

**HIGH COURT OF DELHI**

**Bench: JUSTICE SWARANA KANTA SHARMA**

**Date of Decision: April 1, 2024**

CRL.M.C. 1018/2024 & CRL.M.A. 4071/2024

**RAJEEV JHAWAR ... Petitioner**

**VERSUS**

**DIRECTORATE OF ENFORCEMENT ... Respondent**

**Legislation:**

Sections 7-A, 8, 9, 10, 12 of Prevention of Corruption Act, 1988

Section 13(2), 13(1)(d) of PC Act

Section 420, 120B of Indian Penal Code, 1860

Sections 2(1)(u), 3, 4, and 8(5) of the Prevention of Money Laundering Act (PMLA), 2002

Section 174, 482 of the Code of Criminal Procedure, 1973

**Subject:** Petition seeking quashing of non-bailable warrants issued against the petitioner in a money laundering case linked to allegations of bribery in influencing CBI investigations.

**Headnotes:**

Quashing of NBW Sought by Petitioner – Alleged involvement in bribery to influence a CBI case – Petitioner's repeated absence and failure to comply with court directives – Non-Bailable Warrants (NBW) issued – Petitioner's application under Section 482 Cr.P.C. seeking quashing of NBW and related proceedings [Paras 1, 9-14, 20-38].

Quashing of Non-Bailable Warrant (NBW) – Dismissal of Application – Petitioner, accused in Prevention of Corruption Act case, failed to appear physically despite repeated court orders – Trial Court issued Non-Bailable Warrant – High Court finds no illegality or infirmity in Trial Court's order – Petitioner's previous non-compliance with court's direction and non-

appearance before the Investigating Officer noted – Bail application dismissed. [Paras 32-37]

Non-Appearance of Accused – Impact on Judicial Process – Repeated non-appearance of accused before Trial Court and failure to comply with summons – NBW issued as a coercive measure due to consistent avoidance of court proceedings – Court’s discretion in issuing NBW considered a balance between personal liberty and societal interest. [Paras 33-36]

Judicial Discretion in Issuing Non-Bailable Warrants – Examined – Court exercised discretion judiciously after multiple opportunities given to the accused to appear – NBW seen as necessary due to persistent non-compliance and evasion from the legal process. [Paras 34, 36]

Decision – Dismissal of the application seeking quashing of NBW – Upheld issuance of NBW against petitioner – Observations not to affect merits of the case [Paras 37-39].

Referred Cases:

- Inder Mohan Goswami v. State of Uttaranchal & Ors. (2007) 12 SCC 1
- Satender Kumar Antil v. CBI (2022) 10 SCC 51
- Dr S. Jaitley & Anr. v. State (NCT of Delhi) 2023 SCC OnLine Del 5551
- CA Rakesh Kumar Gupta v. Delhi High Court W.P. (C) 17194/2022

Representing Advocates:

Petitioner: Mr. Sidharth Luthra, Mr. Pramod Kumar Dubey, Sr. Advocates with Mr. Rajiv Bhatnagar, Mr. Ayush Kaushik, Mr. Anshuman Mohit Chaturvedi, Mr. Uddeshya Singh, Mr. Satyam Sharma, Ms. Aditi, Ms. Ritivika Poswal, Mr. Kaul Rustom Khan, Mr. Sangat Pati, and Mr. Suhail Ahmed, Advocates

Respondent: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi, Advocates

## **JUDGMENT**

**SWARANA KANTA SHARMA, J.**

1. The present application has been preferred on behalf of the applicant Rajeev Jhawar under Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) seeking quashing and setting aside of impugned order dated 02.02.2024 passed by the learned Special Judge, CBI-19 (PC Act), Rouse Avenue Courts, New Delhi (*'Trial Court'*) in Complaint Case No. 08/2023, arising out of ECIR/DLZO-I/24/2022, titled as „Enforcement Directorate vs NMP Sinha and Ors.“ issuing Non-Bailable Warrants (*'NBW'*) against the petitioner and proceedings thereafter.

### **FACTUAL BACKGROUND**

2. On 02.10.2020, the Central Bureau of Investigation (*'CBI'*) had registered RC AC-1/2020/A0004, at CBI/AC-I, New Delhi under Sections 7-A/8/9/10/12 of Prevention of Corruption Act, 1988 (*'PC Act'*). This was registered pursuant to receipt of an information that Sh. N.M.P. Sinha i.e. Ex. SP, CBI, New Delhi, in conspiracy with Sh. Vinay Jalan, Sh. Parth Jalan, Sh. Rajiv Jhawar (present applicant) i.e. M.D. of M/s. Usha Martin Ltd., Sh. Raj Kumar Kapoor i.e. Authorized Signatory of M/s. Usha Martin Ltd., and other unknown persons, was trying to influence the investigation of the case of CBI registered *vide* RC17(E)/2016 dated 20.09.2016 under Section 13(2) read with Section 13(1)(d) of PC Act and Section 420/120B of Indian Penal Code, 1860 (*'IPC'*), by EO-II Branch, New Delhi against I.D. Paswan, the then Director (Mines), Govt. of Jharkhand, M/s. Usha Martin Ltd. and other unknown persons. The allegations were that Sh. N.M.P. Sinha was the Supervisory Officer of the aforesaid case before his retirement on 31.08.2020, and Sh. Raj Kumar Kapoor was representing M/s. Usha Martin Ltd. on behalf of Sh. Rajiv Jhawar. As alleged, they were actively pursuing the case through Sh. Vinay Jalan who had assured them that he will get the investigation moulded in their favour through his contacts in CBI. On 23.09.2020, Sh. N.M.P. Sinha had met Sh. Vinay Jalan at hotel ITC Maurya, New Delhi for three-four hours and in his presence, Sh. Vinay Jalan had asked his son Parth Jalan to prepare a reply to the summons issued by CBI to M/s. Usha Martin Ltd. and asked him to meet Sh. N.M.P. Sinha on his next visit to New Delhi. Sh. N.M.P. Sinha also had a conversation with Sh. Parth Jalan. It was informed to CBI that Sh. Vinay Jalan will deliver a bribe of Rs. 20 lakhs to Sh. N.M.P. Sinha to get the work done.

3. During investigation, a trap was laid and the accused persons namely Sh. N.M.P. Sinha and Sh. Vinay Kumar Jalan were arrested and an amount of Rs. 25,00,000/- and Rs.5,12,000/- was recovered respectively from their possession. After completion of investigation, chargesheet was filed on 01.12.2020 against the accused persons namely (1) Nripendra Mohan Prasad Sinha @ N.M. P. Sinha, (2) Vinay Kumar Jalan, (3) Rajiv Jhawar, (4) Raj Kumar Kapoor, (5) M/s. Usha Martin Ltd. and (6) Hemant Joshi, under Sections 120B of IPC read with Sections 7/7A/8/9/10/12 of PC Act and substantive offences under Section 9 and 12 of PC Act.
4. Since, Section 120B of IPC and Sections 7, 7A, 8, 9, 10 and 12 of PC Act are Scheduled offences under the PMLA, enquiries were initiated under PMLA against the accused persons.
5. On the basis of the RC registered by the CBI, an ECIR No. RNSZO/17/2020 dated 29.10.2020 was recorded by Ranchi SubZonal Office (now Zonal office), and the investigation in this case was initiated by Ranchi office. However, the ECIR was transferred to Delhi Zonal Office-1 and new ECIR No. DLZO-I/24/2022 was assigned on 18.05.2022. Thereafter, the investigation was carried out by the Delhi team of Directorate of Enforcement.
6. The case of Directorate of Enforcement, in brief, is that the applicant Rajeev Jhawar, Managing Director, M/s Usha Martin Ltd., on behalf of the accused company, had agreed to give a bribe of Rs. 50 lakhs to Sh. N.M.P Sinha and as a first installment, Rs. 30 lakhs was delivered to Vinay Kumar Jalan in Delhi for further handing over to N.M.P Sinha. However Rs. 25 lakhs was given to N.M.P Sinha and rest Rs. 5 lakhs was retained by Vinay Kumar Jalan on request of N.M.P Sinha and the said amount totalling to Rs. 30 lakhs were seized by CBI. The aforesaid money totalling to Rs. 30 lakhs, which were acquired by N.M.P Sinha and Vinay Kumar Jalan, from Rajeev Jhawar, as a result of criminal activities related to schedule offences is proceeds of crime as defined under Section 2(1)(u) of PMLA. As alleged, the accused persons namely N.M.P Sinha, Rajeev Jhawar, Vinay Kumar Jalan, M/s. Usha Martin Ltd have committed the offence of money laundering as defined under Section 3 and they are liable to be prosecuted and punished under Section 4, and the bribe money Rs. 30 lakhs which is involved in the offence of money laundering is proceeds of crime in terms of Section 3 of PMLA and is liable to be confiscated in terms of section 8(5) of PMLA, 2002.
7. On 30.03.2023, prosecution complaint in the present case was filed against the aforesaid accused persons. Proceedings under Section 174 of the IPC were also initiated against the applicant. On 03.04.2023, cognizance of the

prosecution complaint was taken by the learned Trial Court and process was issued against all four accused persons.

8. The anticipatory bail application instituted by the applicant herein was dismissed by the learned Special Judge *vide* impugned order dated 19.01.2024.
9. Non-Bailable Warrants were issued against the applicant *vide* order dated 02.02.2024 by the learned Trial Court, which has been impugned in this petition.

### **SUBMISSIONS BY THE PARTIES**

#### ***On Behalf of the Petitioner***

10. Learned Senior Counsel appearing on behalf of the applicant Rajeev Jhavar argues that despite the Petitioner filing an application seeking exemption from personal appearance and no prejudice being caused to the proceedings or the prosecuting agency (as per order dated 11.08.2023), the learned Trial Court has issued NBW against the petitioner on 02.02.2024. It is argued that as per settled law, the Courts ought not to issue NBW while deciding the exemption application and filing of exemption application cannot be considered as non-compliance of summons. It is also stated that no Bailable Warrants were issued in this case prior to issuance of NBW by the learned Trial Court. Reliance in this regard is placed on ***Inder Mohan Goswami v. State of Uttaranchal & Ors. (2007) 12 SCC 1*** and ***Satender Kumar Antil v. CBI (2022) 10 SCC 51***.

11. It is further argued by learned Senior Counsel that mere physical absence of the petitioner cannot lead to the inference that he is absconding and evading process of the Court, thereby justifying the issuance of warrant of arrests. It is argued that the petitioner has duly appeared before the learned Trial Court on multiple occasions in compliance with the Delhi High Court Video Conferencing Rules and the judgments of this Court. Further, the appearance of petitioner via video-conferencing was allowed by learned Trial Court *vide* order dated 11.08.2023 and subsequently has also been recorded in the orders dated 19.09.2023, 07.11.2023 and 02.02.2024, and therefore, the petitioner has duly appeared before the learned Trial Court in the present complaint case initiated by the Directorate of Enforcement. Reliance in this regard has been placed on ***Dr S. Jaitley & Anr. v. State (NCT of Delhi) 2023***

*SCC OnLine Del 5551, CA Rakesh Kumar Gupta v. Delhi High Court W.P. (C) 17194/2022.*

12. It is further contended that the petitioner's anticipatory bail application was dismissed by the learned Trial Court on 19.01.2024, which was challenged before this Court and therefore, judicial discipline requires that till disposal of the bail application by this Court, no adverse order should have been passed against the petitioner. However, despite being informed of the pendency of present petitions before this Court, the learned Trial Court had erroneously issued fresh NBW against the petitioner on 22.02.2024. 13. Learned Senior Counsel further submits that the learned Trial Court has failed to appreciate that the petitioner has genuinely and *bona fide* made various attempts to join the proceedings, but due to the various processes being issued against him by the Directorate of Enforcement and CBI, he is unable to do the same. Moreover, NBW has been issued by the learned Trial Court overlooking the fact that the issuance of NBW interferes with the personal liberty of the individual and therefore courts must exercise this discretion with abundant caution and only if absolutely necessary

14. Therefore, in these circumstances, it is prayed that impugned order dated 02.02.2024, and further proceedings, insofar as they related to issuance of NBW against the petitioner be quashed.

***On Behalf of the Respondent***

15. On the other hand, learned Special Counsel appearing on behalf of the Directorate of Enforcement argues that the learned Trial Court has passed a well-reasoned order and while issuing NBW against the present petitioner, the Court has duly taken into account his conduct during the course of pending proceedings before the Trial Court. It is argued that the law is well settled that Courts have the power to issue non-bailable warrants against accused persons where they fail to cooperate and deliberately avoid the process of law by delaying investigation and the trial. It is further submitted that due to the similar malafide conduct of the petitioner, NBW were issued against the petitioner in the CBI case as well.

16. It is also stated that the petitioner had not joined the investigation of the present case on a single occasion and had evaded all the summons while being ensconced abroad in Singapore, and that it is a settled proposition of law that the Trial Court has jurisdiction and power to issue NBW in aid of investigation. In this regard, it is stated that although a prosecution complaint



has been filed in the present case, however, the investigation *qua* the present petitioner is pending.

17. It is further argued that the petitioner has not appeared before the learned Trial Court till date, despite him not obtaining bail in the present case. It is further submitted that summons in the present case were issued subsequent to the order of the cognizance on 03.04.2023. By order dated 10.05.2023, fresh summons *qua* the petitioner were reissued, and the petitioner had appeared through its counsel on 31.05.2024. It is submitted that the learned Trial Court had expressly recorded in the order dated 19.07.2023 that the court was refraining from issuing Bailable Warrants despite having the opportunity to do so. As regards the appearance of petitioner through videoconferencing on 11.08.2023, it is submitted that the learned Trial Court had only allowed the appearance of the petitioner through VC for that particular date i.e. 11.08.2023 and had not given a permanent exemption from personal appearance. Further, it is pointed out that petitioner had been seeking exemptions from personal appearance on all the dates fixed for hearing. It is also pointed out that the learned Trial Court *vide* order dated 05.01.2024 had specifically directed the petitioner to be present and his application seeking exemption had been dismissed on this date. However, no coercive process was issued against him on this day.

18. Therefore, it is prayed that the present petition be dismissed, being devoid of any merits.

19. This Court has heard arguments addressed by learned Senior Counsel for the applicant/accused as well as learned Special Counsel for the Directorate of Enforcement, and has gone through the records of the case.

### **ANALYSIS AND FINDINGS**

20. In the present case, the question before this Court is whether the Non-Bailable Warrants issued against the petitioner *vide* order dated 02.02.2024 are liable to be quashed?

21. The sequence of events which unfolded before the learned Trial Court are that on 03.04.2023, cognizance was taken of the complaint filed by the Directorate of Enforcement, and summons were issued against all the accused persons. With respect to petitioner/accused Rajeev Jhawar, it was noted by the learned Trial Court that he had not appeared before the investigating agency during the course of investigation, and in the charge-sheet filed by the CBI, NBW had already been issued against him. It was also

observed that the Court was not consciously issuing warrants against Rajeev Jhawar on this occasion. The relevant observations read as under:

“...With respect to the accused Rajeev Jhawar it may be mentioned that, it has been stated in the complaint that the accused was summoned on various dates by Directorate of Enforcement for the purpose of investigation. However the accused Rajeev Jhawar deliberately avoided to appear on a summons on one pretext or the other. It may also be mentioned that this Court in the charge sheet filed by the CBI had issued non-bailable warrant against the accused Rajeev Jhawar. An application filed by the accused Rajeev Jhawar for the cancellation of said non-bailable warrant is pending for adjudication. It is also stated in the complaint that as the accused Rajeev Jhawar avoided to appear before investigating officer on one or another pretext. Accordingly, a complaint u/s 174 of Cr.Pc has been filed against Rajeev Jhawar for his non-appearance before the IO of the case, on 24.03.2023 before the Court of Ms. Snigdha Sarvaria, Chief Metropolitan Magistrate, Patiala House Court, New Delhi.

\*\*\* Accordingly, issue summons against all the accused persons for 21.04.2023. This Court has consciously not issued warrants against the accused no. 3 this time. If any coercive process is to be issued against the accused no. 3 the complainant is given liberty to press for the same at any stage in accordance with law.”

22. On 10.05.2023, it was observed by the learned Trial Court that summons had not been served upon the petitioner/accused as per provisions of Cr.P.C. Thus, they were directed to be re-issued in accordance with law. Thereafter, on 31.05.2023, the learned Trial Court had arrived at a view that petitioner had been duly served. On this day, an application was also moved on behalf of the petitioner

“ ...Ld. Counsel Sh. Anshuman Mohit Chaturvedi has filed memo of appearance on behalf of accused no. 3. On behalf of accused no. 3, an application seeking exemption from personal appearance along with certain documents has also been filed. Vakalatnama shall be filed on the next date of hearing.

Copy of the said application supplied to the Ld. Counsel for the ED.



Arguments heard on the application moved on behalf of accused no. 3 for exemption from personal appearance. For the reasons stated in the application, **accused no. 3 Rajeev Jhavar is exempted for today only with the direction to accused no. 3 to appear in person on the next date of hearing.** The application is disposed of accordingly...”

23. Therefore, the application filed on behalf of the petitioner seeking exemption from personal appearance was allowed only for one day, with the direction to appear in person on the next date of hearing. Again on 19.07.2023, an application seeking exemption from personal appearance was preferred by the petitioner, however, the same was dismissed *vide* detailed order and it was clarified that though the Court could have issued Bailable Warrants against the petitioner/accused for the next date of hearing, it was not passing any adverse order against the accused. It was also made clear that if an application seeking exemption is again filed on the next date of hearing, the Court will straightaway issue Non-Bailable Warrants against the petitioner. The relevant portion of order dated 19.07.2023 is extracted hereunder for reference:

“5. Order dated 31.05.2023 reflects that service of the summons were duly effected upon accused no. 3. On behalf of accused no. 3, appearance has been entered into and an application seeking exemption from personal appearance was moved which was allowed and the accused no. 3 was exempted from personal appearance for 31.05.2023 with a direction that the accused would appear in person on the next date of hearing i.e., today

**6. Today also, accused No. 3 has not appeared and has moved present application seeking exemption from personal appearance.**

\*\*\* 8. Accused No. 3 is primarily seeking exemption from personal appearance on the ground that medical condition of applicants’ father and mother are not well and they are being treated in a hospital in Singapore since March, 2020; there is no one to take care of his parents or to attend their medical needs and therefore, the accused No. 3 is unable to appear before this Court. The present application has been supported by the

medical documents of the parents of accused no. 3. It is also stated in the application that today the matter is listed for compliance of Section 207/208 Cr.P.C., therefore, if the accused No. 3 is exempted for today, no prejudice of any kind is going to be caused to the ED.

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10. The Court agrees with the submission of Ld. Counsel for ED. The medical documents which are being filed by accused no. 3 substantially pertain to the year 2022 and there is no certificate of any kind of any doctor that condition of the parents of accused no. 3 is not such that parents of accused no. 3 could not travel to India or that requisite medical treatment cannot be provided in India. The document dated 10.07.2023 filed today pertaining to the mother of the accused no. 3 is of no consequence. **The court does not find any merit in the application. Accordingly, the application in hand is dismissed**

\*\*\* 13. In the interest of justice, no adverse order against accused no. 3 is being passed today and the accused no. 3 is given time to appear on the next date of hearing after making alternate arrangements for his parents. **It is made clear that on the next date of hearing the court is not going to entertain the ground of medical conditions of the parents of the accused no. 3 as an excuse for non-appearance of the accused in person before the court.**

14. **It is also clarified that today as the court could have issuedailable warrants, which the court has not issued therefore in case there is an exemption application on behalf of the accused no. 3 on the next date as well, which the court happens to dismiss, the court may straightaway issue the non-ailable warrants against accused no. 3."**

24. On 11.08.2023, the petitioner had appeared for the first time before the learned Trial Court, however, not physically, but through videoconferencing. After hearing arguments on behalf of the accused and the complainant, the learned Trial Court had taken a lenient view and allowed the petitioner to appear through videoconferencing on that day considering the fact that the matter was at the stage of scrutiny of documents and no prejudice would be caused to the complainant by physical absence of the accused.

25. On 19.09.2023, the petitioner had again appeared through video-conferencing before the learned Trial Court. A specific query had also been put to the learned counsel for the accused as to when the petitioner would appear physically before the Court as he was not on bail in this case. Though his appearance through videoconferencing was allowed on the said day, it was again clarified by the learned Trial Court that any exemption application preferred by the petitioner would be considered on merits. The matter was then renotified for 05.12.2023. These observations are as under:

“ ...Objection filed by ED to the application on behalf of accused no. 3 seeking exemption from personal appearance and disclosure of information qua any Look Out Circular opened by the ED, which was moved on the previous date. Copy supplied.

Regarding physical non-appearance of accused no.3, Ld. Counsel for accused no. 3 has drawn attention to observations made by Ld. Predecessor of this court in page no. 3 of the previous order, whereby the court had permitted accused no. 3 to appear through video conferencing.

A specific query was put to the Ld. Counsel for the accused no. 3 as to when accused shall appear in person before the court, as he is not on bail in this case till date, upon which Ld. Counsel for the accused has submitted that in view of the connected matter bearing CC no. 31/20 titled CBI Vs. NMP Sinha & ors. wherein the proceedings are pending before the Hon“ble High Court, accused no. 3 has not appeared in person today.

Heard. Though accused is permitted to appear through video conferencing for today, since he was permitted on the last date by Ld. Predecessor and he cannot be taken by surprise today, however, it is clarified that exemption from physical appearance, on the next date of hearing shall be on merits, if any such prayer is made on the next date of hearing, especially considering the fact that accused has allegedly not complied with the summons of ED or of this court and has not obtained bail in this case, as yet...”

26. As recorded in order dated 05.12.2023, the petitioner had not appeared before the learned Trial Court. However, the exemption application filed on behalf of the petitioner was allowed for that day only by the link Court which was hearing the matters on the said day. An exemption application was again preferred by the petitioner on 05.01.2024, and the same was dismissed by the learned Trial Court considering his previous conduct of repeated absence from the Court and also the fact that he was not on bail in this case. The learned Trial Court had also directed the petitioner to appear physically on the next date of hearing failing which NBW would be issued against him. For reference, the relevant portion of order dated 05.01.2024 is reproduced hereunder:

“ ...An exemption application from personal appearance has been moved on behalf of A-3.

Heard. Considering the previous conduct of A-3 and his repeated absence from physical presence before the court, the exemption application cannot be allowed as he is not even on bail in this case. Hence, exemption application stands dismissed. A-3 is directed to physically appear on the next date of hearing failing which the court shall be inclined to issue NBWs against him.”

27. It is also important to note at this juncture that prior to the next date of hearing, the anticipatory bail application of the petitioner was dismissed by the learned Trial Court *vide* order dated 19.01.2024.

28. Despite there being clear directions for the petitioner to appear physically before the learned Trial Court, another exemption application on his behalf was filed on 02.02.2024, which was dismissed by the learned Trial Court with the observations that there was repeated physical absence of the petitioner before the Court, despite giving assurance/ undertaking to do so, on previous various dates, and thus, there were no grounds to allow the exemption application as he was not even on bail in this case, and also considering the fact that no relief had been granted to the petitioner/accused by this Court in the connected CBI case.

29. The relevant portion of impugned order dated 02.02.2024, *vide* which NBW were issued against the petitioner, reads as under:

“ ...An exemption application from personal appearance has also been moved on behalf of A-3.

Heard at length.

**At the outset, it is pertinent to mention that this court had specifically directed for the physical presence of A-3 today with further direction that in case, he fails to appear physically on the next date i.e. today, the court shall be inclined to issue NBWs against him. However, still A-3 has not appeared in person.**

Perusal of his exemption application shows that exemption has been sought firstly, for the reason that applicant/A-3 is in the process of initiating appropriate proceedings qua order dated 24.01.24 whereby, the application of applicant/A-3 seeking clarification was dismissed by the Hon<sup>ble</sup> Delhi High Court, which was filed pursuant to orders dated 03.11.23 of Hon<sup>ble</sup> Delhi High Court and 07.11.23 passed by this court. Secondly, exemption is sought as the applicant/A-3 has preferred second anticipatory bail application before Hon<sup>ble</sup> Delhi High Court, after dismissal of his first anticipatory bail application by this court. Thirdly, exemption has been sought on the ground that the court cannot issue NBWs in the first instance after dismissal of exemption application. Lastly, it is also stated that the applicant/A-3 has appeared through V/c which is proper appearance as per Rule 3 of High Court of Delhi Rules for Video Conferencing for Courts, 2021 r/w Office Order bearing no.01/RG/DHC/2023 dated 05.06.23.

The said application is vehemently opposed by Ld. SPP, ED, with a prayer to dismiss the same.

I have considered the arguments. As far as the first two grounds are concerned, the fact that the applicant/A-3 has chosen to initiate appropriate legal proceedings against orders dated 24.01.24 of Hon<sup>ble</sup> Delhi High Court and order dated 19.01.24 passed by this court dismissing his anticipatory bail application, this court cannot grant any relief from appearance and the applicant/A-3 has to approach the Hon<sup>ble</sup> Superior Courts, for seeking exemption. **As regards appearance through V/c is concerned, it needs to be reemphasized that the applicant/A-3 is not on bail in this case and his anticipatory bail application also stands dismissed. The court had already made it clear on the previous date that the applicant/A-3 had to appear physically, which he has repeatedly failed to do so. As**

regards the contention that NBWs cannot be issued at the first instance after dismissal of exemption application is concerned, it is pertinent to mention that the exemption application of applicant/A-3 already stands dismissed on the previous date and no new fact is brought on record, to allow the present application. Moreover, the court had not issued NBWs on the previous date despite dismissal of his exemption application and granted him time to appear but he chose not to do so.

Considering the previous conduct of A-3 and his repeated absence from physical presence before the court, despite giving assurance/ undertaking to do so, on previous various dates, the exemption application cannot be allowed as he is not even on bail in this case. Even the Hon'ble Delhi High Court has refused to grant any relief to the applicant/A-3 vide its order dated 24.01.24 in the connected CBI case considering his conduct. Hence, exemption application stands dismissed.

A-3 appears to be intentionally not appearing before the court physically despite repeated directions, hence, I am of the opinion that his presence cannot be secured unless coercive measures are taken. Accordingly, issue NBWs against A-3 for next date of hearing..."

30. Therefore, what flows from the aforesaid set of orders is that on 19.07.2023, the learned Trial Court had dismissed the exemption application filed on behalf of petitioner and had observed that Bailable Warrants were not being issued against the petitioner, and an opportunity was being afforded to him, but with a clarification that his failure to appear physically on the next date of hearing would lead to issuance of NBW against him. On 11.08.2023, 19.09.2023, 05.12.2023, though he was allowed to appear virtually by the learned Trial Court, it was observed that the same was allowed only for one occasion and he had to appear physically before the Court.
31. As a precursor to order issuing NBW against the petitioner, the learned Trial Court *vide* order dated 05.01.2024 had dismissed the application seeking exemption from personal appearance filed on behalf of the petitioner and had clarified that in case of failure on part of petitioner to appear physically before the Court on the next date, NBW shall be issued by the Court.



32. Having taken note of the orders passed by the learned Trial Court on 31.05.2023, 19.07.2023, 11.08.2023, 19.09.2023, 05.12.2023, 05.01.2024, 02.02.2024, this Court is of the opinion that despite the fact that the petitioner had not obtained bail from the learned Trial Court after cognizance had been taken and summons had been issued against him, the learned Trial Court was lenient with the petitioner on several occasions by not issuing warrants against him, though he was not appearing physically before the Court despite repeated directions in this regard by the learned Trial Court.
33. As far as the reliance placed on decision of ***Inder Mohan Goswami (supra)*** on behalf of petitioner is concerned, this Court has gone through the said decision, wherein it has been held that NonBailable Warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result, and the Court should properly balance both personal liberty and societal interest before issuing warrants.
34. In this Court's opinion, what can be readily discerned from the records of the case and the orders passed by the learned Trial Court is that the petitioner had been afforded several opportunities by the learned Trial Court, to appear before it physically and repeated warnings had been issued that his failure to appear before the Court would lead to issuance of coercive process i.e. NBW. It is only thereafter that the learned Trial Court was left with no other option but to issue NBW against the petitioner. It is also relevant to note that the learned Trial Court had also considered in its previous orders, the conduct of the petitioner during the course of investigation i.e. his non-appearance before the investigating officer despite five summons being served upon him, the fact that complaint under Section 174 of IPC had been filed already against him by the prosecuting agency, and also the fact that NBWs had been issued against him in the connected CBI case and relief had been denied to the petitioner by this Court also in the CBI case as he had failed to return to India despite giving undertakings on numerous occasions.
35. As regards the reliance on judgment rendered by this Bench in case of ***Dr S. Jaitley (supra)***, the said decision is clearly distinguishable on the facts as well as law. In the case cited before this Court, this Court had allowed a 75 years old accused, who had already been granted bail in that case, to appear virtually before the learned Trial Court during the course of trial, subject to the conditions that whenever the Trial Court would require his physical presence, the accused would be informed in advance. Further, the accused therein had appeared physically before the learned Trial Court on several previous occasions. It was also observed by this Court that as per law, the Courts will

have to consider factors such as allegations against the accused, conduct of the accused, place of residence etc. while adjudicating such requests for exemption from personal appearance. Conversely, in the case at hand, the petitioner herein has never appeared either before the investigating agency during investigation or before the learned Trial Court for the last one year despite repeated opportunities granted to him. Further, the petitioner has been residing in Singapore for a long period of time and has not yet appeared before the Trial Court and obtained bail in the present case.

36. Thus, in such circumstances, this Court is of the opinion that the impugned order dated 02.02.2024 suffers from no illegality or infirmity insofar as it has directed issuance of Non-Bailable Warrants against the present petitioner.
37. Accordingly, the present bail application alongwith pending application stands dismissed.
38. It is however clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.
39. The judgment be uploaded on the website forthwith.

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