

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 840 of 2023

Anubrata Mondal @ Kesto

-Versus-

The Directorate of Enforcement

For the Petitioner : Mr. Kishor Datta, Sr. Adv.,
Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Ankur Chowla, Adv.,
Mr. Somopriyo Chowdhury, Adv.
Mr. Gurpreet Singh Chabra, Adv.
Mr. Dipayan Dan, Adv.
Ms. Minoti Gomes, Adv.

For the Enforcement
Directorate : Mr. Billwadal Bhattacharyya, Ld. D.S.G.I.,
Mr. Arun Kumar Maity, Adv.,
Mr. Samrat Goswami, Adv.

Heard & Judgment on : 4th March, 2023.

BIBEK CHAUDHURI, J. : –

Indisputably, the petitioner was arrested in connection with E.C.I.R. No.-KLZO/41/2020 under Sections 3 & 4 of the Prevention of Money Laundering Act (PMLA) corresponding to CT Case No.13/2022 pending before the learned Special Judge (PC Act) (CBI)-18, Rouse Avenue Districts Court, New Delhi by the Enforcement Directorate on 17th November, 2022. It is also not in dispute that the petitioner is under

judicial custody from before in connection with a CBI case and detained in Asansol District Correctional Home.

Immediately after arrest, the petitioner filed a writ petition before the High Court at Delhi bearing No.WP(CrI.)No.2790 of 2022 challenging the jurisdiction of the Trial Court and also the authority of the Head Investigation Unit (HIU), Enforcement Directorate to investigate into the matter. The said writ petition is still pending in the High Court at Delhi.

It is contended on behalf of the petitioner that on 22nd November, 2022 when the afore-mentioned writ petition came up for hearing before the concerned Bench, the learned Special Public Prosecutor, Enforcement Directorate submitted orally that ED would not be proceeding with the production of the petitioner before the Trial Court. Subsequently the said writ petition was listed on several dates and on most of the dates the opposite party took adjournment of hearing of the said writ petition. On 15th December, 2022, the High Court of Delhi passed the following order:-

“CRL.M.A. 24196/2022

1. Exemption allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(CRL.)2790/2022 & CRL.M.A.24195/2022

3. This is a petition seeking setting aside of the order dated 18.11.2022 passed by learned Special Judge, Rouse Avenue Courts, Delhi.
4. It is stated by Mr. Sibal, learned senior counsel for the petitioner that in the present case, the Special Judge, PC Act, Rouse Avenue is seized of the issue with regard to the jurisdiction.

5. It is further stated by Mr. Sibal that the respondent in the present case is seeking production warrant against the accused from the Special Judge, Rouse Avenue. However, the Special Judge is yet to determine the merits of the application, including the issue of his jurisdiction.

6. In this view of the matter, it is stated that the petitioner will argue the application u/s 267 Cr.P.C. before the Special Court on the next date of hearing.

7. In the meantime, issue notice. Mr. Sharma, learned SPP accepts notice, seeks and is granted 4 weeks to file a reply/rejoinder before the next date of hearing.

8. Issuance of notice in this petition will not come in the way of the Special Court to decide the application and all issues, including jurisdiction.

9. List on 23.01.2023.”

It is submitted by Mr. Kishor Datta, learned Senior Counsel on behalf of the petitioner that on the basis of oral undertaking given by the learned Special Public Prosecutor on behalf of the opposite party, the Enforcement Directorate did not find any necessity to pray for issuance of production warrant against the petitioner. The petitioner also relied on such oral undertaking. In support of his contention, he refers to a report published in an Online News Portal under the name of “Live Law” where it was reported that the Enforcement Directorate gave an oral assurance to the Delhi High Court that it will not execute production warrant till January 9, against Anubrata Mondal. It is also submitted with reference

to the order dated 2nd February, 2023 passed in CRL.M.C.7014/2022 and CRL.M.A.No.27148/2022 that the Enforcement Directorate prayed for time before the Delhi High Court to file status report in connection with the case under PMLA against the petitioner but the said status report has not been filed as yet.

Mr. Datta next takes me to Annexure-P/9 being an application filed on behalf of the petitioner for suspension of the order dated 2nd March, 2023 passed by the learned Special Judge, CBI at Asansol in CBI Case No.01/2021 and specially draws my attention to Paragraph 4.1 and Paragraph 4.6. It is contended on behalf of the petitioner that the production warrant dated 20th December, 2022 is subject matter of challenge before the High Court of Delhi in CRL.M.C.7014/2022, wherein the learned Special Public Prosecutor on behalf of the Enforcement Directorate gave oral assurance that the production warrant against the petitioner issued by the Trial Court at Delhi would not be executed and the said assurance is still in force. It was also contended on behalf of the petitioner that the petitioner was not served with a copy of the application filed by the Superintendent, Asansol District Correctional Home on 2nd March, 2023.

Be it mentioned here that on 1st March, 2023, the Superintendent, Asansol Correctional Home received an e-mail from the Additional Director, HIU, New Delhi directing him to produce the petitioner in the Trial Court at Delhi in connection with the above-mentioned case under PMLA. The learned Judge, Special Court, CBI, Asansol allowed the prayer made by the Superintendent of the Correctional Home directing him to

cause production of the petitioner before the learned Special Judge, (P.C.Act.), CBI-18 at Rouse Avenue Court, New Delhi. Objection filed by the petitioner was subsequently rejected by the learned Judge at Asansol.

It is vehemently urged by Mr. Datta that the writ petition filed by the petitioner challenging jurisdiction of the Trial Court at Delhi is pending and has been fixed now on 17th March, 2023. The learned Special Judge, Rouse Avenue Court has also not decided the issue relating to jurisdiction as per the direction made by the High Court at Delhi on 15th December, 2022 as yet. Without deciding the said issue, the petitioner cannot be directed to be produced before the Trial Court at Delhi.

Next limb of the argument advanced by Mr. Datta on behalf of the petitioner that the petitioner is seriously ill. He was shifted to hospital yesterday and at this stage on health ground he should not be taken to Delhi. It is submitted by Mr. Datta that Section 269 of the Code of Criminal Procedure empowers the Officer-in-Charge of the prison to abstain from carrying out the Court's order under Section 267 of the Cr.P.C., where the person in respect of whom an order is made under Section 267 of the Cr.P.C. is by reason of sickness or infirmity unfit to be removed from the prison.

Mr. Billwadal Bhattacharyya, learned Deputy Solicitor General, on the other hand, submits that the instant application filed by the petitioner is liable to be dismissed summarily on the ground of suppression of materials fact and conscious but utterly illegitimate attempt of 'Forum Shopping'. At the outset, it is submitted by the learned Deputy Solicitor

General that the petitioner did not annex the order dated 19th December, 2022 passed by the learned Special Judge, Rouse Avenue Court, Delhi. He submits a compilation containing the copy of the said order dated 19th December, 2022. The learned Trial Judge by an elaborate order allowed the application filed by the ED under Section 267 of the Cr.P.C. read with Section 65 of the PMLA. By filing an application under Section 482 of the Code of Criminal Procedure before the High Court at Delhi on 2nd March, 2023, the petitioner prayed for :-

a) Necessary orders and directions, thereby the oral statement made by the respondent (ED) be made part of written order and that the production warrants issued vide the impugned order dated 19.12.2022 passed by the learned Special Judge, Rouse Avenue Court, Delhi allowing the application under Section 267 Cr.P.C. r/w. Section 65 PMLA, 2002 filed by the respondent (ED) be ordered to be stayed till the next date of hearing,
AND,

b) Pass any necessary and appropriate order and direction, as the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Mr. Bhattacharyya further draws my attention to Paragraph 14 of the aforesaid application and submits that Paragraph 14 of the instant application is same and identical. In the instant application the petitioner has assailed the order dated 2nd March, 2023 passed by the learned Special Judge, Asansol in Special CBI Case No.1 of 2021 and pending disposal of the application prays for stay of operation of the said order. It

is contended by the learned Deputy Solicitor General that purpose and purport of both the applications are similar, i.e. to stall execution of production warrant.

Mr. Bhattacharyya further submits under instruction that Mr. Ankur Chowla, learned Advocate for the petitioner yesterday undertook at Delhi High Court that the petitioner would not press the present application. On such condition, the Hon'ble Bench of Delhi High Court heard the application filed by the petitioner, but refused to pass any interim order of stay. As soon as the petitioner failed to achieve favourable order, the instant application has been moved suppressing the undertaking given by the learned Advocate for the petitioner yesterday at Delhi High Court.

According to Mr. Bhattacharyya, the above act by the petitioner is a clear instance of suppression of fact and Forum Shopping. The attempt made by the petitioner should be taken very harshly and exemplary cost should be imposed against the petitioner. In support of his contention, Mr. Bhattacharyya refers to a decision of the Hon'ble Supreme Court in the case of ***Bombay Metropolitan Region Development Authority, Bombay Vs. Gokak Patel Volkart Ltd. & Ors.*** reported in ***(1995) 1 SCC 642***. Referring to Paragraph 12 and 13 of the aforesaid report it is submitted by Mr. Bhattacharyya that the petitioner had already approached the Delhi High Court under Section 482 of the Code of Criminal Procedure for staying operation of the order dated 19th December, 2022 passed by the Trial Court and having been failed, he

moves the instant application for the same relief in roundabout way which is not permissible under the law.

On the issue of 'Forum Shopping', learned Deputy Solicitor General relies on ***Kamini Jaiswal Vs. Union of India & Anr., (2018) 1 SCC 156.*** It is observed by the Hon'ble Supreme Court in the above report forum shopping takes several hues and shades. Even making allegations of a per se conflict of interest and requiring transfer of matter to another Bench, has been held to be a form of forum hunting. A classic example of forum shopping is when a litigant approaches one court for relief but does not get the desired relief and then approaches another court for the same relief. Jurisdiction in a court is not attracted by the operation or creation of fortuitous circumstances. To allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. This could not be allowed and circumstances such as this would lead to some sort of judicial anarchy. Successive bail applications filed by a litigant ought to be heard by the same Judge, otherwise an unscrupulous litigant would go on filing bail applications before different Judges until a favourable order is obtained. Unless this practice was nipped in the bud, it would encourage unscrupulous litigants and encourage them to entertain the idea that they can indulge in forum shopping, which has no sanction in law and certainly no sanctity. Another category of forum shopping is approaching different courts for the same relief by making a minor change in the prayer clause of the

petition. Similarly, substituting some petitioners for others with a view to confer jurisdiction on a particular court would also amount to forum shopping by that group of petitioners. Another form of forum shopping is where a litigant makes allegations of a perceived conflict of interest against a Judge requiring the Judge to recuse from the proceedings so that the matter could be transferred to another Judge.

Mr. Bhattacharyya also takes me to a judgment dated 4th January, 2023 passed by the Division Bench of this Court upon an application for bail filed by the petitioner in connection with CBI case. The said application was registered as CRM(DB) 4229 of 2022. The Division Bench of this Court in the aforesaid judgement observed in Paragraph 16 as hereunder:-

“Apart from the aforesaid materials showing intimidation of witnesses a very disturbing feature has come to our notice. A production warrant had been obtained against the petitioner by Enforcement Directorate in a money laundering case registered against him in New Delhi. Immediately thereafter, on 09.12.2022 a criminal case, namely, Dubrajpur Police Station Case No.266/2022 dated 19.12.2022 under sections 323, 325, 307, 506 IPC was lodged implicating the petitioner in a purported incident of assault which is said to have occurred one and half years ago. Though no medical papers in support of such assault were placed, the State Police Administration in post haste obtained police custody of the petitioner in the said case. Mr. Singh contends such exercise was a mala fide one and undertakes to abort the execution of the production warrant. We are informed that the legality of the production

warrant is pending consideration before the Delhi High Court. To avoid pre-judging the issue we choose not to make any comment with regard to its legality save and except observing the arrest and police custody of the petitioner in the belated FIR registered against him appears to be an overzealous and unjustified exercise for reasons not far to seek.”

In reply, it is submitted by Mr. Datta that the instant application cannot be treated to be an instance of ‘Forum Shopping’ because in the application filed before Delhi High Court on 3rd March, 2023, the petitioner prayed for recording oral assurance made by the ED to the effect that they would not press for execution of production warrant issued on 19th December, 2022 till the disposal of the writ petition and/or Criminal Miscellaneous Appeal. On the other hand, in the instant revision, the petitioner has assailed legality and propriety of the order dated 2nd March, 2023 passed by the learned Special Judge, CBI Court, Asansol.

It is further submitted by Mr. Datta that an undertaking made by an Advocate on behalf of a litigant without instruction cannot be accepted by any Court of law. There is no document filed by the opposite party to show that petitioner instructed his Advocate to submit before the High Court at Delhi that he would not press the instant revision at the time of hearing. Therefore, such undertaking having no legal binding upon the petitioner cannot be agitated as a ground for dismissal of the instant revision.

Having heard the learned Advocates for both sides and on careful perusal of the entire materials on record, this Court at the outset likes to

record that legality, validity and propriety of orders dated 2nd March, 2023 passed by the learned Judge, Special CBI Court at Asansol is under challenge before this Court. Much has been said, criticizing the judicial process undertaken by the Trial Court at Delhi and also by the High Court at Delhi, but these are not the issues for decision before this Court and I consciously choose not to make any comment with regard to such submission made on behalf of the petitioner.

Petitioner's case is that the Enforcement Directorate orally assured the Hon'ble Bench at Delhi High Court that they would not execute production warrant issued against the petitioner by the Trial Court on 19th December, 2022. Such assurance was not recorded in any of the orders passed by the Hon'ble Judges at Delhi High Court in different proceedings. The learned Advocate for the petitioner relies on a report published by "Live Law" in support of his contention. Though it is needless to say that this Court cannot take judicial notice on publication of certain news in an Online News Portal, it is pertinent to mention that the said report states that the ED gave an oral assurance to Delhi High Court that it would not execute the production warrant against the petitioner till 9th January, 2023. There is absolutely no record that after 9th January, the opposite party renewed such oral assurance before any judicial forum. It is on record that yesterday an application under Section 482 of the Cr.P.C. was moved before the Delhi High Court with a prayer to bring oral assurance made by the ED for not taking any step for execution of production warrant against the petitioner. In the said application, no interim order against execution of production warrant was passed by the

Delhi High Court and the application is fixed for hearing on 17th March, 2023.

Production warrant was directed to be issued by the Trial Court vide order dated 19th December, 2022. On 1st March, 2023, the Superintendent, Asansol Correctional Home received an e-mail from the Additional Director, ED(HIU), New Delhi for execution of production warrant dated 20th December, 2022 under Section 267 of the Cr.P.C. The Superintendent, Asansol Correctional Home submitted a prayer before the learned Special Judge, CBI Court at Asansol seeking permission to execute the production warrant. The said prayer was allowed by the learned Judge which is the subject matter of challenge in the instant revision. The case under PMLA is pending before the Special Court (CBI) at Delhi. The petitioner has not been produced as yet in the said case before the Trial Judge for answering to a charge of the offence or for the purpose of any proceeding against him. The Court under whose custody the petitioner is detained, on receipt of the intimation of production warrant from the Officer-in-Charge of the prison, has no other alternative but to direct him to execute the production warrant. The impugned order dated 2nd March, 2023 is actually an interlocutory order. The learned Judge, Special Court, CBI, Asansol has no alternative to decide as to whether he should permit the Superintendent of the Correctional Home to execute the warrant or not. Section 269 of the Cr.P.C., on the other hand, empowers the Superintendent, Correctional Home to abstain from carrying out the Court's order if the person by reason of sickness or infirmity is unfit to be removed from the prison.

In the instant case, the petitioner was sent to District Hospital, Asansol on 2nd March, 2023 when he complained of his illness. It is submitted by the learned Deputy Solicitor General on instruction that the petitioner has been discharged from the hospital. Therefore, it is presumed that there is no acute reason to hold that the petitioner is unfit by reason of his sickness from being removed to Delhi.

I have already held that the impugned order dated 2nd March, 2023 is interlocutory in nature. The order did not decide or touch upon the rights and liabilities of the petitioner. Therefore, I am of the view that the impugned order is not revisable.

The learned Senior Counsel on behalf of the petitioner repeatedly submits that this Court has inherent power to act under the facts and circumstances of the case specially when the petitioner has challenged territorial jurisdiction of the Trial Court and the said matter is still pending for adjudication.

I am of the view that since Section 482 can only be invoked to give effect to any order under this Code, or to prevent abuse of the process of the Code or otherwise to secure the ends of justice. In the instant case, it is found from the pleadings and the relief sought for by the petitioner that the petitioner has been trying to obstruct the process of the Court. This is not the only instance. The petitioner repeatedly filed series of applications to resist the Enforcement Directorate from executing production warrant issued against him. Not only the petitioner in his private capacity but also the State Police Administration was made to engage by registering a criminal case on 9th December, 2022, namely,

Dubrajpur Police Station Case No.266 of 2022 dated 19th December, 2022 under Sections 323/325/307/506 IPC implicating the petitioner in a purported incident of assault which is said to have occurred about one and half years ago. It is important to note that above-mentioned police case was registered on the very date when the Trial Judge issued production warrant in Delhi. It is not a mere co-incident. State Police Administration was consciously engaged so that production warrant might not be executed against the petitioner. In the said case, the petitioner was taken by the State Police to Dubrajpur on the strength of production warrant which happens to be the home ground of the petitioner. He was taken to police custody for some days in order to abort the execution of production warrant. The Division Bench of this Court in CRM(D.B.) 4229 of 2022 recorded the submission of the learned Advocate for the CBI that such exercise was mala fide one and undertakes (*sic undertaken*) to abort the execution of production warrant.

Since there is no order of stay of execution of production warrant dated 19/20th December, 2022 by any judicial forum, and the impugned order is absolutely interlocutory in nature, I do not find any merit in the instant revision.

Therefore, the revisional application being not maintainable, fails.

As the instant revision fails, prayer for granting interim stay does not arise.

However, it is made clear that if the Enforcement Directorate takes the petitioner to Delhi in execution of production warrant, considering the health of the petitioner, it is directed that he will be taken to Delhi by air.

Medical Officers posted in a Central Government Hospital in Kolkata in the Department of General Medicine, Cardiology and General Surgery will examine medically the petitioner and issue a medical certificate stating the condition of the health of the petitioner before he is handed over to the Enforcement Directorate. A Medical Officer shall accompany the petitioner to Delhi and he will be examined medically by the Doctors immediately after his arrival in Delhi. All such medical papers shall be produced before the Trial Court in Delhi at the time of the production of the petitioner before the said Court.

Before I part with, I am to add that the application filed by the petitioner bearing Criminal Misc.(main) No.7014 of 2022 and the instant revision have been filed for the sole purpose of obviating the process issued by the Trial Court in Delhi. When Criminal Misc.(main) No.7014 of 2022 was moved on behalf of the petitioner, the learned Advocate submitted before the Hon'ble Bench that the petitioner would not press for the instant revision specially fixed today by the order of the Hon'ble the Chief Justice. When the petitioner failed to obtain any relief in Delhi High Court, he chooses to move the instant application today and submitted on merit. Successive applications filed by the petitioner in different Courts for obtaining favourable order are undoubtedly a clear instance of 'Forum Shopping'. This practice can never be encouraged and to quote the Apex Court, "Unless this practice was nipped in the bud, it would encourage unscrupulous litigants and encourage them to entertain the idea that they can indulge in forum shopping, which has no sanction in law and certainly no sanctity".

In view of such circumstances, this Court is of the view that exemplary cost should be imposed upon the petitioner.

The petitioner is directed to pay compensatory cost of Rs.1,00,000/- (Rupees One Lakh only) in the High Court Legal Services Authority as a compensation for instituting successive, harassing applications of similar nature before the highest seat of judiciary of two States of the Country to obviate the process of the Court.

(Bibek Chaudhuri, J.)

**Srimanta/Suman/Mithun
A.R. (Ct.)**