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

Date of decision: 14.11.2019

+ **W.P.(CRL) No. 3175/2019, CRL. M.A. 40150/2019 & CRL
M.A. 40151/2019**

KAMAL LUTHRA

..... Petitioner

Through Mr. N.Hari Haran, Sr. Adv.
with Mr. Narendera M.Sharma,
Mr. Ankur sood, Mr. Sachin
Mittal, Mr. Abhishek Sharma,
Mr. Pravesh Khyalia,
Mr.Siddhartha Jain, Mr. Aditya
Singh and Mr. Akshay Arya,
Advocates.

versus

SERIOUS FRAUD INVESTIGATION OFFICE

..... Respondent

Through Mr. Rahul Arora, Sr. Prosecutor
for state.
Mr.Anurag Ahluwalia-CGSC
with Mr. S.S.Sahni, Assistant
Director, Sh. P.C.Maurya,
Additional director and Ms.
Ruhi Arora, Sr. A.D. for R-
1(SFIO).

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI,J (*Oral*)

1. Vide this order, I shall dispose of Writ Petition filed under article 226 of the constitution of India read with Section 482 of the Cr.P.C. for quashing of the order Dated 14.10.2019 and 11.11.2019 passed by Ms. Neelam Singh, Ld. ASJ-03 cum special Judge(Companies Act), South West District, Dwarka Courts in Criminal complaint no. 770/2019 directing issuance of NBW issued against the petitioner.

2. Ld. Counsel for the petitioner has prayed for quashing of the order dated 14.10.2019 and 11.11.2019 on the ground that petitioner was unaware about the said criminal case and the summons previously issued by the Ld. Trial court for 14.10.2019 remained unserved as per the report of the process server. The petitioner was intimated about the pendency of the complaint and issuance of summons for 14.10.2019 by one of the co-accused and on becoming aware about the same, the petitioner through counsel inspected the court records pertaining to the complaint and immediately filed two applications viz an application for cancellation of NBWs and another application under section 438 Cr.P.C. seeking anticipatory bail on 07.11.2019. Ld. Trial court without considering the said applications passed the

impugned order dated 11.11.2019 directing that NBW issued vide order dated 14.10.2019 becomes operative.

3. It is further submitted that in connection with the same complaint, this Hon'ble Court has already granted protection to co-accused Shri Brij Bhushan Singhal (A-158) in bail petition No. 2454/2019 vide order dated 10.10.2019 and petitioner is on a better footing than the above mentioned co-accused as he is not even alleged to be involved in the affairs of any of the companies under investigation.

4. It is further submitted that Petitioner is residing in the given address for the last 35 years along with his family. Petitioner is a senior citizen aged 64 years old and suffering from various serious medical problems including heart and lung ailments and detailed list of the same is as follows:-

- a) The petitioner underwent a major invasive heart surgery in 2002 at Sir Ganga Ram hospital for Percutaneous Transluminal coronary angioplasty and stent to left anterior descending artery.

b) In December, 2004, the Petitioner developed a severe condition of lung silicosis and underwent treatment at the Delhi Heart and Lung Institute.

c) The petitioner underwent another major heart surgery in June, 2006. The Petitioner had to undergo a coronary artery bypass grafting surgery at the Delhi Heart and Lung Institute.

d) The petitioner has also developed arrhythmia in 2018, which causes irregular or abnormal heart beat. The condition, if not treated on a regular and consistent basis, can cause sudden cardiac arrest with potentially fatal consequences. The petitioner is undergoing regular treatment at Medanta hospital, Delhi Heart and Lung Institute and PSRI Heart Institute.

e) The petitioner also suffers from Hypothyroidism and diabetes.

f) Since 2006, the petitioner has been on anti-depressants and is required to take medication daily to maintain his mental health due to depression and anxiety. Any physical or mental stress can have serious consequences on the petitioner's health.

5. As part of his treatment, the petitioner has to take number of medicines on a daily basis and also has to get regular check-up done with the doctor. The petitioner may also require surgery if the prescribed medicines do not prove effective.

6. Vide various orders, the Ministry of Corporate Affairs had ordered an investigation into the affairs of various companies including BSL, by the Serious Fraud Investigation Officer. The petitioner had joined the investigation and after completion of investigation, the complaint was filed in the court of Ld. ASJ/Special Judge (Companies Act) naming 287 persons as accused. The petitioner has been named as accused no. 189 for doing business through a proprietary concern under the name and style of M/s KNK Traders (KNK).

7. Vide order dated 16.08.2019, Ld. ASJ/Special Judge (Companies Act) had taken cognizance of the offences mentioned in the said complaint and directed issuance of summons for the offences under Section 447 of the Companies Act. Ld. ASJ/Special Judge (Companies Act) had also directed appearance of petitioner for 14.10.2019. Till date, no summon has been served on the petitioner.

It appears from the record that when the process server visited the petitioner's residence, he was informed by the security guard that the petitioner was not in town and therefore, the petitioner was not served with the summons issued against him directing him to appear before the special Court on 14.10.2019.

8. On becoming aware about the order dated 14.10.2019, the petitioner acted with urgency and conducted inspection through his counsel on 30.10.2019, i.e. immediately on re-opening of the courts after Diwali vacation. Thereafter petitioner filed two separate applications; first seeking Anticipatory bail and second for cancellation of NBW issued vide order dated 14.10.2019 and both the applications were directed to be listed on 11.11.2019. On 11.11.2019, due to the on-going strike and call of abstinence of work by the District Bar Associations before the District courts in Delhi, the counsel for the petitioner was unable to attend the case. The petitioner was also unable to attend on the said date on account of his being out of town and the medical advice to take rest and avoid any stress till at least 13.11.2019. In such circumstances, petitioner's son appeared and submitted before the Special court on behalf of the petitioner, an

application seeking exemption of the petitioner from personal appearance on medical ground but vide the impugned order dated 11.11.2019, Ld. Special Court wrongly issued NBW against the petitioner. Ld. Counsel for the petitioner further submitted that the petitioner was not arrested during investigation and there is no legal justification for issuance of NBWs against him. The petitioner has apprehension that he will be sent to custody upon appearance before the Ld. ASJ/Special Judge (Companies Act). It is, therefore, submitted that NBWs issued vide order dated 14.10.2019 against the petitioner is unjustified and without any basis. The summons were never served upon the petitioner. Only a submission has been made by SFIO that the petitioner was aware about the development of the case and deliberately avoiding his appearance before the Ld. ASJ/Special Judge (Companies Act) on 14.10.2019. The same is without any basis and no material was placed before the Ld. ASJ/Special Judge (Companies Act). Issuance of NBWs by the Ld. ASJ/Special Judge (Companies Act) is contrary to law laid down by the Hon'ble High Court. Ld. Counsel for the petitioner has relied upon "*Inder Mohan Goswami & Anr. v State of Uttaranchal & Ors.*"

reported in (2007) 12 SCC 1. It is further submitted that investigation in the instant case has already been completed. Since the petitioner was not arrested during investigation, there is no ground for the SFIO to oppose the bail or seek custody before the Ld. ASJ/Special Judge (Companies Act). It is submitted that petitioner is aged and needs constant medical support. It is further submitted that since the investigation is complete and no recovery is to be effected at the instance of the petitioner, no useful purpose would be served by sending the petitioner to jail. It is submitted that in similar circumstances, another Bench of this court has granted relief to similarly placed co-accused Sh. Dharmender Gupta in Bail Application No. 1615/2019 vide Order dt. 11.07.2019. It is submitted that there are 287 accused persons and prosecution has relied upon record running into several thousands of pages. Proceedings in such cases are likely to take time. The petitioner has never made any attempt to influence the witnesses, tamper with documentary evidence or in any other manner, hampered the investigation or judicial process. He has never evaded the process of law. He undertakes to be bound by the conditions imposed upon him by the court and he be, therefore,

released in the event of his arrest.

9. It is, therefore, prayed that impugned order dated 14.10.2019 and 11.11.2019 be Quashed in the complaint case in question pending before the court of Ld. ASJ/Special Judge (Companies Act).

10. The quashing petition is opposed by Mr. Anurag Ahluwalia, Ld. CGSC on the ground that the allegations against the petitioner are serious in nature. A complaint has been filed against the petitioner for the offences punishable under Section 447 of the Companies Act, 2013. Ld. CGSC has further argued that High Court had granted bail to one co-accused Nitin Johri. However, the said bail order has been stayed by the Hon'ble Supreme Court. Ld. CGSC has further argued that petitioner is supposed to approach the Ld. ASJ/Special Judge (Companies Act) for cancellation of NBWs as well as for grant of bail. All the submissions made by the Ld. Sr. Counsel before this Court should be made before the court of Ld. ASJ/Special Judge (Companies Act). He has, therefore prayed for dismissal of the quashing petition.

11. I have considered the rival submissions. Prima facie there are allegations of fraud committed by the petitioner. Perusal of the order-

sheet dated 11.11.2019 of Ld. Special Judge reveals that some co-accused persons have appeared before the Ld. ASJ/ Special Judge and moved an application for seeking bail. Ld. Counsel for the FSIO has accepted notice and sought time to file reply to the said bail application. So far as petitioner is concerned, he was absent on the said date and in these circumstances, NBWs were issued against him.

12. *Per contra*, Ld. Counsel for the petitioner has argued that petitioner could not appear on 11.11.2019 as he was not well. On the earlier date i.e. 14.10.2019, he could not appear as he was not served.

13. I have given my thought to the matter. In case, the petitioner is correct to the extent that he was not duly served for 14.10.2019 and was not well on 11.11.2019, the Ld. ASJ/ Special Judge after considering the submission of Ld. Counsel for petitioner and Ld. Counsel for SFIO and perusal of report on summon and after seeing the medical documents/report/certificate can pass the appropriate order in accordance with law. In these circumstances, it will be appropriate for the petitioner to approach the Ld. ASJ/ Special Judge and make all his submissions made herein, before the Ld. Trial court as well. However, no doubt there is a reasonable apprehension that

before the petitioner is able to approach the Ld. Special Court, he may be arrested by prosecuting agency in pursuance of NBWs issued against him. In the opinion of this Court, the petitioner needs to be protected to that extent and **it is, therefore, ordered that till next date of hearing i.e. 16.11.2019, the NBWs issued by Ld. ASJ/Special Judge be kept in abeyance.**

14. In view of the above discussion and keeping in mind the facts and circumstances of the case and nature of offence, no grounds for quashing of the impugned order dated 14.10.2019 and 11.11.2019 are made out. However, the NBWs issued against the petitioner be kept in abeyance till next date of hearing i.e. 16.11.2019 before the Ld. ASJ/Special Judge (Companies Act). Let the petitioner appear before the court concerned and Ld. ASJ/Special judge will consider his application for cancellation of NBWs and for bail in accordance with law uninfluenced by the observations made by this Court.

15. The quashing petition along with all pending applications is disposed of accordingly.

BRIJESH SETHI, J

NOVEMBER 14, 2019

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