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

\+ W.P.(CRL) 3541/2019

PALVINDER SINGH MATTAR ..... Petitioner
Through: Mr Jaspreet Singh Rai, Advocate.

versus

STATE & ANR ..... Respondents
Through: Ms Richa Kapoor, ASC for State with Ms Shivani Sharma, Advocatea along with ACP Jasod Singh Mehta, Special Cell, New Delhi.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **04.08.2020**

[Hearing held through video conferencing]

CRL.M.A. 10374/2020
CRL.M.A. 10375/2020

1. Exemptions are allowed, subject to all just exceptions.

2. The applications are disposed of.

CRL.M.A. 10373/2020

3. This is an application seeking early hearing of the above-captioned writ petition.

4. With the consent of the learned counsel for the parties, the petition is taken up for hearing.

5. The application is allowed.

W.P.(CRL) 3541/2019

6. The petitioner has filed the present petition, *inter alia*, praying that the FIR No. 406/2001 under Sections 420/468/471 of the Indian Penal Code, 1860 (hereafter 'IPC') registered with Police Station Chanakyapuri and all proceedings emanating therefrom, be quashed.

7. The petitioner also impugns an order dated 17.04.2010 passed by the learned Metropolitan Magistrate, whereby the petitioner was declared a proclaimed offender. The FIR in question (FIR No. 406/2001 dated 24.11.2001) was registered at the instance of the Liaison Officer of the German Embassy. He had filed two complaints, one of which was against the petitioner herein. He had alleged that the documents filed by the petitioner with the German Embassy to obtain visa to Germany were forged.

8. It is stated that during the investigation, it was found that one Mahipal Sharma – a travel agent – had assisted the petitioner in obtaining the visa on the basis of forged documents. It is also alleged that on 10.10.2001, he had travelled overseas with the petitioner and had returned to India on 14.10.2001. However, the petitioner did not return to India. It appears that the petitioner had no intention to do so.

9. During the investigation, a raid was conducted at the residence of Mahipal Sharma and certain incriminating documents including, passports and visa forms, passport size photographs, traveller cheques, demand draft, photocopies of passports, returns of income tax, passbook of bank accounts, rubber stamps, visiting cards, ticket slips and a computer were recovered. Mahipal Sharma was arrested in the said case. He disclosed that he had

assisted persons for obtaining visa from the German Embassy on the basis of forged documents. These included documents such as personal income tax returns and other documents. Mahipal Sharma disclosed that one Sham Narula of Hoshiarpur, Punjab would bring boys from Punjab who aspired to go overseas, to him and he would arrange for the documents to assist them in travelling overseas.

10. He also disclosed that the petitioner was one of the boys who was brought from Punjab by Sham Narula and he confessed to have assisted the petitioner in obtaining a visa from German Embassy on the basis of the forged documents which were prepared by him from his computer. It is alleged that he had accompanied the petitioner to Germany and had returned back to India after leaving him there. It was also the prosecution's case that Sham Narula had charged ₹50,000/- from each of the boys on the pretext of securing jobs for them and sending them overseas. Sham Narula was also arrested.

11. A chargesheet was filed and the petitioner was also named as one of the accused. It is alleged that he was also complicit in the offence of obtaining visa by presenting forged documents.

12. Mr Jaspreet Singh Rai, learned counsel appearing for the petitioner contended that the FIR against the petitioner ought to be quashed as the charge-sheet does not ascribe any role played by the petitioner in the aforesaid offence but merely mentions the provisions of Section 120B of the IPC. He submits that in fact, the FIR in question also did not record any offence under Section 120B of the IPC. He submitted that the petitioner was

a victim of the offence and since the FIR and the chargesheet does not disclose any fault on his part, the same ought to be quashed.

13. Next, he submitted that the petitioner was arrested in Italy on 24.07.2004 and was detained from 24.07.2004 to 15.11.2004 and thereafter, from 15.11.2004 to 18.12.2004. He submits that even during this period, the Indian Authorities did not provide the necessary documents to the Italian Authorities. Consequently, the petitioner was released by the Italian Authorities.

14. The petitioner was declared a proclaimed offender on 17.04.2010. Mr Rai submitted that the said order proclaiming the petitioner to be a proclaimed offender is also liable to be quashed since the necessary summons were not issued to the petitioner. He submits that the prosecution had made no efforts to issue the summons to the petitioner overseas although it was well within their knowledge that the petitioner had left the country on 10.10.2001.

15. After being released from custody in Italy, the petitioner proceeded to Canada. He states that he is married his spouse in Canada and has two issues from his marriage.

16. Mr Rai further contended that during these proceedings, a red corner notice was issued but the same was also deleted as Indian Authorities were unable to provide the necessary documents. He earnestly contended that the FIR ought to be quashed for this reason as well.

17. It is apparent from above that the petitioner was fully aware of the

criminal case pending against him in India much prior to him being declared a proclaimed offender. He was arrested in Italy on 24.07.2004 and remained in custody for about three months. Surely, in the natural course any person placed in such a position, would have made the necessary enquiries and ascertained the reason for his detention. Mr Rai contends that the petitioner was under the impression that there was no case against him and, therefore, he was released by the Italian Authorities. This contention is clearly unsubstantial and cannot be accepted.

18. It is necessary to bear in mind that the other co-accused had pleaded guilty and were sentenced. Undeniably, it was the petitioner who presented his forged documents before the German Embassy to obtain a visa. It is difficult for this Court to accept that the petitioner was not aware or did not have the knowledge that his personal income tax returns and other documents presented by him in German Embassy were forged and fabricated. The contention that he was under the impression that he was released by the Italian Authorities as there was no case against him, cannot be accepted. It is apparent that the petitioner had, in fact, consciously decided to evade the proceedings in India instead of joining the same, and had proceeded to Canada in an endeavour to place himself beyond the reach of the Indian Authorities.

19. The petitioner's contention that the chargesheet does not disclose any offence against him and he had no role to play, is unpersuasive. The allegation against the petitioner is that of conspiracy. He is also the beneficiary of the forged documents that were presented to the German Embassy. The manner in which the petitioner had approached the travel

agent to obtain the visa to travel overseas also clearly indicates that he could not have been oblivious of the illegal manner in which he secured the visa.

20. The FIR clearly discloses commission of an offence. There is also *prima facie* reason to believe that the petitioner was complicit in the matter since the forged documents were his personal documents and he is the one who had presented them to the German Embassy.

21. In this view, this Court finds no reason to quash the FIR in question and/or the proceedings emanating therefrom.

22. This Court also does not consider it apposite to entertain the petitioner's prayer for quashing of the order dated 17.04.2010 passed by the learned Metropolitan Magistrate, whereby he was declared a proclaimed offender.

23. As observed above, the petitioner would have known about the case pending against him. More so, because he was arrested by Italian Authorities and detained for three months. During this period, he would have surely taken the necessary steps to make enquiries about the case against him. Be that as it may, the question whether the petitioner was aware of the case against him and had wilfully avoided the proceedings in India is a question of fact. This Court does not consider it necessary to examine this issue in these proceedings under Article 226 of the Constitution of India. The petitioner has an alternate remedy to challenge the order passed by the learned Metropolitan Magistrate.

24. In view of the above, the present petition is dismissed. However, it is

clarified that nothing stated in this order shall be read to the prejudice of the petitioner in the proceedings pending against him.

25. The hearing scheduled on 22.09.2020 stands cancelled.

VIBHU BAKHRU, J

AUGUST 04, 2020
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