

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:
The Hon'ble Justice Jay Sengupta

WPA 13812 of 2023
CAN 1 of 2023

Nandini Bharadwaj Nanjundaswamy @ Nandini Gupta & anr.
Versus
Union of India & Ors.

For the petitioner:	Mr. Sabyasachi Banerjee
	Mr. Sumit Mishra
	Ms. Prachi Gaweriwala
	Ms. Minal Palana
	Advocates

For the ED:	Mr. Dhiraj Trivedi
	Mr. Samrat Goswami
	Ms. Debjani Ray
	Mr. Ankit Khanna
	Ms. Supriti Sarkhel
	Advocates

Heard lastly on:	04.09.2023
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Judgment on:	04.09.2023
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Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for a direction upon the respondents, especially the respondent nos. 2 and 3 to show cause as to why the petitioner no. 1 could not travel to Dubai to meet the petitioner

no. 1 and a direction upon the respondent no. 2 to allow the petitioner no. 1 to travel to Dubai.

2. On 22.06.2023 while hearing this matter, a Co-ordinate Bench of this Court enquired as to whether the writ petitioner no. 2 who was the main accused in the accused was willing to appear in answer to the summons dated 14.12.2022 addressed to him by the Enforcement Directorate (ED, for short). On 26.06.2023, the Court was informed that the petitioner no. 2 shall be available at Kolkata on 25.08.2023 for participating in the enquiries. Accordingly, the Court directed that not coercive measures shall be taken against the petitioner no. 2 by the ED subject to participation in the enquiry till 28.08.2023. In the event the ED wanted custodial interrogation, they shall indicate the same on the adjourned date. Subsequently, the petitioner no. 2 entered into India at a prior date, informed the ED about his presence and offered to be examined. He was examined on a few dates. Thereafter, the ED filed an application praying for vacating of the interim protection granted on 26.06.2023. Affidavits were filed.

3. After an intervening fiasco that the petitioners were apprehended by the CID near the Court, they were let go with a notice on the petitioner no. 2 for examination.

4. On 28.08.2023 an analysis of examination of the petitioner no. 2 as filed by the ED was taken on record in a sealed cover. However, it was reported by the learned counsel of the petitioners that as the petitioner no. 2 left office of the ED after examination on 25.08.2023, he was picked up by the Electronic Complex Police in respect of a separate case. Although he was granted bail on the next day, the CID prayed for and took custody of the petitioner no. 2 in connection with a case started by them.

5. The order of interim protection granted by a Co-ordinate Bench of this Court on 26.06.2023 was not challenged by the ED. At best, this Court can look into the subsequent conduct and circumstances for deciding on whether to continue with the interim order granted earlier.

6. On 01.09.2023 a list of vital questions that were purportedly not answered properly by the petitioner no. 2, as filed on behalf of the Enforcement Directorate was taken on record, perused and kept in a sealed cover along with the statements of two witnesses who have been examined under Section 50 of the PML Act in the meantime.

7. Learned counsel representing the petitioners submits as follows. The petitioner no. 2 came back in India voluntarily only to co-operate with the investigation. In addition to the co-operation vouched by him, he offered and was in fact interrogated on several dates by the ED that is on 11th, 12th, 14th, 16th and 17th August, 2023 and thereafter, on 25th August, 2023. In respect of the documents he was supposed to submit as per the notices, he submitted all the available documents. He also answered all the queries put by the Enforcement Directorate. As he has co-operated with the investigation, there is no reason to ask for his custodial interrogation. Even the petitioner no.1 has cooperated with the investigation in all possible ways.

8. Learned counsel appearing on behalf of the Enforcement Directorate submits as follows. The modus operandi involved was deceiving innocent individuals and swindling a significant amount of money through various schemes including posing as representative of companies and offering supports, website sales and loans through a fake mobile app. The petitioner entered into India under questionable circumstances through Nepal. His offer to co-operate with investigation was only a

ploy to garner the sympathy of the Court. He answered only the more trivial questions and avoided or did not answer the real questions. First, the petitioner has several investments and companies in other countries than what he had admitted. Even while in CIDs custody the petitioner has been trying to contact his officers over phone. Statements of two of his personal assistants in this regard had recorded under Section 50 of the PML Act in the meantime. Another assistant stated that the petitioner no. 1 tried to remove digital evidence and instructed others in this regard. The petitioners' signatures in respect of such transactions have been found in the laptops. There was a look out notice issued not only by the CID, but also by the Interpol which was also looking for the accused over complaints in other countries. Since the petitioner no. 2 has been avoiding to reply the more important and relevant questions and trying to tamper with evidence, the order of "no coercive steps" should not be continued. The ED would require the petitioner no. 2 for custodial interrogation. Even the petitioner no. 1 did not comply with the subsequent summons. Alternatively, in view of the arrest of the accused by the CID the instant writ petition has practically become infructuous.

9. In reply, learned counsel for the petitioners submits that the petitioner no. 1 was not served with any notice other than the first one at the airport. Besides, it was the CID who had asked the petitioner to call up his associates for the purpose of investigation while he remained in their custody.

10. I have heard the learned counsels appearing on behalf of the parties and have perused the writ petition, the application, the affidavits, the reports regarding examination of the petitioner no. 2 and the statements of two other witnesses recorded recently.

11. It is true that apparently the petitioner no. 2 came to India after obtaining an order of protection upon assuring that he would co-operate with investigation. It is also true that he came before time, though under rather strange circumstances, and volunteered to be examined by the ED.

12. However, from the analysis of examination of the petitioner no. 2 on different dates and from the list of the vital questions, which were allegedly not answered properly by the petitioner no. 2, it appears that on a number of vital issues, the petitioner either evaded the questions or answered the same incorrectly. These were purportedly not only been double checked by the ED through its sources, but also by finding out evidence to the contrary.

13. From the statements of witnesses examined recently under Section 50 of the PML Act it appears that even while in the CID's custody the petitioner managed to try to call some of his associates. At an appropriate stage, the petitioner no. 2 would get an opportunity to rebut or explain such claim. From another statement it appeared that the petitioner no. 1 tried to engineer tampering of evidence.

14. There are several incriminating materials already available against the petitioners.

15. The investigation is now at a crucial stage.

16. Considering the non-cooperation of the petitioner no. 2 in not properly answering the questions posed by the ED and the alleged attempts of the accused to tamper with evidence, I find no reason to grant and/or extend the order of non-coercive steps issued earlier in this writ petition.

17. Accordingly, the writ petition is dismissed.

18. However, the trial Court shall not be swayed by any observations made herein as the same were made only for deciding the present writ petition.

19. The petitioners shall be at liberty to seek available remedies.
20. With these observations, the writ petition is disposed of.
21. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

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