

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

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Reserved on: 27th July, 2018

Decided on: 20th August, 2018

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W.P.(CRL) 2230/2018

SUKHMEET SINGH ANAND

... Petitioner

Represented by: Mr.S.S.Jauhar with Mr.Deepak
Bashta, Advocates

versus

STATE OF NCT DELHI

... Respondent

Represented by: Ms.Richa Kapoor, ASC for the State.
Mr.Ramesh Gupta, Sr.Advocate with
Mr.Saif Khan, Mr.Niraj Singh and
Mr.Achutan Sreekumar, Advocates
for complainant.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. Aggrieved by the order dated 26th March, 2018 dismissing the application of the petitioner seeking cancellation of non-bailable warrants issued against the petitioner, petitioner prefers the present petition through his power of attorney, Manit Jauhar.
2. Brief background of the case is that a complaint was filed by M/s Samsung Gulf Electronics FZE (in short 'Samsung') through its authorized representative Wookjoong Yoon before the learned Metropolitan Magistrate alleging that its Financial Controller S.C. Baek was found involved in certain fictitious transactions shown to have been entered during 1992-2002 between Samsung and M/s Sky Impex, a company owned and held by Sukhmeet Singh Anand, the petitioner herein and Pradeep Kumar Ghatania. The modus operandi adopted by these persons was that on the request of Sukhmeet Singh Anand, S.C. Baek would place fictitious orders on M/s Sky

Impex for products such as HT cable, aluminum metal, coke calcinations packages etc. which were not even required by Samsung and the products were never even received. On the basis of fictitious orders placed by S.C. Baek, M/s Sky Impex raised false invoices and bills of exchange payable within 90-210 days and S.C. Baek misusing his official position as Financial Controller of Samsung would sign off and accept the bills of exchange. M/s Sky Impex by discounting these fictitious bills of exchange with the help of related documents would generate cash flows in its favour taking advantage of the credit extended by Samsung. In the year 2003 when S.C. Baek left UAE without permission, internal inquiries and independent audits revealed the fraud committed. Thus Samsung filed a complaint against S.C. Baek, M/s Sky Impex owned by Sukhmeet Singh Anand and others at a Police Station in Dubai. After a proper investigation and trial, the Court at Dubai came to the conclusion that Sukhmeet Singh Anand and Pradeep Ghatania dishonestly and fraudulently misappropriated a total amount of USD 85,99,757 from Samsung by fraudulent means. The accused were convicted and awarded imprisonment followed by deportation.

3. Samsung in the present complaint alleges that faced with the conviction after the trial at Dubai, Sukhmeet Singh Anand and Pradeep Kumar Ghatania established a false claim against Samsung by forging and fabricating a bill of exchange bearing No. SM 1 C dated 1st February, 2002 which forgery and fabrication allegedly took place in the jurisdiction of PS R.K. Puram or PS Shakarpur. Besides the bill of exchange dated 1st February, 2002, documents, such as purchase order dated 25th November, 2001 issued by M/s Sky Impex in favour JCE Consultancy [India], delivery receipt dated 28th January, 2002, issued by Sukhmeet Singh Anand in favour

of JCE Consultancy stating that they had received goods as per the contract dated 1st December, 2001 and a performance certificate dated 1st February, 2002 issued by S.C. Baek were also forged and fabricated. To intimidate Samsung and its officials and by forging the documents as noted above Sheikh Allaudin Pakir Maiddin filed a false civil case before the Dubai Court which was rejected on 24th September, 2008 and a false complaint was filed before the ACJM, Ghaziabad, Uttar Pradesh on 5th January, 2005. In the said complaint at Ghaziabad summons were issued against Samsung and its officials including the officials of parent company. Accused is also alleged to have sent fax messages generated from Delhi threatening Samsung to withdraw proceedings at Dubai and on failure to do so illegal and criminal intimidation was extended.

4. Samsung filed a petition for quashing of the complaint filed at Ghaziabad on the ground that Courts in India had no jurisdiction to entertain the complaint, which petition was first dismissed by the High Court at Allahabad and Special Leave Petition preferred against the same was also dismissed noting that the Courts in India have jurisdiction. For the reason that the complaint at Ghaziabad was filed on the strength of forged and fabricated documents as noted above, Samsung filed a complaint with DCP, EOW on 26th February, 2014. As no action was taken on the said complaint, Samsung filed a complaint as noted above before the learned CMM, Patiala House wherein on the directions of the learned ACMM under Sections 156 (3) Cr.P.C. FIR No.93/2014 under Sections 384/420/467/468/471/120B IPC was registered at PS Economic Offences Wing against the petitioner and other co-accused. During the course of investigation the petitioner did not join the investigation.

5. It is the case of the investigating agency that Sukhmeet Singh Anand prior to registration of FIR left India on 1st June, 2005 and thereafter obtained Indian passport bearing No. K0702366 dated 10th November, 2011 from Embassy of India, Spain and for that purpose gave his local address as Carrer De Anquines, 18 B-1, Sitage 08870, Barcelona, Spain. It was found that on 16th January, 2004, at the time of applying for the new passport petitioner informed the Regional Passport Officer that his previous passport No.Z1149012 valid upto 5th April, 2013 has been lost at Delhi and on the strength of this misrepresentation obtained a new passport. During investigation it was found that the previous passport of Sukhmeet Singh Anand being Passport No.Z1149012 valid upto 5th April, 2013 was retained in the Police Station of Dubai and thus while applying for the new passport wrong information was supplied and offence under Section 12 of the Passport Act was also added to the investigation.

6. Since the petitioner was not available and as per the record of immigration had not arrived back in India thus the Investigating officer sought open non-bailable warrants against the petitioner from the learned Trial Court which were allowed through Ministry of External Affairs and red corner notice was also issued against the petitioner vide order dated 25th October, 2017.

7. During the investigation, the fax numbers from which alleged threatening letters were sent to Samsung and its officials were also examined and it was found that no calls/fax were sent on 4th July, 2005 or 8th July, 2005 from fax No.26522922. Further fax No.26564012 was found disconnected w.e.f. 22nd November, 2004.

8. Challenging the impugned order, contention of learned counsel for the petitioner is that the claim of the complainant for jurisdiction vested in Delhi police to register the FIR or the two Courts to try at Delhi is bogus. Charge sheet has been filed on 8th November, 2017 in FIR No.93/2014 without arrest however, no cognizance has been taken till date. Admittedly, till date the petitioner has not been served with a notice in the absence whereof no non-bailable warrants could be issued against the petitioner. The notices were sent at Som Vihar, Delhi address of the petitioner when admittedly the Investigating Officer was aware that the petitioner is not in India and has been residing in Spain. The issuance of non-bailable warrants is contrary to the guidelines of the Ministry of Home Affairs dated 11th February, 2009. Thus the non-bailable warrants issued against the petitioner are required to be set aside.

9. Learned Additional Standing Counsel for the State submits that the petitioner has not joined the investigation till date. Petitions seeking quashing of the FIR No.93/2014 were filed by the co-accused before this Court which petitions were dismissed by this Court on 27th March, 2018. She further states that the petitioner filed an application seeking recalling of the non-bailable warrants issued by the learned ACMM and placed before the Court, order of the Hon'ble Supreme Court exempting the Managing Director of Samsung stating that the petitioner Sukhmeet Singh Anand was exempted from appearing by the order of the apex Court. The learned ACMM thus cancelled the non-bailable warrants issued against the petitioner and allowed the application filed by the petitioner. Later when complete facts were brought to the notice of the Court that the order of exemption from appearance only related to Mr. Lee Kun Hee, the Managing

Director of Samsung who was a purported accused in the complaint filed at Ghaziabad, fresh non-bailable warrants were issued and the application seeking cancellation of non-bailable warrants was dismissed by the impugned order. Learned Additional Standing Counsel for the State thus claims that the petitioner is making false representation and false claims at every stage and having not joined the investigation till date the non-bailable warrants issued against him cannot be cancelled.

10. Contention of learned counsel for the petitioner that since no notice has been served on the petitioner at his address at Spain, thus issuance of non-bailable warrants against him is illegal deserves to be rejected. As noted above the petitioner is an Indian citizen having an Indian passport with his permanent residential address of Som Vihar, Delhi. Only when he was convicted in Dubai and directed to be deported thereafter the petitioner by misrepresenting facts got his new passport issued from the Embassy of India at Spain giving a local address. Merely because the petitioner has not visited India is no ground to come to the conclusion that the petitioner has no connect with his permanent residential address at Som Vihar. As noted above from the investigation carried out it is evident that the petitioner in connivance with the co-accused has committed the alleged offences in India and thus the learned Trial Court was within its jurisdiction to have issued non-bailable warrants against him. Further the petitioner has submitted to the jurisdiction of the Courts in India through his attorney.

11. The decision rendered by the Supreme Court reported as AIR 1965 SC 1251 State of Gujrat vs. Shyamlal Mohanlal Choksi: Manubhai Patel followed by the High Court of Judicature at Madras in Crl. Original Petition No.21724/2013 titled as M. Kalanithi Maran vs. State, by the Inspector of

Police decided on 28th July, 2003 has no application to the facts of the case as the Courts therein were dealing with the interpretation of Section 91 of Cr.P.C. and it was held that the word ‘person’ in Section 91 Cr.P.C. does not include an accused and thus accused cannot be directed to be summoned to produce documents. Non-bailable warrants have been got issued by the investigating agency to arrest the accused petitioner in the present case. The petitioner earlier got his non-bailable warrants cancelled by misrepresenting facts which were then clarified by the subsequent application and no exemption had been granted to the petitioner by the Supreme Court as projected.

12. The main plank of argument of learned counsel for the petitioner is that in the absence of service of notice to the petitioner, no non-bailable warrants could be issued against the petitioner. The said argument is fallacious and requires to be rejected. In the decision reported as (2009) 81 AIC 357 Yogendra Pratap Singh Vs. State the Allahabad High Court dealing with the power to issue process under Section 82/83 of Cr.P.C. held :

“19. It may be observed here that as per the scheme of Criminal Procedure Code once an FIR disclosing non-bailable offences is registered against an accused the Police is empowered to interrogate the accused and in that connection even to arrest him. However, if an accused tries to evade the arrest Police can also ask for issuance of non-bailable warrants. However, when non-bailable warrants are also not executed because of avoidance of his arrest by the petitioner, then the Court is empowered to issue process under Section 82/83 of Cr.P.C. which is a process only to ensure appearance of the petitioner before the Court so that the investigating agency can complete the investigation by interrogating the accused.”

13. When an accused is not available for investigation, despite notice at his permanent address in a case of cognizable and non-bailable offences, to

the Investigating Agency and which is an offence/offences of serious nature for arrest even without service of notice the Investigating Agency would be within its jurisdiction to get an order seeking issuance of non-bailable warrants for the arrest of the accused for the offence/offences allegedly committed.

14. In the decision reported as 2012 Cri LJ 905 J.S.Bhatia Vs. CBI this Court noting the judgment of the Division Bench of this Court in Ottavio Quattrocchi Vs. Central Bureau of Investigation 75 (1998) DLT 97 (DB) which followed the decision of the Supreme Court in State through CBI Vs. Dawood Ibrahim Kaskar held:

“44. The Supreme Court considered the question that whether a court can issue a warrant to apprehend a person during investigation for his production before Police in aid of investigation agency. The question was answered by the Supreme Court holding that Section 73 of the Code confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also. It was further held that Section 73 of the Code is a general application and that in course of investigation a court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest. On the question whether such issuance of warrant can be for his production before the police in aid of investigation, it was observed by the Supreme Court that a Magistrate plays, not frequently a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc.

45. In nutshell the Supreme Court held that when an application is moved by the Investigating Agency for arrest or apprehension of a person, who is accused of non-bailable offence, such prayer can be allowed by issuing a warrant for appearance before the Court only and not before the police.”

Thus, non-bailable warrants can be issued for procuring attendance of a person before the Court and on police remand being granted investigation can be carried out from such accused. The Petitioner herein has been avoiding the process of the investigating agency and the Court despite opportunities being given to him. Thus, the Court can proceed to issue proclamation under Section 82 of Cr.P.C. Non-bailable warrants being sine qua non for the issuance of action under Section 82, it is thus essential to issue non-bailable warrants.”

15. In view of the discussion aforesaid, this Court finds no error in the impugned order dated 26th March, 2018.

16. Petition is accordingly dismissed.

(MUKTA GUPTA)
JUDGE

AUGUST 20, 2018
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