AUGUST 2024 | 6TH EDITION

THE LAW LEDGER

The fortnightly e-journel

DELHI POLICE ACADEMY

THE SUPREME COURT OF INDIA

Pankaj Bansal
vs
Union of India & Ors.



Article 22(1) of the Constitution, guarantees the right of an arrested person to be informed of the grounds of arrest

Issue # 06 | August 2024

THE LAW LEDGER

Pankaj Bansal
vs
Union of India & Ors.

Article 22(1) of the Constitution, guarantees the right of an arrested person to be informed of the grounds of arrest

Criminal Appeal Nos 3051-3052 of 2023 {@ Special Leave Petition (Crl.) Nos. 9220-21 of 2023}
Date of Judgement: 03/10/2023

Click here to Read the Complete Judgement

Facts of the Case:

The case revolves around the arrests of Pankaj Bansal and Basant Bansal by the Enforcement Directorate (ED) under the Prevention of Money Laundering Act, 2002 (PMLA). The sequence of events leading to their arrests are as under:

1. The ED had registered an Enforcement Case Information Report (ECIR) on June 15, 2021, related to alleged money laundering offenses by the IREO Group. Neither Pankaj Bansal nor Basant Bansal were named as accused in this ECIR.

2. On June 9, 2023, both Pankaj Bansal and Basant Bansal secured interim protection by way of anticipatory bail from the Delhi High Court in relation to the first ECIR. This protection was valid until July 5, 2023.

3. On April 17, 2023, an FIR (No. 0006) was registered by the Anti-Corruption Bureau, Panchkula, Haryana, under various sections of the Prevention of Corruption Act and IPC. Based on this FIR, the ED recorded a second ECIR on June 13, 2023. Again, neither of the appellants was named as an accused in this ECIR.

4. On June 13, 2023, at 6:15 PM, the ED issued summons to both appellants in relation to the first ECIR, requiring them to appear at 11:00 AM on June 14, 2023. While they were at the ED's office in compliance with these summons, Pankaj Bansal was served with fresh summons at 4:52 PM on June 14, 2023, related to the second ECIR, requiring him to appear at 5:00 PM the same day. There is ambiguity about when Basant Bansal was served summons related to the second ECIR. Basant Bansal was arrested at 6:00 PM and Pankaj Bansal at 10:30 PM on June 14, 2023.

5. The arrested appellants were produced before the Vacation Judge/Additional Sessions Judge, Panchkula, who passed remand orders on June 15, 20, and 26, 2023, granting ED custody and later judicial custody.

6. The appellants challenged their arrests and remand orders before the Punjab & Haryana High Court, which dismissed their petitions through orders dated July 20 and 26, 2023.

Issues Advanced:

The key issues that emerged from this case are:

1. Whether the arrests of Pankaj Bansal and Basant Bansal under Section 19 of the PMLA were valid and lawful.

2. Whether the remand orders passed by the Vacation Judge/Additional Sessions Judge, Panchkula, were proper and in compliance with legal requirements.

3. How should the ED "inform" arrested persons of the grounds of arrest under Section 19 of the PMLA, and what constitutes proper compliance with this provision.

4. Whether the arrests and subsequent proceedings violated the constitutional rights of the appellants, particularly under Article 22(1) of the Constitution.

Judgement:

The Supreme Court allowed the appeals, set aside the impugned orders of the Punjab & Haryana High Court, quashed the arrest orders and remand orders, and directed the immediate release of the appellants. The Court's reasoning can be summarized as follows:

1. The Court found the ED's conduct in arresting the appellants highly questionable. It noted that the second ECIR was recorded immediately after the appellants secured interim protection in relation to the first ECIR, despite the underlying FIR being dated April 17, 2023. The Court viewed this as a "retaliatory move" lacking in probity and transparency. The judgment emphasized that the ED, as a premier investigating agency, is expected to act with the highest degree of fairness and dispassion.

2.The Court delved deep into the requirements of Section 19 of the PMLA, which governs the power of arrest. It held that mere non-cooperation or evasive replies by a person during questioning are not sufficient grounds for arrest under this provision. The authorized officer must have "reason to believe" that the person is guilty of an offense under the PMLA, and this belief must be based on material in possession of the officer.

3.A significant part of the judgment deals with how arrested persons should be informed of the grounds of arrest under Section 19 PMLA. The Court noted the inconsistent practice across the country, where in some places, written grounds are provided, while in others, they are merely read out or allowed to be read by the arrested person.

The Court held that:
a) Merely reading out or allowing the reading of grounds of arrest is not sufficient to comply with Section 19 PMLA and Article 22(1) of the Constitution.
b) Henceforth, a written copy of the grounds of arrest must be furnished to arrested persons under PMLA as a matter of course and without exception.

The Supreme Court explicitly overruled the decisions of the Delhi High Court in Moin Akhtar Qureshi vs. Union of India and the Bombay High Court in Chhagan Chandrakant Bhujbal vs. Union of India, which had held that providing written grounds of arrest was not mandatory under Section 19 PMLA.

4.The Court found that the Vacation Judge/Additional Sessions Judge, Panchkula, failed to discharge his duty properly while passing the remand orders. The judge did not record any finding that he had perused the grounds of arrest or verified compliance with Section 19 PMLA. The Court emphasized that passing a remand order does not automatically validate an unlawful arrest.

5.**The judgment underscores the importance of Article 22(1) of the Constitution, which guarantees the right of an arrested person to be informed of the grounds of arrest. The Court held that the mode of conveying this information must be meaningful and serve the intended purpose of enabling the person to seek legal remedies. The relevant para is reproduced as under:**

"In this regard, we may note that Article 22(1) of the Constitution provides, inter alia, that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest. This being the fundamental right guaranteed to the arrested person, the mode of conveying information of the grounds of arrest must necessarily be meaningful so as to serve the intended purpose."

6.The Court rejected the narrow interpretation that "inform" in Section 19 PMLA does not necessitate providing written grounds of arrest. It held that **given the constitutional objective and the practical difficulties an arrested person might face in remembering orally communicated grounds, providing written grounds is essential.**

The relevant para is reproduced as under:

"------- to give true meaning and purpose to the constitutional and the statutory mandate of Section 19(1) of the PMLA Act of 2002 of informing the arrested person of the grounds of arrest, we hold that it would be necessary, henceforth, that a copy of such written grounds of arrest is furnished to the arrested person as a matter of course and without exception.