

HIGH COURT OF DELHI

Date of Decision: April 04, 2024

BENCH : HON'BLE MR. JUSTICE AMIT SHARMA

W.P.(CRL) 867/2023 & CRL.M.A. 24921/2023

SAMSUNG GULF ELECTRONICS, FZE ... Petitioner

VERSUS

**UNION OF INDIA THROUGH SECRETARY MINISTRY OF EXTERNAL
AFFAIRS & ORS. ... Respondents**

Legislation:

Article 226 and 227 of the Constitution of India

Sections 420/467/468/471/384/120B of the IPC

Section 301(2) of the Cr.P.C.

Section 14 of the Passive Extradition Law (PEL)

Subject:

Petition by Samsung Gulf Electronics for a Writ of Mandamus, directing authorities to appoint an advocate for the prosecution in extradition proceedings of Sukhmeet Singh Anand in Spain.

Headnotes:

Extradition Proceedings – Appointment of Advocate for Prosecution – Petition by Samsung Gulf Electronics, FZE seeking the appointment of an advocate for prosecuting the extradition request of Sukhmeet Singh Anand in Spain – Respondent authorities directed to appoint an advocate to assist in extradition proceedings. [Paras 1-18]

Representation in Foreign Legal Proceedings – Analysis – Court considers the necessity of effective legal representation in extradition proceedings in Spain – Emphasizes on the right of the petitioner to assist the prosecution, as permitted by the Indian trial court – Highlights the duty of respondent authorities to ensure effective legal pursuit of the extradition request, noting previous denial due to alleged inadequate representation. [Paras 13-16]

Decision – Directs Respondent Nos. 4 and 5 (Delhi Police) to seek the appointment of an advocate for extradition proceedings – Consideration for appointment at the petitioner's expense – Ministry of External Affairs to communicate the decision to Spanish authorities – Ensures compliance with established legal rights and international legal norms. [Para 17]

Referred Cases:

- Jagjeet Singh and Others vs. Asish Mishra alias Monu and Another (2022) 9 SCC 321
- Hari Krishna Mandir Trust vs. State of Maharashtra and others (2020) 9 SCC 356

Representing Advocates:

For Petitioner: Mr. Arvind Nigam, Senior Advocate with Mr. Saif Khan, Mr. Niraj Singh, Mr. Achuthan Sreekumar, and Mr. Mridul S., Advocates.

For Respondents: Ms. Rupali Bandhopadhyaya, ASC (criminal) for the State with Mr. Abhijeet Kumar, Advocate. Mr. Ajay Diggpaul, Central Government Standing Counsel with Mr. Kamal Diggpaul and Ms. Ishita Pathak, Advocates. Insp. Harish Chandra, EOW.

JUDGMENT

AMIT SHARMA, J.

1. The present petition under article 226 and 227 of the Constitution of India seeks the following prayers:-
“In light of the foregoing, it is most respectfully prayed that this Hon'ble Court may be pleased to pass the following orders:
(a) An appropriate Writ of Mandamus or Writ/ Order/ Direction may kindly be passed directing the Respondent Authorities to appoint an Advocate for prosecution, of the request for extradition of Sukhmeet Singh Anand accused No. 5 in FIR no 93 of 2014 registered at PS Economic Offences Mandir Marg New Delhi, in Courts of Spain; AND
(b) Any further Writ/ Orders/ Directions may also be passed as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”
2. Learned Senior Counsel appearing on behalf of the petitioner, submitted that on the complaint of the petitioner a FIR bearing No. 93/2014 was registered at P.S. Economic Offence Wing, Mandir Marg, New Delhi, under Sections 420/467/468/471/384/120B of the IPC. Thereafter, it is submitted that a chargesheet was filed before the Court of competent jurisdiction on 07.11.2017. It is submitted that subsequently, Sukhmeet Singh Anand was apprehended by Interpol, Madrid, Spain in view of a Red Corner Notice. Thereafter, a proposal for extradition of the aforesaid Sukhmeet Singh Anand from the Kingdom of Spain to India was sent to the concerned authorities by the Ministry of External Affairs *vide* letter bearing no. T413/53/2016. It is submitted that the Spanish National Court, Criminal Division, Section Four denied the said extradition request. It is submitted that subsequently in November 2022 another request for extradition of the aforesaid Sukhmeet Singh Anand had been sent by the Delhi Police. Learned Senior Counsel submitted that in order to avoid any further

complication in the aforesaid extradition proceedings pending before the Kingdom of Spain, letters dated 18.02.2023 were sent to the respondents requesting for appointment of an Advocate on behalf of the Delhi Police, Government of India for prosecution with respect to the request for extradition of the aforesaid Sukhmeet Singh Anand. Learned Senior Counsel appearing on behalf of the petitioner submitted that the first extradition request was denied by the Spanish National Court due to lack of proper representation on behalf of the Delhi Police, *inter alia*, lack of assistance to the Courts in Spain for appreciation of documents rendering the presence of Sukhmeet Singh Anand imperative for his prosecution in India. It is stated that the aforesaid first request was denied mainly on the ground of *res judicata* and statutory limitation, which was contrary to the record. It is submitted that due to inadequate representation on behalf of the Indian authorities before the Learned Spanish Court, the latter was not clearly apprised of the facts of the case and the concerned queries were not clarified properly.

3. It was submitted that the letters dated 18.02.2023 to the respondents requesting for appointment of an Advocate, was replied to by respondent no. 4 *vide* its e-mail dated 20.02.2023 informing that the said request had been forwarded to respondent no. 5 for necessary action. It is stated that Ministry of External Affairs (Respondent no. 1) in its reply dated 07.03.2023 had categorically stated that Government of India would be represented by Spanish lawyers as being appointed by the Spanish Government before the Learned Spanish Courts with respect to the said extradition request.

4. Learned Senior Counsel for the petitioner submits that Indian law permits complainant/complainant's counsel to assist the public prosecutor as envisaged under Section 301 (2) of the Cr.P.C. In the present case, in the proceedings pending before the learned Trial Court *vide* order dated 05.03.2019, the complainant/petitioner has been permitted to assist the prosecution/State. It was submitted that the fresh request for extradition of the aforesaid Sukhmeet Singh Anand was made to the Kingdom of Spain and the proceedings relating to the said extradition would be a continuation of the prosecution pending before the learned Trial Court here. It is submitted that in its written request dated 19.04.2023 addressed to the respondent no.1, the counsel for the petitioner has clearly stated that either counsel or advocate may be appointed to assist the public prosecutor in the extradition proceedings before the concerned Court in Spain at the cost of petitioner or to allow the petitioner to assist the public prosecutor in Spain. Reliance was placed on Section 14 of the Passive Extradition Law („PEL“) to show that

participation of a Requesting State (which may appoint a lawyer to represent it before the Spanish Court) is permitted. Attention of the Court has been drawn to Section 14.1 of the PEL, which provides as under:-

“1. Within fifteen days following the procedure period, a hearing shall be scheduled to take place with the participation of the Public Prosecutor, the person sought to be extradited, assisted if necessary, by an interpreter, and the defence counsel. The representative of the requesting State may take part in the hearing, and for this purpose shall be summoned when they have so requested and the Court agrees to do so in accordance with the principle of reciprocity, for which purpose it shall, where appropriate, request the necessary guarantee through the Ministry of Justice.”

5. Attention of this Court has been drawn to various orders passed by the learned Spanish Courts approving the aforementioned PEL, thereby allowing foreign lawyers to intervene in the extradition proceedings pending before the said Spanish Courts. It was also pointed out that as a matter of practice on previous occasions as well, Senior Advocates have been appointed by Indian authorities before Courts abroad for extradition proceedings. Reliance has been placed on some notifications issued by the concerned authorities in such cases.

6. Status report dated 28.04.2023 authored by S. M. Sharma, Assistant Commissioner of Police, Section-IV/EOW, Mandir Marg, New Delhi, was filed, wherein it was recorded as under:-

“That, The order dated 05/03/2019 of refusing the extradition request is based on the following grounds:

a. The request made by the Republic of India has been made for judging of a case against Sukhmeet Singh Anand wherein certain prior alleged and known facts have been added to prove a case for extortion and falsification of a document against him. The court has expressed surprise as to how the Republic of India which is also the state of origin of the person sought to be extradited had not initiated the extradition proceedings any sooner despite of being aware that its citizen had already been arrested to this effect in Greece (in 2007) and subsequently in Spain (2008) without doing anything about it.

b. The court has held that in the present case the extradition claim of Republic of India is based on the allegedly false bill of exchange and basic element for the implementation of the subsequent procedural fraud, which was already subject to analysis by the legal authorities of the United Arab Emirates which convicted the current person sought in absentia. Therefore, it was found surprising in the present matter that Sukhmeet Singh Anand should now be called on to be prosecuted for the same facts which were already subject to prosecution previously by the authorities of the United Arab Emirates. Therefore, even though, the effects of material res judicata do not concur from a strict formal point of view, in the present case the court is faced with a case of "non-bis in idem", included in Article 9 of the Bilateral Extradition Treaty. This is so because Sukhmeet Singh Anand has already been prosecuted based on similar facts, not by the authorities of the requesting state (India), but by

a third state, which requested extradition both from the Republic of Greece and from Kingdom of Spain, for the enforcement of the sentence rather than for the prosecution, as is the case now.

c. The charges as alleged in this case have expired due to statutory limitations and no interrupting events have occurred. The orders passed by the Supreme Court of India does not concern Sukhmeet Singh Anand. He was arrested in Barcelona, post which 10 years have elapsed, and subsequent orders passed by the Patiala House Court Magistrate, including the order directing registration of the instant FIR does not affect the case in any manner leading to any interruption to the statutory limitation, which has therefore expired.

That, after further investigation, a supplementary charge-sheet dated 26/09/2019 has also been filed in the present case, dated 19/08/2014, The supplementary charge-sheet revealed that accused Sukhrneet Singh Anand is the main accused and is the master mind behind the entire conspiracy. As per the investigation conducted in the supplementary charge-sheet, it has clearly come to fore that when the main accused Sukhmeet Singh Anand and his accomplice came to know that their cover was blown, they created false and fabricated antedated documents such as Sale-Purchase Agreement of the year 2015 to show sale of M/s. JCE Consultancy to M/s. Celeana Holdings Ltd. (BVI) so that the accused Sukhmeet Singh Anand and his accomplices i.e. the other accused persons could mislead the Courts to continue with fictitious proceeding against the Complainant Company. That, on 19.10.2022, a fresh extradition request of accused Sukhrneet Singh Anand has been moved with fresh ground which are as follows:-

a. Accused Sukhmeet Singh Anand through his accomplice i.e., the other accused persons who are either his employees, friends and advocate, in conspiracy with each other first created a bogus entity by the name of M/s JCE Consultancy, a proprietorship concern of Sheikh Allaudin Pakir Maideen (employee of Sukhmeet Singh Anand), and further created false and fabricated documents such as bills of exchange, purchase orders, delivery receipts etc. for showing nonexistent commercial transactions with the Complainant Company i.e., Samsung Gulf Electronics FZE. The said fabricated documents were used to institute a complaint case against the Complainant Company before the Magistrate, Ghaziabad District Court for demanding money. Such documents were also used by Sukhmeet Singh Anand and his accomplice to initiate and continue with the legal proceedings against the Complainant Company before the Allahabad High Court, Delhi High Court, Patiala House Court, New Delhi and the Hon'ble Supreme Court of India.

b. **After the National Court's decision was issued, on September 26, 2019, a supplementary charge-sheet was filed. The most relevant issue highlighted in the supplementary charge-sheet is that there are certain new facts involving Sukhmeet Singh Anand which occurred in 2015, as explained in the new extradition request (mainly paragraphs xiv) to xxi) of section 7).**The supplementary charge-sheet reveals that Sukhmeet Singh Anand is the master mind behind the entire criminal conspiracy, along with the rest of accused persons (Sheikh Allaudin Pakir Maideen, Ranjeet Kumar, Anil Malik, Mandeep Singh Vinayak). When Sukhmeet Singh Anand and his accomplice came to know that they will get exposed, they created false and fabricated antedated documents such as SalePurchase Agreement to show sale of a fake entity, JCE Consultancy to Celeana Holdings (BVI).

The aforesaid document was falsely dated on May 14, 2012, when, in reality, was first produced and filed by the accused persons before the Ghaziabad District Court on June 26, 2015, in order to commit a procedural fraud.

c. Co-accused Ranjeet Kumar and Vipin Sharma have categorically stated that they signed forged documents (Sale-Purchase Agreement) in the year 2014-2015 at the instance of the accused Mandeep Singh Vinayak, who acted on the instructions of the 1st accused Sukhmeet Singh Anand.

d. Charge-sheet and supplementary charge-sheet indicates that no uncertain terms that Sukhmeet Singh Anand have ordered to initiate proceedings in India and fabricate documents pertaining to the companies M/s. JCE Consultancy and M/s. Celeana Holdings over the years, including in 2018 when M/s. Celeana Holding appointed one Raj Kumar as its Power of Attorney holder on February 9, 2018.

e. **As these new facts were brought to light for the first time in the supplementary charge-sheet dated September 26, 2019, the National**

Court could not take them into consideration in its ruling dated on March 5, 2019

f. Accused Sukhmeet Singh Anand, son of Shri Balbir Singh Anand, resident of F-503, SomVihar, R.K. Puram, New Delhi, India and also at Carrer De Anquines, 18 B-1, Sitges, 08870, Barcelona, Spain. Sukhmeet Singh Anand is the main conspirator of the criminal conspiracy for committing the offences as investigated in present case, which is clear from the charge-sheet dated November 7, 2017 and supplementary charge-sheet dated September 26, 2019”

(emphasis supplied)

7. A short affidavit was filed on behalf of respondent no. 1/Ministry of External Affairs, wherein it was recorded as under:-

“3. That as far as response of the respondent no. 1/MEA to the additional documents filed by the petitioner on 02.05.2023 is concerned, it is humbly submitted that the information submitted by the petitioner Samsung Electronics, FZE, citing previous incidents of engaging lawyers by NIA and CBI in their cases, **it is pertinent to note that in those cases the request for appointment of lawyers was made by the concerned law enforcement agency and approved by their administrative Ministry concerned. In the present case the concerned law enforcement agency is Delhi Police which is not under the administrative control of the respondent no. 1/MEA, hence, the respondent no. 1/MEA has no role in this matter.**

4. That further, in this regard, the respondent no. 1 through it Embassy at Madrid vide Note Verbale dated 26.04.2023 requested the authorities of Kingdom of Spain to ascertain whether any clarification or assistance of an Advocate from India (on behalf of Samsung Gulf Electronics, FZE) is needed to facilitate the authorities of the Kingdom of Spain on any issue concerning the extradition request in respect of accused Sukhmeet Singh Anand. A response from the Govt. of Spain is awaited.

5. In view of the above submissions, it is respectfully prayed that this Hon'ble Court may kindly be pleased to take the submissions on behalf of the respondent no. 1 on record and proceed further in the

matter in accordance with law. The answering respondent shall be ever bound to adhere with the orders and/or directions issued by this Hon'ble Court in the present matter.”

(emphasis supplied)

8. A note verbale dated 26.04.2023 was issued by the Embassy of India to Madrid Spain, wherein it is recorded as under:-

“2. The Embassy has been directed by the authorities of the Government of the Republic of India to ascertain from the authorities of the Kingdom of Spain, whether any clarification or assistance of an advocate from India is needed to facilitate the authorities of the Kingdom of Spain on any issue concerning the extradition request. The Ministry is therefore requested to kindly convey whether any such clarification or assistance is needed by the authorities of the Kingdom of Spain.”

9. Learned Central Government Standing Counsel appearing on behalf of the Union of India had submitted that in view of the above, the Indian authorities are awaiting response from the concerned authorities of the Kingdom of Spain. It is pointed out that thereafter, again on 05.09.2023, another note verbale was issued by the Embassy of India, wherein it has been recorded as under:-

“2. In the matter, the Embassy would like to convey that the case concerning complaint of cheating and forgery against Mr. Anand is sub judice under the Hon'ble High Court of Delhi. The lawyers of the complainant (M/s Samsung Gulf Electronics, FZE) have again filed a petition in the Hon'ble Court reiterating their request for:

a). For appointment of a counsel/advocate to assist the public prosecutor in the extradition proceedings before the concerned Hon'ble Court in Spain at the cost of the petitioner OR

b). Allow the petitioner to assist the public prosecutor in Spain. The counsels, in their petition has, inter-alia quoted "Section 14 of the Passive Extradition Law" (PEL) allows the participation of the requesting state (which may appoint a lawyer to represent it before the Hon'ble Court in Spain). In this regard, Section 14.1 provides as following :

"1. Within fifteen days following the procedure period, a hearing shall be scheduled to take place with the participation of the Public Prosecutor, the person sought to be extradited, assisted if necessary, by an interpreter, and the defense counsel. The representative of the requesting State may take part in the hearing, and for this purpose shall be summoned when they have so requested and the Court agrees to do so in accordance with the principle of reciprocity, for which purpose it shall, where appropriate, request the necessary guarantee through the Ministry of Justice."

3. The Embassy would like to add that the Court hearing in the matter is likely to be scheduled shortly. In view of the above, the Embassy requests the esteemed Ministry to kindly ascertain from the authorities of the Kingdom of Spain (i) legal position explained above, (ii) the current status of the revised extradition request in r/o Mr. Sukhmeet Singh Anand, and (iii) if any assistance is required from Indian advocates in the extradition matter. The response may kindly be

conveyed to the Embassy for onward transmission to the authorities of the Republic of India.”

10. It is further stated that the Spanish side *vide* their note verbale dated 07.11.2023 has further conveyed that it has sent the request to the competent authorities and the reply is awaited.

11. During the pendency of the present proceedings when the provisions of „PEL” was pointed out, the EOW (respondent no. 5) sought time to take further instructions with regard to the same. Status report dated 06.11.2023 authored by S. M. Sharma, Assistant Commissioner of Police, Section-IV/EOW, Mandir Marg, New Delhi, has been filed stating as under:-

“The para-8 of the petition at page-6 also speaks,”.. Section-14 of the Passive Extradition Law (PEL) allows the participation of requesting state (which may appoint a lawyer to represent it before the Spanish Court). In this regard, Sec.14.1 provides as follows.

“Within fifteen days following the procedure period, a hearing shall be scheduled to take place with the participation of the Public Prosecutor, the person sought to be extradited, assisted if necessary, by an interpreter, and the defense counsel. The representative of the requesting State may take part in the hearing, and for this purpose shall be summoned when they have so requested and the Court agrees to do so in accordance with the principle of reciprocity, for which purpose it shall, where appropriate, request the necessary guarantee through the Ministry of Justice.”

That, in this case, the matter is within the jurisdiction of concerned Court of Spain and it is subject to outcome the order passed by concerned Court in the matter. Prior to such proceeding Writ Petition filed by the complainant company before the Hon’ble High Court doesn’t appear to be justified and appears premature reason being that there is no such request and consequential order of concerned court.

That, with respect to the appointment of A Govt. Counsel, the language of Note Verbale dated 26.4.23 is very clear and has emphasized on the assistance of a lawyer which would be achieved if the concerned Court agrees to do so in accordance with the principle of reciprocity, for which purpose it shall, where appropriate, request the necessary guarantee through the Ministry of Justice. Considering the above we may wait for the decision/reply of the Kingdom of Spain on Note Verbale of MEA.

That, the reply dated 31.10.2023 of MEA is very clear mentioning,” The extradition request is submitted to the Spanish Govt. and the Govt. of India (GOI) is represented by the Spanish Lawyers, engaged by the Spanish side. If the Spanish side requires any clarification/ additional information, it would make a formal request for the same which would be provided by GOI in consultation with MHA/local law enforcement agency that had submitted the extradition request.

That, the matter was taken up with Spanish Foreign Ministry, which is the contact point for such matters for the Mission ... Additionally, through our interactions with concerned division, it is gathered that, if in case an advocate from India is required it will be sought/taken up in due course.”

That, if the petitioner wants to engage its lawyer, appear before the concerned court of Spain at its own expenses in its personal capacity, this agency has no objection to it and petitioner may do so with highest regards to both Sovereign Nations, strictly following the due procedure, relevant laws of Extradition/Rules/Norms/Practice of Kingdom of Spain/International Law. With regard to representing the interests of GOI/Delhi Police in this case, response of MEA to the Note-Verbale is awaited.

(emphasis

supplied)

12. Heard learned counsel for the parties and perused the record.
13. The Hon“ble Supreme Court in **Jagjeet Singh and Others vs. Asish Mishra alias Monu and Another (2022) 9 SCC 321** while dealing with the question of victim"s right has observed and held as under:

“A. Victim's right to be heard

15. Until recently, criminal law had been viewed on a dimensional plane wherein the courts were required to adjudicate between the accused and the State. The “victim”—the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. **However, with the recognition that the ethos of criminal justice dispensation to prevent and punish “crime” had surreptitiously turned its back on the “victim”, the jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.**

16. Internationally, the UN Declaration of Basic Principles of Justice for the Victims of Crime and Abuse of Power, 1985, which was adopted vide the United Nations General Assembly Resolution 40/34, was a landmark in boosting the provictim movement. The Declaration defined a “victim” as someone who has suffered harm, physical or mental injury, emotional suffering, economic loss, impairment of fundamental rights through acts or omissions that are in violation of criminal laws operative within a State, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between the perpetrator and the “victim”. Other international bodies, such as the European Union, also took great strides in granting and protecting the rights of “victims” through various covenants [The position of a victim in the framework of Criminal Law and Procedure, Council of Europe Committee of Ministers to Member States, 1985; Strengthening victim's right in the EU communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Reasons, European Union, 2011; Proposal for a Directive of the European Parliament and of the Council establishing “Minimum Standards on the Rights, Support and Protection of Victims of Crime, European Union, 2011.] .

17. Amongst other nations, the United States of America had also made two enactments on the subject i.e. (i) The Victims of Crime Act, 1984 under which legal assistance is granted to the crime-victims; and (ii) The

“victims” Rights and Restitution Act of 1990. This was followed by meaningful amendments, repeal and insertion of new provisions in both the statutes through an Act passed by the House of Representatives as well as the Senate. In Australia, the legislature has enacted South Australia Victims of Crime Act, 2001. While in Canada there is the Canadian Victims Bill of Rights. Most of these legislations have defined the “victim” of a crime liberally and have conferred varied rights on such victims.

18. On the domestic front, recent amendments to the CrPC have recognised a victim's rights in the Indian criminal justice system. The genesis of such rights lies in the 154th Report of the Law Commission of India, wherein, radical recommendations on the aspect of compensatory justice to a victim under a compensation scheme were made. Thereafter, a Committee on the Reforms of Criminal Justice System in its Report in 2003, suggested ways and means to develop a cohesive system in which all parts are to work in coordination to achieve the common goal of restoring the lost confidence of the people in the criminal justice system. The Committee recommended the rights of the victim or his/her legal representative *“to be impleaded as a party in every criminal proceeding where the charges are punishable with seven years' imprisonment or more”*.

19. It was further recommended that the victim be armed with a right to be represented by an advocate of his/her choice, and if he/she is not in a position to afford the same, to provide an advocate at the State's expense. The victim's right to participate in criminal trial and his/her right to know the status of investigation, and take necessary steps, or to be heard at every crucial stage of the criminal proceedings, including at the time of grant or cancellation of bail, were also duly recognised by the Committee. **Repeated judicial intervention, coupled with the recommendations made from time to time as briefly noticed above, prompted Parliament to bring into force the Code of Criminal Procedure (Amendment) Act, 2008, which not only inserted the definition of a “victim” under Section 2(wa) but also statutorily recognised various rights of such victims at different stages of trial.**

20. **It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression “victim” which “means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir”.**

21. This Court in *Mallikarjun Kodagali v. State of Karnataka* [*Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752, paras 3 and 8 : (2019) 1 SCC (Cri) 801] , while dealing with questions regarding a victim's right to file an appeal under Section 372CrPC, observed that there was need to give adequate representation to victims in criminal proceedings. The Court therein affirmed the victim's right to file an appeal against an order of acquittal. In *Mallikarjun Kodagali* [*Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752, paras 3 and 8 : (2019) 1 SCC (Cri) 801] , though the Court was primarily concerned with a different legal issue, it will be fruitful in the present context to take note of some of the observations made therein : (SCC pp. 760-61, paras 3 and 8)

“3. What follows in a trial is often secondary victimisation through repeated appearances in court in a hostile or a semi-hostile environment in the courtroom. Till sometime back, secondary victimisation was in the form of aggressive and intimidating cross-examination, but a more humane interpretation of the provisions of the Evidence Act, 1872 has made the trial a little less uncomfortable for the victim of an offence,

particularly the victim of a sexual crime. In this regard, the judiciary has been proactive in ensuring that the rights of victims are addressed, but a lot more needs to be done. Today, the rights of an accused far outweigh the rights of the victim of an offence in many respects. There needs to be some balancing of the concerns and equalising their rights so that the criminal proceedings are fair to both. [*Girish Kumar Suneja v. CBI*, (2017) 14 SCC 809 : (2018) 1 SCC (Cri) 202] ...

8. *The rights of victims, and indeed victimology, is an evolving jurisprudence and it is more than appropriate to move forward in a positive direction, rather than stand still or worse, take a step backward. A voice has been given to victims of crime by Parliament and the judiciary and that voice needs to be heard, and if not already heard, it needs to be raised to a higher decibel so that it is clearly heard.*

(emphasis supplied)

22. It cannot be gainsaid that the rights of a victim under the amended CrPC are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a *brutum fulmen* [Ed. : The literal translation from the Latin approximates to “meaningless thunderbolt or lightning”, and is used to convey the idea of an “empty threat” or something which is ineffective.] . We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the CrPC. The presence of “State” in the proceedings, therefore, does not tantamount to according a hearing to a “victim” of the crime.

23. A “victim” within the meaning of CrPC cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. **He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a “victim” has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision.** We may hasten to clarify that “victim” and

“complainant/informant” are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a “victim”, for even a stranger to the act of crime can be an “informant”, and similarly, a “victim” need not be the complainant or informant of a felony.

24. The abovestated enunciations are not to be conflated with certain statutory provisions, such as those present in the Special Acts like the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, where there is a legal obligation to hear the victim at the time of granting bail. Instead, what must be taken note of is that:

24.1. *First*, the Indian jurisprudence is constantly evolving, whereby, the right of victims to be heard, especially in cases involving heinous crimes, is increasingly being acknowledged.

24.2. *Second*, where the victims themselves have come forward to participate in a criminal proceeding, they must be accorded with an opportunity of a fair and effective hearing. If the right to file an appeal against acquittal, is not accompanied with the right to be heard at the time of deciding a bail application, the same may result in grave miscarriage of justice. Victims certainly cannot be expected to be sitting on the fence and watching the proceedings from afar, especially when they may have legitimate grievances. It is the solemn duty of a court to deliver justice before the memory of an injustice eclipses.”

(emphasis

supplied)

14. The aforesaid legal position is also evident from a bare reading of Section 14.1 of the Passive Extradition Law („PEL“), which is duly recognized by the Hon“ble Spanish National Court. A perusal of the record reflects that the stand of the Ministry of External Affairs/respondent no. 1 is that since request for extradition has been made by the Delhi Police (EOW), then the request for appointment of an Advocate for extradition proceedings has to be forwarded by the Delhi Police. However, Delhi Police, i.e., respondent nos. 4 and 5 in their status report are shifting their responsibility on to the Ministry of External Affairs/ Respondent no. 1 stating that the response to the note verbale which has been issued to the concerned authorities of Spain, to respond whether they need any assistance with respect to the extradition proceedings, is awaited.

15. The Hon'ble Supreme Court in **Hari Krishna Mandir Trust v. State of Maharashtra and others (2020) 9 SCC 356** while opining on the duty of the Courts in issuing the Writ of Mandamus for enforcement of a public duty, has observed and held as under:

“100. The High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a writ of mandamus or in the nature of mandamus, but are duty-bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.

101. In all such cases, the High Court must issue a writ of mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority.

102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In *Director of Settlements, A.P. v. M.R. Apparao* [*Director of Settlements, A.P. v. M.R. Apparao*, (2002) 4 SCC 638] . Pattanaik, J. observed: (SCC p. 659, para 17)

“17. ... One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, “mandamus” means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or Government, requiring him or them to do some particular thing therein specified which appertains to his or their

office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any person who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right *must be subsisting on the date of the petition* (see *Kalyan Singh v. State of U.P.* [*Kalyan Singh v. State of U.P.*, AIR 1962 SC 1183]). The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law.”

(emphasis in original)

103. The Court is duty-bound to issue a writ of mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of mandamus is that mandamus lies to enforce a legal duty. This duty must be shown to exist towards the applicant. A statutory duty must exist before it can be enforced through mandamus. Unless a statutory duty or right can be read in the provision, mandamus cannot be issued to enforce the same.”

16. In the concerned opinion of this Court, it is for respondent nos. 4 and 5 to make a specific request for appointment of an Advocate to effectively pursue the extradition request before the Hon^{ble} Spanish National Court, especially in view of the fact that the first extradition request was denied on account of alleged inadequate representation. This Court is not getting into the issue whether the representation during the initial request was inadequate or not. However, the facts remains that it is the duty of respondent nos. 4 and 5 to ensure that the extradition request is effectively pursued with the best legal assistance at hand. The petitioner also, in view of the settled position of law, has interest as well as right to assist the prosecution, which has also been permitted by the learned Trial Court. The said respondents in their Status Reports have not stated that such an exercise is contrary to any policy or to any other guideline. The only reason assigned, as stated above, is that they are waiting for the Spanish authority to send such a request. This cannot be acceptable. It is for the requesting agency to forward such a request.
17. In peculiar facts and circumstances of the case, this Court deems fit to direct respondent nos. 4 and 5 to take necessary steps seeking appointment of an Advocate for pursuing the extradition proceedings with respect to Mr. Sukhmeet Singh Anand pending before the Hon^{ble} Spanish National Court. While doing so, respondent nos. 4 and 5 can consider the request of the petitioner for such an Advocate to be appointed at their expense. The said exercise shall be done by respondent nos. 4 and 5 within fifteen days of this judgment.

18. Needless to say that once the aforesaid decision has been taken, respondent no. 1 shall take necessary steps in accordance with law with respect to communicating the same to the concerned authorities of the Kingdom of Spain.
19. The petition is allowed and disposed of in the aforesaid terms.
20. Pending application(s), if any, also stand disposed of.
21. Judgment be uploaded on the website of this Court, *forthwith*.

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.