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

+ **CRL.M.C. 2402/2013**

MUKESH KUMAR SEWALIA

.....Petitioner

Through: Mr. Mehrab Zuha, Advocate

versus

STATE CBI & ORS.

.....Respondents

Through: Mr. Ravi Sharma, SPP for CBI with
Mr. Premtosh K. Mishra, Mr. Swapnil
Choudhary, Mr. Ishann Bhardwaj,
Mr. Shivam Mishra, Ms. Madhulika
Rai Sharma, Advocates
Mr. Anusuya Salwan, Mr. Rachit
Wadhwa, Mr. Waseen Ahmad,
Advocates for DSIIDC

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

22.05.2025

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1. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (formerly, Section 482 of the Code of Criminal Procedure, 1973) seeks release of property bearing Plot No. 87, Narela Industrial Complex, Delhi.¹ The relief clause reads as follows:

“a. release the property i.e. plot no. 87, Narela Industrial Complex, in favour of the petitioner herein/applicant. who is the rightful owner of the aforesaid property, in the interest of justice.

b. the C.B.I, be directed to obtain the concerned file /title document of said plot i.e. 87, Narela Industrial Complex, Delhi regarding Sh. Mukesh Kumar Sewalia from the record of the trial court / court of

¹ “the subject property”



Special Judge, Delhi, previously presided over by the then special judge Sh. G.P. Mittal (as his lordship then was) and to return the file to the respondent no.2 through respondent no.3 from whom it was seized by C.B.I. (Respondent no. 1). ”

2. The subject property was seized during the investigation of RC No. 59-A/90/CBI/ACB/ND registered against Mr. G.P. Sewalia. The trial in that case culminated in a conviction dated 15th November, 2006. However, in its final judgment, the Trial Court specifically held that the subject property did not constitute part of the convicted individual's assets. The relevant portion of the judgment reads:

“45. There is one more immovable property in the shape of an industrial plot from DSIDC at 87 Narela Industrial Estate in the name of Mukesh Kumar Sewalia. Document D-17/O Ex.P69 admitted by the accused U/s. 294 Cr.P.C. This document simply shows that Industrial Plot in the sum of Rs.93,000/- was allotted in the name of Mukesh Kumar Sewalia. The document, however, nowhere shows that resources for purchase of this industrial plot were provided by the accused. The prosecution has not led even a shred of evidence to show that the industrial plot in Narela Industrial Estate was purchased by the accused in the name of his brother Mukesh Kumar Sewalia or that the pecuniary resources were provided by the accused to Mukesh Kumar Sewalia. This property, therefore, cannot be added to the assets of the accused.”

3. Pertinently, no order was passed regarding the release or disposal of the subject property, nor has the CBI challenged the finding that excluded the property from the list of assets held by Mr. Sewalia. Despite the categorical findings of the Trial Court, the property continued to remain under attachment.

4. In these circumstances, the Petitioner filed an application before the Trial Court seeking release of the subject property. The said application was dismissed by an order dated 22nd October, 2011, which reads as follows:

“Vide this order I shall dispose of an application moved by Mukesh



Kumar dt. 8.4.2011 for deattache /release of property bearing No. 87, Narela Industrial Complex, Delhi.

It is submitted in the application that during the investigation CBI maliciously attached certain properties of applicant including plot No. 87, Narela Industrial Complex allotted by DSIDC towards disproportionate assets of accused G P Sewalia on the allegation that it was purchased by accused in the name of Mukesh Kumar hence the same was a benami transaction of accused G P Sewalia.

It is further submitted in the application that applicant has produced by the prosecution as PW19 in support of his case but not even a single question has been put to him with regard to above said property. Trial court has convicted the accused but Id. Trial judge in para no. 45 of relevant judgment has observed that prosecution has not produced any evidence to prove that this property was purchased by accused in the name of his brother Mukesh Kumar (applicant) hence it cannot be added in the assets of accused. However, trial court inadvertently did not pass any order regarding disposal of the above said property. It is prayed that plot No. 87, Narela Industrial Complex, Delhi may be released in favour of applicant.

CBI has filed its reply opposing this application stating therein that the above noted case ended in conviction vide order dt. 15.11.06. Thereafter, accused preferred an appeal in Hon'ble High Court of Delhi which is yet to be decided. During the course of trial said property alongwith other properties were attached by the predecessor of this court under Criminal Law Amendment Ordinance 1944. Appeal filed by G P Sewalia is yet to be decided by the Hon'ble High Court of Delhi, hence property in question cannot be released/detached at this stage. It is prayed that the application of applicant be dismissed.

Arguments heard. File perused.

The facts leading to the attachment of the property in question were that Sh. G.P. Sewalia was tried in the above noted case for the offence possessing ~ assets disproportionate to the known source of his income u/s 13 (2) r/w Sec. 13(1) (e) of P C Act, 1988. Property No. 87, Narela Industrial Complex, Delhi was one of the property about which it was alleged that accused G.P. Sewalia was holding the said property benami in the name of applicant. Vide impugned order dt. 3.7.06 said property was attached by the then Special Judge upon an application filed by CBI. The applicant alleged that when the property was attached on 3.7.06 no notice was given to the applicant. Now the trial has been concluded and the then Ld. Special Judge Sh. G P Mittal vide his judgment dt. 15.11.06 observed that prosecution has failed to prove that property No. 87, Narela Industrial Complex, Delhi belongs to accused G.P. Sewalia.



Ld. Defence counsel referring para no. 45 of judgment dt. 15.11.2006 passed by the then Special Judge, argued that though CBI in the charge sheet has alleged that this property is the benami property of accused G P Sewalia but during the trial prosecution has failed to prove this fact, hence Ld. Special Judge has held that this property is not the benami property of Sh. G P Sewali. This property is in the name of Mukesh Kumar. It is his personal property. Predecessor of this court has wrongly attached this property. No notice of attachment of property was given to applicant hence he could not file any objection. In this judgment dt. 15.11.06 predecessor of this court inadvertently did not passed any order regarding releasing/disposal of the above said property of applicant. Therefore, attachment be withdrawn and property may be released to applicant.

Ld. Senior Prosecutor Sh. Tejvir Singh Dua argued that predecessor of this court has convicted G P Sewalia. Judgment of Ld. Special Judge Sh. G P Mittal has been challenged by accused and the matter is subjudiced before Hon'ble High Court. Moreover, the predecessor of this court has not passed any specific order in the judgment in respect of de-attachment of property in question, therefore, being successor of the same court, this court cannot review the judgment of its predecessor. It is further argued that judicial record reveals that fact that notice was issued to the applicant, but he did not turn up; even during trial and after the order of attachment applicant never claimed his right on property in dispute, therefore, plea of applicant for releasing the attached property is not tenable in the eye of law. Property in question cannot be released/deattached at this stage. I have carefully considered all the arguments raised in this court and have gone through the record. My Id. Predecessor in para no. 45 of his judgment dt. 15.11.2006 has observed as follows:

"There is one more immovable property in the shape of an industrial plot from DSIDC at 87 Narela Industrial Estate in the name of Mukesh Kumar Sewalia. Document D-17/0 Ex P69 was admitted by the accused U/s 294 Cr PC. This document simply shows that Industrial Plot in the sum of Rs. 93,000/- was allotted in the name of Mukesh Kumar Sewalia. The document, however, nowhere shows that resources for purchase of this industrial plot were provided by the accused. The prosecution has not led even a shred of evidence to show that the industrial plot in Narela Industrial Estate was purchased by the accused in the name of his brother Mukesh Kumar Sewalia or that the pecuniary resources were provided by the accused to Mukesh Kumar Sewalia. This Property, therefore, cannot be added to the assets of the accused."

Applicant Mukesh Kumar has appeared in the witness box as



PW19. Photocopy of his statement has been annexed by the applicant alongwith this application. He has not claimed that he had purchased this property from his source of income. He has not disclosed his source of income vide which he made the payment for purchasing this property.

My Ld. Predecessor has convicted accused G P Sewalia but has not passed any order for releasing the above said attached property in his judgment dt. 15.11.2006. Now passing of order of releasing/ recalling of attachment of this property would amount to reviewing of the judgment of my Ld. Predecessor dt. 15.11.2006. A Court of Special Judge has no power of review. Accused has filed an appeal against the judgment of my Predecessor dt. 15.11.2006 in the Hon'ble High Court which is still pending. Any Interference by this Court with the matter seized by Hon'ble High Court would be also against judicial propriety.

There is no merit in the argument of Ld. Counsel for applicant that no notice was issued to the applicant/ owner of this property. My Ld. Predecessor had sent a copy of the order of attachment to the recorded owners which is clear from the following portion of his order dt. 3.7.2006:

"Accordingly, all the properties mentioned in the list except the one which stands in the name of accused are attached and recorded owners are hereby directed not to alienate, transfer or create any third party interest in any form or nature, whatsoever, till further orders. One copy of this order be sent to the each recorded owners and one copy of this order to be sent to the concerned authorities who maintains the record of the rights for intimation and compliance of this order. Accordingly, this application stands disposed off.

Ahlmad of this Court has also given following note with regard to compliance of his order.

xxx ... xxx ... xxx

Applicant has not filed any objection against attachment of property in question before the Predecessor of this Court during the trial or thereafter U/s 4/5 of Criminal Law Amendment Act 1944.

In view of the above discussion, the aforesaid application is dismissed. File be consigned to R R."

(sic)

5. As evident from the afore-noted extract, the Trial Court acknowledged that the subject property was not found to be benami or linked to the convicted individual, yet, it declined to release the property,



citing procedural limitations, primarily the Petitioner's failure to file an objection under Sections 4 and 5 of the Criminal Law Amendment Ordinance, 1944.

6. This Court is unable to accept the reasoning adopted by the Trial Court in declining relief to the Petitioner. The legal position is well-settled that attachment under the Criminal Law Amendment Ordinance, 1944 can be lifted once the proceedings conclude and the property is found not to be tainted or linked to ill-gotten assets. The Trial Court had clearly found no nexus between the Petitioner's property and the assets of the convict. In such circumstances, the continued retention of the property would offend both equity and law.

7. Furthermore, there is no statutory embargo that prevents the release of a property merely because the convict has filed an appeal. The judgment on the point of ownership or linkage to the convict remains binding unless stayed or set aside. Absent any challenge by the CBI to the finding in paragraph No. 45 of the conviction judgment or any fresh material linking the property to the proceeds of crime, the Petitioner's title must be restored.

8. This Court is of the considered view that the Petitioner has established his rightful claim over the subject property. The finding in the conviction judgment operates as a judicial determination in his favour. Any further denial of relief would amount to perpetuating an unjust attachment long after the cessation of its legal justification.

9. Accordingly, the petition is allowed. The Respondents are directed to release the title documents of Plot No. 87, Narela Industrial Complex, Delhi, and to take necessary steps to lift the attachment, if any, still subsisting. It is clarified that this property was expressly held not to be part of the convicted



individual's assets and is not under lawful attachment in RC No. 59-A/90/CBI/ACB/ND.

10. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

MAY 22, 2025/ab