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

Date of decision: 18.12.2019

+ CRL.M.C. 6555/2019 & CRL.M.A. 43000/2019-Stay

STATE

..... Petitioner

Through Mr. Rajesh Mahajan, ASC, State with
Jyoti Babbar, Adv.
Mr. Hareesh H.P. DCP/3rd

versus

SUKASH @ SUKESH CHANDRASHEKAR

..... Respondent

Through None

.CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL.M.A. 43001/2019

Allowed, subject to all just exceptions.

Application is disposed of.

CRL.M.C. 6555/2019 & CRL.M.A. 43000/2019

1. Vide the present petition, the petitioner seeks direction thereby to set aside the part of orders dated 05.12.2019 and 11.12.2019 passed by Ms Kiran Bansal, Special Judge, (PC Act cases) ACB-1, Central District Rouse Avenue Courts, New Delhi whereby contempt notice has been issued to DCP 3rd Battalion, DAP, Delhi Police.

2. Brief facts of the case in the present petition are that the respondent, along with the others was arrayed as an accused in case FIR No. 186/2017 registered at PS Crime Branch. The respondent herein is also facing trial in

three other cases in Delhi being FIR No. 166/2017 registered at PS Crime Branch, FIR No. 100/2017 registered at PS Sabzi Mandi and FIR No. 56/2017 also registered at PS Crime Branch.

3. Further case of the petitioner is that the respondent is in judicial custody in the above cases and was lodged in Central Jail, Tihar. Vide order dated 05.07.2019 passed in FIR 166/2017 by the Court of Shri Virender Kumar Goyal, Ld. ASJ-4, West District, Tis Hazari Courts, Delhi, the Respondent was granted custody parole till 27.07.2019 on the ground of arranging for funds for medical treatment of his wife and also for his presence with regard to financial, physical and physiological support to his ailing wife.

4. The custody parole granted to the respondent was extended from time to time till 14.12.2019 vide different orders.

5. Learned counsel appearing on behalf of petitioner submits that in FIR No. 166/2017, vide order dated 14.11.2019, Shri Virender Kumar Goyal, Ld. ASJ-4, West District, Tis Hazari Courts observed as under:

"The crime branch officials are not allowed to verify the facts by visiting personally without the prior permission of this court"

6. In case FIR no. 186/2017, on 20.11.2019, Respondent moved an exemption application stating that since he was on custody parole in another case, he shall be exempted from appearance on said date, which prayer was declined by Id. Special Judge, Central District as the accused was stated to be not on custody parole in case FIR 186/17. In same case, Ms Leena Maria Paul- co-accused and wife of Respondent herein had moved an exemption application before the Court of Ms Kiran Bansal, Id. Special Judge, (PC Act cases) ACB-1, Central District, Rouse Avenue Courts, New Delhi on the ground that she was not keeping good health. The Investigating Officer was directed to verify her medical condition and nature of illness. On 30.11.2019, when the application of said co-accused Ms. Leena Maria Paul was taken up, the Investigating Officer- ACP Shri Jasbir Singh, filed an application- stating that since the court of Shri Virender Kumar Coyal, Ld. ASJ-4, West District vide order dated 14.11.2019 in case FIR 166/17 had directed the Crime Branch officials not to verify the facts by visiting personally without the prior permission of the court, therefore the medical condition of accused Leena Maria Paul could not be verified.

7. Vide order dated 30.11.2019, Ms. Kiran Bansal, Ld. Special Judge (PC Act cases) observed that Ms Leena Maria Paul was not an accused in

case FIR 166/2017, which case was pending before Shri Virender Kumar Goyal, Ld ASJ-4. The Ld. Special Judge directed the Investigating Officer to verify the medical condition of Ms Leena Maria Paul by visiting her residence and concerned hospital and to file a detailed report in this regard.

8. Learned counsel further submits that the court of Special Judge, ACB-1, Central District had also directed production of the Respondent by the Jail Superintendent and he was not produced before the Ld. Special Judge, who in this regard observed as under:

"The accused Sukesh @ Sukash Chandrashekar was also directed to be produced before the present court today by the Jail Superintendent, however. Jail Superintendent stated that order of the present court was apprised to the Hon'ble Court of Sh. Virender Kumar Coyal, Ld. ASJ (West), THC and Ld. ASJ (West), THC has passed the following order:

"this court is also of the view that once custody parole is granted by this court then permission of other court is not required. Suppose one court declines the permission then the same will frustrate the custody parole granted to the accused.

So, whatsoever it may be, order of the court be brought in the knowledge of the Ld. Judge CBI tomorrow and to make request for further directions if any about the production of accused before the court."

The fact that the accused Sukesh @ Sukash Chandrashekar was granted custody parole by the Ld. ASJ (West), THC was already in, the notice of the present

court when the court directed to produce the accused Suresh @ Sukash Chandrashekar before this court today vide order dated 20.11.2019. Moreover, if applicant/accused had any issue, then he could have filed an application before the present court instead of Ld. ASJ (West), THC.)

This fact that the accused Suresh @ Sukash Chandrashekar had earlier tried to influence the Ld. Predecessor of this court Ms. Poonam Chaudhary, Ld. ASJ and an FIR in this respect was also lodged also cannot be ignored.

When the present court had already directed for the production of accused before the court today i.e. 30.11.2019 vide order dated 20.11.2019, court fails to understand as to why the application was filed by the accused and DCP 3rd Bn., DAP before the court of Ld. ASJ (West) and not the present court. Needless to say, custody parole of the accused was granted without proper and physical verification of the grounds on which custody parole is being sought. The accused Suresh @ Sukash Chandrashekar has been on custody parole for a little less than five months now.

The court is aware that propriety demands that the present court should not comment on the orders of the Ld. ASJ-4 (West), THC and the orders of the Ld. ASJ-4 (West) should not be interfered with, but the shocking state of affairs cannot be ignored only for the sake of propriety.

The accused has been on custody parole since 05.07.2019. To the understanding of the present court, custody parole for such a long duration cannot be granted. The court is unable to find any judgment or provision of law on the issue as to whether if the accused is in custody in more than one case, then if he is required,

to obtain custody parole from one or all concerned courts and if custody parole is granted by any one court, then permission is required from other courts or not.

A peculiar situation has arisen in FIR No. 186/17 as the accused Sukash @ Sukesh Chandrashekhar has been granted custody parole by the order of Ld. ASJ- 04, West District, Tis Hazari Court in FIR No. 166/17 but custody parole has not been granted in FIR No. 186/17 and FIR No. 56/17.

Despite directions to the Jail Superintendent to produce the accused Sukash @ Sukesh Chandrashekhar before the present Court, the Jail Superintendent has not produced the accused stating that Ld. ASJ-04, West District, Tis Hazari Court has stated that Jail Superintendent should not produce the accused Sukash @ Sukesh Chandrashekhar anywhere till further directions and to ensure that the purpose of the custody parole granted by Ld. ASJ04, West District, Tis Hazari Court is not defeated."

9. Learned counsel further submits that vide the same order, the court also made a reference u/s 395 Cr.P.C to the Hon'ble High Court, framing the following questions of law:

- "(i) If an accused is in custody in more than one case and the concerned trial courts are more than one, then whether the accused is required to obtain custody parole from each and every concerned court or the accused can move to any one court of his choice for seeking custody parole?
- (ii) Maximum duration in which the custody parole can be granted to an undertrial?
- (iii) In case custody parole application is moved to only one of the concerned court then whether any permission is

required from the other concerned courts before sending the undertrial on custody parole?

(iv) In case, permission is not required from the other concerned courts, then whether the Jail Superintendent or accused should give intimation to the other concerned courts regarding sending the undertrial on the custody parole?"

10. The Court further directed the Jail Superintendent to produce the Respondent in Court on 04.12.2019. On the said date, in case FIR 186/2017, the Investigating Officer filed an interim medical report of accused Leena Maria Paul and sought further time for complete verification of the documents. With regard to the reference to this Court and movement of Respondent was concerned, the court of Id. Special Judge observed as under:-

"As far as accused Sukash @ Sukesh Chandrashekhar is concerned, reference with respect to question as to which would be the concerned trial court as per Rule 1209, Delhi Prison Rules 2018 has been sent to the Hon'ble High Court.

As per Section 395 Cr.P.C., any court making a reference may either commit the accused Sukash @ Sukesh Chandrashekhar to J/C or to release him on bail till the issue is pending in the Hon'ble High Court. Accused has not moved any application for custody parole before this court, therefore, he is remanded to J/C till 06.01.2020.

It is clarified that accused Sukash @ Sukesh Chandrashekhar shall not be moved out of Delhi without prior permission of this court, as far as FIR No. 186/17, PS Crime Branch is concerned."

11. However, later on the same day i.e. on 04.12.2019 after passing of above mentioned order in case FIR no. 186/2017, the Ld. counsel for the Respondent moved an application in case FIR 166/2017 for direction to the office of DCP 3rd Battalion (petitioner herein) and Superintendent, Jail no.7, Tihar to comply with order vide which custody parole was granted to the accused till 14.12.2019. On the said application, the Court of Ld. ASJ-4, West District directed that the order granting custody parole to Respondent be complied with and further observed that the non-compliance of the order would attract contempt of court. Relevant part of the order 04.12.2019 passed by Shri Virender Goyal, Ld. ASJ -04, West District, Tis Hazari Courts in FIR 166/2019 is reproduced hereunder:

"It is contended that in compliance of the order of Ld. CBI Judge, Ms Kiran Bansal, accused had appeared before the said court and now has appeared before this court. It is further contended that earlier also Ld. Trial Court, Hon'ble High Court of Delhi and Hon'ble Supreme court of India has granted the custody parole of 52 days for providing medical facilities to the wife of accused in 2018. It is further contended that Ld. CBI Judge, Ms. Kiran Bansal has passed the order that without permission of the said Court, accused be not taken outside the limits of NCT of Delhi and also as made reference to the Hon'ble High Court of Delhi. In respect of certain questions raised in respect of custody parole {sic}. Even after making the reference u/s 395 Cr.P.C, the accused can be sent to jail or he be released on bail. But

in this case, he is already on custody parole, which is extension of judicial custody.

This Court cannot comments on the order of Ld. CBI Judge as proprietary does not demand so.

It is also contended that order dated 22.11.2019 has not been challenged in any manner.

Hence, Superintendent Jail and DCP Battalion are directed to comply with the order of this court dated 22.11.2019.

No misuse of the custody parole has been reported by Jail Superintendent and DCP 3rd Battalion. This Court has already passed order dated 22.11.2019 for custody parole of accused till 14.12.2019, which has not been challenged in any manner.

In view of above the order dated 22.11.2019 be complied with immediately by the DCP 3rd Battalion and Superintendent jail. Non compliance of the order will attract contempt of Court. Accordingly, application stands disposed off."

12. On 05.12.2019, in case FIR no. 186/2017, Ms Kiran Bansal, Special CBI Judge was apprised vide two letters dated 04.12.2019 that accused Sukash @ Sukesh Chandrashekhar- Respondent herein, had to be flown out of Delhi in view of the later order 04.12.2019 passed by Shri Virender Goyal, Ld. ASJ-04 in case FIR no. 166/2017 (referred to above). The Ld. Special Judge observed that the Respondent could not have flown out of Delhi in view of the order passed by her on 04.12.2019 and without prior permission of her court. The Court also observed that the accused did not move any application seeking permission to go out of Delhi before her Court

and rather chose to move an application again before Ld. ASJ- 04, West District, Tis Hazari Court, Delhi. Ld. Special Judge CBI also observed that DCP 3rd Battalion had not informed and sought permission from her court before the accused was sent out of Delhi. Issuing notice of contempt to the DCP 3rd Battalion, Ld. Special Judge granted him five days time to explain as to why contempt of court proceedings should not be initiated against him. The relevant part of the order reads as under:

" Letter bearing no. 33752/HA/C85J dated 04.12.2019 and no. 33755/HACBJ/lllrd Bn. DAP of Sh. Hareesh H.P, DCP 3rd Battalion , DAP, New Delhi, have been placed before this court stating that accused Sukash @ Sukesh Chandrashekhar has been flown out of Delhi despite the order passed yesterday with direction that accused Sukash @ Sukesh Chandrashekhar should not be moved out of Delhi without Prior permission of this court.

Needless to say, the accused did not care to move any application seeking permission to go out of Delhi before the present Court and rather chose to move again an application before Ld. ASJ-04 , West District, Tis Hazari Courts , Delhi. The order of Ld. ASJ-04 dated 04.12.2019 has also been placed before this court stating that DCP 3rd Battalion was directed to comply the order dated 22.11.2019 and it was further directed that non compliance will attract contempt of court. In order to avoid the contempt of court of Ld. ASJ-04 , West District, they had sent accused Sukash @ Sukesh Chandrashekhar out of Delhi. In effect they have now committed criminal contempt of the present court.

Ld. ACP submits that they were tied between the two orders which are contrary to each other. Thus, in any

case they would have been liable for contempt of at least one of the court.

Be that as it may. They could have also approached the Hon'ble High Court. They have admitted that they have not approached the Hon'ble High Court till date.

Neither the DCP 3rd Battalion nor the accused had informed the present court or sought permission before the accused was sent out of Delhi.

Five days' time is granted to DCP 3rd Battalion to explain as to why contempt of court proceedings should not be initiated against him and also to inform as to when the return tickets if the accused Sukash @ Sukesh Chandrashekhar were booked."

13. Learned counsel for petitioner submits that in case FIR 186/2017, on 11.12.2019 a reply was filed on behalf of DCP 3rd Battalion DAP seeking further time to file reply to the contempt notice issued on 05.12.2019. While granting one week's time to file the reply, the court of Ld. Special Judge observed in the order dated 11.12.2019, that since accused Sukash @ Sukesh Chandrashekhar- Respondent herein had not been brought back to Delhi and had been sent back to Chennai without prior permission of her Court, it was case of continuous contempt of court. The relevant part of the order is reproduced hereunder:

"One week more time sought to file reply to the contempt notice issued on 05.12.2019. However, till date accused Sukash @ Sukesh Chandrashekhar has not been brought back to Delhi and has been sent back to Chennai without prior permission of this court. It is thus, a case of

continuous contempt.

Ld. DCP sought one week time to file reply to the contempt notice, let the reply be filed on next date of hearing."

14. On perusal of the orders mentioned above, the order dated 04.12.2019 passed by Id. Special Judge, (PC Act cases) ACB-1, Central District, Rouse Avenue Courts, New Delhi in FIR 186/2017 and order dated 04.12.2019 passed by of Shri Virender Kumar Goyal ASJ-4, West District, Tis Hazari Courts , Delhi were contrary to each other and irreconcilable. While the former order required that the Respondent be not moved out of Delhi without the prior permission of court, the latter order passed by Shri Virender Kumar Goyal ASJ, required the Respondent to continue on custody parole till 14.12.2019. Since the two directions were diametrically opposite, compliance of any one order, would ipso facto entail non-compliance of the other order.

15. It is pertinent to mention here that latter order also mentioned about consequence of contempt action in case of non-compliance of the directions contained therein. He was bound to follow the order passed by the courts and in continuing the Respondent on custody parole, he was infact duly complying with the latter order dated 04.12.2019 passed in case FIR 166/2017. In other words, if compliance of order passed by one court, led to

ipso facto non-compliance of the order passed by another court, such act, in my considered view cannot be said to fall within the parameters of contempt as defined under the Contempt of Courts Act, 1971. Thus, the Ld. Special Judge erred in passing the impugned directions issuing notice of contempt when she had herself made a reference under section 395 Cr.P.C. for answer by this Court.

16. In the facts of the case, the proper course for the court should have been to await order on reference rather than proceed for initiation of contempt proceedings due to which serious prejudice has been caused to the Petitioner by issuance of impugned directions.

17. In view of above impugned order dated 05.12.2019 and 11.12.2019 passed by Ms Kiran Bansal, Special Judge, (PC Act cases) ACB-1, Central District Rouse Avenue Courts, New Delhi is set aside to the extent that the contempt notice has been issued to the petitioner i.e. DCP 3rd Battalion/*accused in the present case.*

18. In view of above, the petition is allowed and disposed of.

19. Pending application stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 18, 2019/ms