subjective opinion or satisfaction of the authorized officer to arrest the person could not be a matter of judicial review, in as much as when the arrest is made by the authorized officer on he having been satisfied about the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. ***The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act. Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorized officer, would not be a matter of scrutiny by the Courts at such a nascent stage of inquiry or investigation. (emphasis supplied)***

None of the above factors are

available in the present case.

88. It will not be out of place to mention here that the petitioner did not make any prayer for issuance of writ in the nature of habeas corpus. Therefore, this Court does not have any opportunity to deal with such an issue. Only issue which has been raised by the petitioner in course of his elaborate argument is that the detention of the accused is illegal being violative of Articles 21 and 22(2) of the Constitution of India and Section 187 of the BNSS. There is of course prayer for releasing the accused from judicial custody in prayer (c) and (d) of the writ petition, however, this Court is of considered view that the Writ Court cannot release an accused incorporating the provision of Section 483 of the BNSS.

89. I am of the considered view that no further discussion is necessary on this point for the purpose of this case.

90. Final conclusion of this writ petition, therefore, depends upon the interpretation of the term “nearest Magistrate”. Does it mean “nearest Magistrate”

having his seat within the territorial jurisdiction of the place of arrest or the term encompasses the authority of the Magistrate having jurisdiction to try the case. Requirement of production of the accused before the nearest Magistrate in the locality where his arrest comes into play when a person who after arrest is required to be produced before the jurisdictional Judicial Magistrate is detained in a place which is far away from that jurisdiction and therefore cannot be produced before the jurisdictional Magistrate within 24 hours as mandated both by Article 22(2) of the Constitution and by Section 57 of the Code of Criminal Procedure, now Section 58 of the BNSS. In such circumstances, he will be produced before the nearest Judicial Magistrate together with a copy of the entries in the diary. Therefore, even before a Magistrate before whom a transit remand application is filed, the mandatory requirement of Section 167 (1) Cr.P.C., now Section 187 of BNSS, is that a copy of the entries in the case diary should also be produced. It is on the basis of the entries in the case diary, under Section 167 (2), such “nearest Judicial

Magistrate" while passing an order authorizing detention of person arrested for a term not exceeding 15 days in a whole. Where he has no jurisdiction to try the case and he finds further detention unnecessary, he may order the accused to be produced before the Jurisdictional Magistrate. This principle is elaborately dealt with in Gautam Navlakha (supra). The issue was decided by the Hon'ble Supreme Court and this Court has already referred to paragraph 102 of the Supreme Court's judgment in Gautam Navlakha (supra) that the nearest Magistrate may or may not have the jurisdiction to try the case. Conversely, this Court shall not commit any wrong to held that if the arresting officer has the scope to produce the arrested person before the jurisdictional Magistrate within 24 hours for an order of remand, requirement of Article 22 (2) cannot be said to be violated.

91. In Sat Parkash Yadav (supra), it is held by the Division Bench of the Delhi High Court that any person who is arrested outside the district or outside the State is produced before the Chief Judicial Magistrate /

Chief Metropolitan Magistrate for obtaining the transit remand. The purpose of transit remand is to get sufficient time to produce the accused before the concerned Court within the stipulated period of 24 hours as provided under Article 22(2) of the Constitution of India. Since the appellant could be brought to Delhi just within one hour, it was not essential to obtain transit remand from the Court of the concerned Magistrate at Noida, Gautam Budha Nagar.

92. The case in hand is absolutely similar on factual circumstances. The DOE found that the accused could be brought to Patna immediately after his arrest within one hour and ten minutes by air. The DOE took recourse of the said path and produced the accused before the learned Chief Judicial Magistrate, Patna along with an application for remand in the custody of ED. The learned Chief Judicial Magistrate passed an order of custodial remand with the DOE on perusal of the application for remand. The application contained elaborate statement regarding reasons to believe and grounds of arrest. I have no hesitation to rely on the

Division Bench's decision of the Hon'ble Delhi High Court in Sat Parkash Yadav (supra) because no contrary view has been taken on this issue till date by the Hon'ble Supreme Court.

93. The learned Sr. Advocate appearing on behalf of the petitioner lays great stress on the provisions contained in Section 58 of the BNSS and submits that Article 22(2) of the Constitution read with Section 58 of the BNSS was violated by the DOE in the instant case.

94. A conjoint reading of both the above provisions show that in terms of Article 22 of the Constitution itself, after excluding the time taken in the journey, a person arrested in Raipur by the CBI, pursuant to a case registered in Delhi, has to be produced before a Magistrate within 24 hours. It is only if the journey is likely to take more than 24 hours that the person arrested has to be produced before a local Magistrate and a transit remand is obtained. In Article 22(2) of the Constitution, in computing the period of 24

hours, the travel time for the arrested persons to be produced before the jurisdictional Court is to be excluded. If the arrested person cannot be produced before 24 hours, then he has to be produced before the nearest Magistrate.

95. In the instant case, the accused was produced within 24 hours of his arrest. Therefore, the requirement of his production before the nearest Magistrate of the place of arrest was not mandatory.

96. Mr. Singh, learned Sr. Advocate appearing on behalf of the petitioner, tries to interpret the term “nearest Magistrate” in its narrow and pedantic manner. If such approach is taken to interpret Article 22(2) of the Constitution read with Section 187 of the BNSS, it would obviously limit the power of the arresting authority to produce an accused before the jurisdictional Magistrate, even if it has the scope to produce him within 24 hours of his arrest. If such approach is taken, the Court will lean in favour of a construction which reduces the Statute to a futility. A Statute or any

enacting provision therein must be so construed as to make effective and operative on the principle expressed in the maxim : - "*ut res magis valeat quam pereat*".

97. The Courts while pronouncing upon the Constitutionality of a Statute starts with a presumption in favour of Constitutionality and prefers a Constitution which keeps the Statute within the competence of the legislature.

98. On this point, this Court refers to a decision of the Hon'ble Supreme Court ***in Corpn. of Calcutta & Anr. v. Liberty Cinema***, reported in ***AIR 1965 SC 1107***.

99. The right of an accused rests on the Constitutional and Statutory requirement of his production before the Magistrate within 24 hours. If the arresting officer finds that he may be produced before the jurisdictional Magistrate within 24 hours, there is no necessity to produce the accused before the nearest Magistrate where he is arrested. The fundamental right of the accused is said to be violated if he is detained for more than 24 hours without being produced before the

Magistrate.

100. In the instant case, however, no such violation took place.

101. In view of such circumstances and under the backdrop of the above discussion, I have no other alternative but to hold that the instant writ petition is devoid of any merit.

102. Accordingly, the writ petition is dismissed, on contest.

103. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

skm/uttam/-

AFR/NAFR	AFR
CAV DATE	27.03.2024
Uploading Date	08.04.2025
Transmission Date	08.04.2025