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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 26th July, 2019

+ CRL. M.C. 4154/2018 & CrI.M.A. 30175/2018

STATE OF WEST BENGAL

..... Petitioner

Through: Mr. Puneet Mittal, Sr. Adv.
with Mr. Tanveer A. Mir, Mr.
Suhaan Mukherjee, Mr.
Ravinder Singh, Ms. Raveesha
Gupta, Mr. Amit Verma, Mr.
Rishabh Surana, Mr. Prastut
Dalvi & Ms. Astha Sharma,
Advts.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Rahul Mehra, Standing
counsel (criminal) with
Mr. Chaitnaya Gosain, Adv.
Mr. Siddharth Agarwal, Mr.
Arshdeep Singh, Mr. Arjun
Dewan, Mr. Arjun Mukherjee,
Mr. Shahryan Khan & Ms.
Sowjhanya, Advts. for R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The second respondent was arrested, *inter alia*, in the course of investigation of first information report (FIR) RC No. 217 2018 A 0003/CBI/ACU-VI/AC-II/New Delhi of Central Bureau of Investigation (CBI) and came to be remanded to judicial custody by the court of Special Judge (Prevention of Corruption Act) sitting at

New Delhi, he being detained in the consequence in Central Jail No.7 at Tihar. It appears that he was also involved in two other cases pertaining to the jurisdiction of the courts in Delhi, they being RC no. 217/2018/A/0003/AC-II/CBI/ACU-V/ND and ECIR no. 3/HIU/2018. It is stated that he was formally arrested in the said other cases and similarly remanded to judicial custody, he being detained in Central Jail No. 7, Tihar for all such purposes.

2. It further appears that a crime was registered vide no. 52 on 14.02.2017 by police station Muchipara of Kolkata (West Bengal), it involving offences punishable *inter alia* under Sections 385/467/468/469/471/120B IPC. Apprehending arrest by the West Bengal police in the context of the said case, the second respondent moved the court of Sessions at New Delhi praying for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The said application, upon notice, was contested by the State of West Bengal (the petitioner herein), a preliminary objection as to the jurisdiction of the court of Sessions at New Delhi having been raised. During the course of consideration of the said application and objections, the court of Sessions, by its order dated 27.07.2018, directed that no coercive steps would be taken by State of West Bengal, or the SHO of police station Muchipara, Kolkata. The objection as to the territorial jurisdiction was repelled by the said court, by its subsequent order dated 14.08.2018.

3. Feeling aggrieved by the above said order rejecting the objection to the jurisdiction, the present petition was filed by State of

West Bengal. A learned single judge of this Court while entertaining the said petition and issuing notice, by order dated 16.08.2018, directed the hearing on the bail application before the court of sessions to be deferred. The said order has remained operative till date, extended from time to time, the main petition not having come up for hearing or final disposal.

4. During the interregnum, while this petition has been pending on board of this Court, and while hearing on anticipatory bail application by court of sessions has remained stayed, certain further developments took place. As a result of certain orders passed by the concerned court(s), the second respondent has been directed to be released on bail in all the three above-mentioned cases which are pending before the criminal courts in Delhi, this rendering unnecessary the justification for his detention with reference to such cases (of Delhi jurisdiction) by the Superintendent Jail, Tihar.

5. Faced with this situation, the Deputy Superintendent of Central Jail no. 7 had approached the District & Sessions Judge, New Delhi by a letter of request dated 10.07.2019. The matter arising out of the said communication was taken up by District & Sessions Judge leading to an order being passed on 10.07.2019, the effect whereof is that the jail authorities are unable to take any decision as to release of the second respondent from prison or act upon a production warrant that in the meanwhile is stated to have been received by the prison, till the present matter is decided upon by this Court.

6. It is against this backdrop that the second respondent moved application (Crl.M.A. No.31009/2019) seeking clarifications. This matter was transferred to this bench by Hon'ble the Chief Justice by his order dated 24.07.2019. When the above said application came up before this court on 25.07.2019, it was agreed by the counsel on all sides that it would be appropriate, in the given facts and circumstances, that the main petition questioning the legality or propriety of the order concerning the jurisdiction to be taken up for final disposal and such clarifications as may be required, be considered and adjudicated upon. The matter has thus come up for final hearing.

7. The learned counsel on all sides have been heard. A peculiar situation prevails. To recapitulate, the second respondent was arrested and sent to judicial custody upon remand orders passed by competent criminal courts in Delhi in three matters which admittedly pertain to local jurisdiction. He is also wanted by the West Bengal police in the context of aforementioned FIR of Police Station Muchipara, Kolkata. Concededly, till date, there is no process issued by the competent court in West Bengal as may lead to his formal "arrest" in the said case. The only process issued by the said court is in the nature of production warrant which was served on the prison authorities in Delhi, as renewed from time to time. The West Bengal police has not cared to come to Delhi till date to seek permission of the court(s) here (under whose authorization the second respondent has all along been kept in judicial custody) for causing his formal arrest. The fact,

therefore, remains that, as on date, there is no authorization in law for the second respondent to be kept in continued custody for purposes of West Bengal case.

8. In this view, there is no justifiable reason for the prison authorities in Delhi to keep the second respondent in continued detention any further, particularly when in all the three cases where he was so detained in Delhi, he has been ordered to be released on bail. At the same time, the second respondent now being well aware that he is wanted by the police of West Bengal in context of the above mentioned case is duty bound, as a law abiding citizen, to appear before the concerned authorities in State of West Bengal.

9. In such circumstances, as noted above, and in order to come out of the quagmire in which this matter has fallen, it will be appropriate, and to this the counsel on all sides fairly agree, that the second respondent is directed to be released forthwith from detention in Central Jail No.7, Tihar provided he has not been ordered to be detained in any other case in Delhi with direction that he shall appear before the court of Additional Chief Metropolitan Magistrate II, Bankshall Court, Kolkata, as is stated to be the jurisdictional court for purposes of the above- mentioned case, on or before 02.09.2019, as is the date chosen by the counsel for the second respondent. The second respondent may in the meanwhile approach the court(s) of competent jurisdiction in State of West Bengal to seek such remedy as he may be entitled to under the law *vis-a-vis* the above said case of West Bengal. The second respondent shall have continued protection against arrest

in the afore-mentioned case of Kolkata (West Bengal) till 02.09.2019, this being subject to orders, if any, passed by any court in West Bengal during the interregnum. Ordered accordingly.

10. Given the above dispensation, the learned senior counsel for the petitioner fairly agrees that there is no need for any further directions in the petition at hand which may be accordingly disposed of, his submission being that the objection as to the territorial jurisdiction may be kept open. For removal of doubts, it is clarified that the above said directions shall not be construed as any expression of opinion by this court on the said issue.

11. The learned standing counsel (criminal) for the Government of NCT of Delhi submitted for record that it is necessary that the situation brought about in the case of the second respondent in the petition at hand does not recur and, for this, the State will take suitable steps to have appropriate administrative instructions issued.

12. The application of the second respondent for anticipatory bail in which the impugned order was passed and the proceedings arising before District & Sessions Judge, New Delhi out of communication dated 10.07.2019 of Deputy Superintendent of Jail, Tihar are rendered infructuous by the above direction of this Court. The proceedings in said matters are thus drawn to a close.

13. Since the preparation of the transcript of this order dictated orally in the court will take some time, the learned Standing Counsel (criminal) has been requested to appropriately communicate the above

directions to the jail authorities, the caution being that the second respondent shall be released forthwith from custody in the Central Jail, Tihar, subject to the above conditions, provided he is not wanted in any other case here.

14. The petition and the pending application are disposed of.

15. *Dasti* under the signatures of Court Master to all sides.

R.K.GAUBA, J.

JULY 26, 2019

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