IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on:13.01.2023

\+ **CRL.M.C. 6688/2022 & CRL.M.A. 26048/2022 *(for stay)***

ASHWANI KUMAR ..... **Petitioner**

versus

STATE ..... **Respondent**

Advocates who appeared in this case:

For the Petitioner : Mr. RK Tarun & Mr.Rohit Shukla, Advs.

For the Respondent : Ms. Richa Dhawan, APP for State Inspector Hansraj Swami, IFSO, Special Cell

CORAM
HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order dated 19.10.2022 passed by the learned CMM, Patiala House Courts, New Delhi (impugned order) in FIR No. 0299/2020, under Sections 419/420/468/471/120B/34 of the Indian Penal Code, 1860 (**IPC**) and Sections 66 C & D of the Information Technology Act, 2000 (**IT Act**).

2. The learned Chief Metropolitan Magistrate, by impugned order, has issued the non-bailable warrant (NBW) against the petitioner.

3. Learned Counsel for the petitioner submits that the notice under Section 41A of the Code of Criminal Procedure, 1973 (**CrPC**) was issued for the first time on 18.07.2022. The petitioner had immediately

sent a WhatsApp message to the Investigating Officer explaining that he is not in a position to join investigation on such a short notice, being not in the country.

4. He submits that NBW was issued on wrong presumption that the applicant has been continuously absconding and not available at his residence. The investigating agency, in its application for the issuance of NBW, had mentioned that the NBW was issued on three occasions earlier even though the said NBWs were illegally procured prior to issuance of any notice under Section 41A of the CrPC.

5. Learned APP for the State opposes the grant of any relief to the petitioner. She submits that the applicant is a kingpin in the present case.

6. She submits that a fake call center was being run from a property belonging to the petitioner. The racket of impersonation and cheating the US citizens was being run by the applicant along with other co-accused persons.

7. She further submits that the applicant has been absconding and is not entitled for any relief.

REASONING

8. It is noted that the present petition has been filed with a supporting affidavit of the father of the petitioner. The father of the petitioner has filed an affidavit claiming to be the special power of attorney holder of the petitioner. The special power of attorney is filed

along with the present petition and is stated to be attested by the office of Consulate General of India.

9. It is significant to note that the said power of attorney does not mention any address of the petitioner. The filing and maintainability of the petition under Section 482 of the CrPC by such persons, who are absconding, is deprecated by courts.

10. In a proceeding before the Court of law, there cannot be any justification for not furnishing the address of the petitioner if he bonafidely wants to submit himself to the jurisdiction of the Court of law, especially when he has been accused of a serious economic offence in India. The Petitioner has approached this Court with unclean hands and with material suppression of facts and on this ground itself the petition is liable to be dismissed.

11. In ***Mohan Gupta vs The Enforcement Officer*** **2010 SCC OnLine Mad 4550:(2010) 3 MWN (Crl) 217**, learned Judge observed that a person who has been evading the process of law for a long time shall submit himself to the authority of the Court. Granting relief to the petitioner under extraordinary jurisdiction would have the effect of encouraging abuse of process of law.

12. The Division Bench of this Hon'ble Court in the matter ***Wave Hospitality Private Ltd. vs Union of India & Ors***. **2019 SCC OnLine Del 8855** took a view that the exercise of discretion is a remedy in equity and which the court can refuse to exercise in case it is found that the conduct of the parties or persons invoking jurisdiction of this

Court are not genuine or bona fide, possibilities of misusing the process of law cannot be ruled out.

> *"15.In our considered view, if we take note of the preliminary objections raised by the respondents and we apply them in the peculiar facts and circumstances of this case, we have to hold that it is not an appropriate case where the discretion, extraordinary in nature available to this Court should be exercised in favour of persons against whom there are serious allegations of money laundering and who are prima facie found to be not co-operating in the matter of investigation and enquiry into the matter."*

13. It is not in doubt that the proceedings under Section 482 of the CrPC are discretionary and equitable and are not to be encouraged for abuse of the process of law.

14. The Hon'ble Supreme Court has in a plethora of cases held that proceedings shall not be quashed wherein the petitioner/accused person has been absconding/ evading the process of law. The present is not a fit case wherein the discretionary remedy of this Hon'ble Court shall be exercised.

15. This Court, by order dated 30.12.2022, has already dismissed the application filed by the petitioner under Section 438 of the CrPC seeking anticipatory bail in the present case.

16. It was noted that serious allegations have been made against the petitioner, that is, cheating citizens of other country by running a fake call centre.

17. It was also noted that petitioner has not cooperated with the investigation and the *prima facie* claim of the petitioner that he had

not joined investigation on account of not being available in the country, was found to be incorrect.

18. It is not denied that despite the dismissal of the application under Section 438 of the CrPC or after the passing of the impugned order, the petitioner has submitted himself to the investigation.

19. The powers under Section 482 of the CrPC are not to be exercised to aid a party with such antecedents.

20. This Court, therefore, finds no reason to interfere with the order passed by the learned Trial Court.

21. The petition is, therefore, dismissed.

AMIT MAHAJAN, J

JANUARY 13, 2023
KDK/SK