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

Date of decision: 21st FEBRUARY, 2022

IN THE MATTER OF:

\+ **CRL.M.C. 1319/2021**

WAVE HOSPITALITY PRIVATE LIMITED ..... Petitioner

Through: Mr. Tanveer Ahmed Mir, Mr. Dhruv Gupta and Mr. Vaibhav Suri, Advocates.

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Anil Grover, SPP-CBI with Mr. Neeraj Bhardwaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. Vide the instant petition under Section 482 Cr.P.C, the Petitioner seeks to challenge order dated 28.11.2020 passed by the Learned Additional Sessions Judge, Rouse Avenue Courts, New Delhi in Criminal Revision No.37/2020 wherein the Learned Additional Sessions Judge has upheld the Order dated 22.06.2020 passed by the learned CMM, Rouse Avenue Courts, New Delhi, directing the CBI to release the amount lying in the account/FDRs of the Petitioner subject to the Petitioner furnishing a bond that he shall produce the amount before the court as and when directed. The learned CMM further directed the Petitioner herien to furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR of the Petitioner.

2. The Petitioner is engaged in the business of hospitality.

3. Facts, in brief, leading to the instant petition are as follows:

a) A case bearing No.RC-36(A)/2017-DLI was registered by the CBI, ACB, New Delhi on 16.11.2017 against M/s Advantage India, Sh. Deepak Talwar, M/s Accordis Healthcare Pvt Ltd, Sh. Raman Kapoor, Sh. Sunil Khandelwal, M/s T. Kapoor & Co. and others, under Sections 33, 35, 37 of FCRA, 2010 and Sections 120-B, 420, 468, 471, 199 IPC.

b) It is stated that M/s Advantage India, which is an NGO, received foreign contribution from two foreign donors and the amount received by it has been misused by Mr. Deepak Talwar. It is stated that during investigation CBI freezed the bank accounts/FDRs of Deepak Talwar and his family members. Bank accounts/FDRs related to the Petitioner herein were also frozen on the ground that certain proceeds of crime had been deposited in their bank accounts/FDRs.

c) The Petitioner filed and application for de-freezing of the bank accounts/FDRs. Learned CMM, Rouse Avenue Courts, New Delhi, *vide* order dated 22.06.2020, directed the CBI to release the amount lying in the account/FDRs of the Petitioner subject to Petitioner furnishing a bond that he shall produce the amount in question before the court as and when directed. The Petitioner was also directed to furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR of the Petitioner.

d) The said Order was challenged by the Petitioner herein by filing a Revision Petition. The Revisional Court vide order dated

28.11.2020 upheld the Order dated 22.06.2020.

e) It is this Order which is being challenged by the Petitioner to the extent that it directs the Petitioner to furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR of the Petitioner.

4. Notice was issued on 05.05.2021. Reply has been filed.

5. Mr. Tanveer Ahmed Mir, learned counsel appearing for the Petitioner, contends that the order for freezing the bank account of the Petitioner has been passed without following the procedure as laid down under Section 102 Cr.P.C. Section 102 Cr.P.C reads as under:

> *"**102.** **Power of police officer to seize certain property.***
>
> *(1) Any police officer, may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.*
> *(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*
> *(3) Every police officer acting under sub- section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.]"*

6. Mr. Mir contends that Section 102(3) Cr.P.C mandates that every Police Officer, immediately after freezing the account, should report the

seizure to the Magistrate having jurisdiction. Learned counsel for the petitioner relies on a judgment passed by the co-ordinate Bench of this Court in Muktaben M. Mashru v. State of NCT of Delhi, **2019 SCC Online Del 11509,** to contend that the provisions of Section 102 Cr.P.C are mandatory in nature. He, therefore, states that the account of the Petitioner ought not to have been frozen. The learned counsel for the Petitioner also places reliance on the Judgment passed the Bombay High Court in Manish Khandelwal & Ors. vs. State of Maharashtra, **2019 SCC Online Boml412,** wherein the Bombay High Court has also taken the same view.

7. Mr. Mir further contends that M/s Add Advertising Services Pvt. Ltd, who is identically situated with the Petitioner herein challenged the order dated 22.06.2020 directing M/s Add Advertising Services Pvt. Ltd to furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR. Vide order dated 28.09.2020, the learned Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue set aside the condition imposed by the learned CMM on M/s Add Advertising Services Pvt. Ltd. to furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR to the satisfaction of the court and had directed that the accounts of M/s Add Advertising Services Pvt. Ltd. be de-frozen on furnishing a personal bond only. He, therefore, contends that two Judges have taken two different views while dealing with the same impugned Order dated 22.06.2020 passed by the learned CMM.

8. *Per contra*, Mr. Anil Grover, learned SPP for the CBI, contends that Section 102 Cr.P.C is not mandatory in nature. He places reliance on a Judgment passed by the Punjab and Haryana High Court in Narrotam singh

Dhillon v. State of Punjab, **2007 SCC Online P&H 20,** and a Judgment passed by the Andhra Pradesh in Mohd. Maqbool Ahmed v. The Dy. Commr. of Police Hyd. & Ors., **1996 (2) APLJ 97 (HC),** wherein the High Court of Punjab and Haryana and the High Court of Andhra Pradesh had held that the provision of Section 102 Cr.P.C is only directory in nature and the order of seizing of properties cannot be annulled only because the Police has not reported the seizure to the Magistrate having jurisdiction. He states that the information of seizure can be given at any point of time.

9. At this juncture, this Court is not entering into the controversy as to whether Section 102 Cr.P.C is mandatory or directory in nature. It is pertinent to mention that the learned CMM *vide* order dated 22.06.2020 has recorded that when a specific query was put to the IO regarding reporting of the seizure to the concerned Magistrate in December 2017, the IO had conceded that no specific/separate intimation of seizure of the account/FDRs was given to the Magistrate. Based on this averment, *vide* order dated 28.09.2020, the learned Principal District & Sessions Judge-cum-Special Judge (PC Act) (CBI), Rouse Avenue, while dealing with the revision petition filed by M/s Add Advertising Services Pvt. Ltd, which is identically situated with the Petitioner herein, had chosen to set aside the directions passed by the learned CMM. Order dated 28.09.2020 directing to furnish a surety/security or a bank guarantee of the amount equal to the amount in the account/FDR. The order passed in favour of M/s Add Advertising Services Pvt. Ltd. has not been challenged by the CBI and has, therefore, attained finality.

10. As stated above, without going into the question as to whether Section 102 Cr.P.C is mandatory or directory in nature, this Court feels that the

benefit given to M/s Add Advertising Services Pvt. Ltd, which is identically situated to the Petitioner herein, should also be extended to the Petitioner herein.

11. The Order of the learned CMM is, therefore, modified to the extent that the condition imposed on the Petitioner to furnish a surety/security or a bank guarantee equal to the value of the amount lying in the account/FDR of the Petitioner is set aside. The petitioner is directed to furnish a personal bond for the amount lying in the account of the Petitioner and on furnishing the said personal bond, the accounts/FDRs of the petitioner are directed to be de-frozen.

12. With these observations the petition is disposed of along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J

FEBRUARY 21, 2022
Rahul