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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4492/2023 & CRL.M.A. 17182/2023(Stay)**
DIRECTORATE OF ENFORCEMENTPetitioner

Through: Mr. S.V. Raju, ASG with Mr. Ravi
Prakash Sr. Advocate, Mr. Vivek
Gurani, Standing Counsel, Mr.
Kanishk Maurya, Mr. Pranjal Tripathi
and Mr. Naveen Jindal, Advocates.

versus

OM PRAKASHRespondent

Through: Mr. A. F. Faizi, Mr. Videh Vaish and
Mr. Momin Fazal, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

% **ORDER**
27.01.2025

1. This hearing has been done through hybrid mode.
2. The present petition under Section 482 of the Cr.P.C. seeks the following prayers:

“I. Quash and set aside the Impugned Order dated 30.06.2023 passed by Ld. Vacation Roster Judge, ASJ-05, New Delhi District, Patiala House Courts, New Delhi passed in ECIR no. ECIR/20/HIU/2021 ; or
II. Quash and set aside the Impugned Order dated 30.06.2023 passed by Ld. Vacation Roster Judge, ASJ-05, New Delhi District, Patiala House Courts, New Delhi to the extent that directions have been passed “*to conduct an inquiry with regard to the working of Investigating Officer and administrative failure of his superior Officers, which led to the unjustified incarceration of the accused Om Prakash behind the bars for 17 days. The enquiry report be*



filed before this Court within 15 days.” And

III. Pending hearing and disposal of this Application to Stay the the Impugned Order dated 30.06.2023 passed by Ld. Vacation Roster Judge, ASJ-05, New Delhi District, Patiala House Courts, New Delhi; or

IV. Any other order which this Hon’ble Court may deem fit and proper in the interest of justice.”

3. Learned ASG appearing on behalf of the petitioner/Department submits that he is only pressing prayer “II” with regard to the expunging of the aforesaid remarks as well as setting aside of the order for conducting an inquiry in the present petition.

4. In the present case, the respondent was arrested in pursuance of non-bailable warrant and was produced before the learned Special Court on 12.06.2023 and the order of even date records as under:

“Ld. SPP for ED submits that accused Om Prakash has been produced on execution of NBWs however, he is not required at this stage for custodial interrogation, only the request is made to the court for issuing directions to the accused for joining the investigation. Also, his permanent address is also on record. Submissions of Ld. SPP for ED heard.

In view of the submissions made, accused Om Prakash is sent to JC for 03 days and be produced on 15.06.2023 before Ld. Vacation Judge.”

5. Thereafter on the next date of hearing, the respondent was produced and was sent to judicial custody remand for 14 days, while observing as under:

“ File taken up on an application seeking 14 days’ judicial custody remand of accused Om Prakash.

Present: Sh. Arun Khatri, Ld. SPP for the department/ED (through VC).

Sh. Dhananjaya Kumar and Sh. Sudhir Kumar, Ld. Counsels for accused Om Prakash.

Accused produced from JC.



Heard. Perused.

Considering the facts and circumstances of the case, the judicial custody remand of the accused Om Prakash is extended further for a period of 14 days.

Put up on 29.06.2023 for further proceedings.”

6. Learned ASG submits that the observation with regard to the application seeking 14 days judicial custody remand is factually incorrect. There is no such application filed on behalf of the petitioner/department on that day. Consequently it is submitted that the observation made by learned ASJ in the impugned order is unjustified.

7. On the other hand, learned counsel appearing on behalf of the respondent submits he has no objection if the remarks as well as order for conducting inquiry is set aside.

8. The record reflects that the respondent was arrested in pursuance of the non-bailable warrants issued and was produced before the learned Special Court. The Investigating Officer has in fact made a statement that no custodial investigation is required and only that the respondent be directed to remain present during the course of the investigation. It is not in dispute that there was no application seeking judicial remand of 14 days by the Investigating Officer in the present case.

9. Be that as it may, in view of the above, the following remarks made in order dated 30.06.2023 in para 6, ***“It appears that the accused has suffered the custody period of 17 days due to the callous approach of the agency against the fundamental right of personal liberty guaranteed under the Constitution of India and also contrary to the provisions of Code of Criminal Procedure(Cr.PC) also.”*** and in para 9, ***“Therefore, copy of this order be sent to Director, Directorate of Enforcement with the directions to***



conduct an inquiry with regard to the working of Investigating Officer and administrative failure of his superior Officers, which led to the unjustified incarceration of the accused Om Prakash behind the bars for 17 days. The enquiry report be filed before this court within 15 days”, are hereby expunged and set aside.

10. The petition is partly allowed and disposed of.
11. Pending application(s), if any, also stands disposed of.
12. Copy of this order be sent to the concerned learned Trial Court for necessary information and compliance.
13. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

JANUARY 27, 2025/bsr

Click here to check corrigendum, if any