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

+ **CRL.M.C. 1122/2021 & CRL.M.A. 5715-5716/2021**

AMIT MAVI

..... Petitioner

Through: Mr. Nishaank Mattoo, Mr. Prateek
Gautam, Advs.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Hirein Sharma, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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08.04.2021

CRL.M.A. 5715/2021 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 1122/2021 & CRL.M.A. 5716/2021

The petitioner vide the present petition seeks the setting aside of Non-Bailable Warrants issued against him vide order dated 05.01.2021 of the learned trial Court in relation to the FIR No.147/2020 registered at EOW, Mandir Marg, New Delhi as well as seeking quashing of the order dated 27.02.2021 whereby the process is stated to have been issued under Section 82 of the Cr.PC, 1973 in relation to the said FIR as well as seeking the setting aside of the order dated 30.03.2021 of the learned trial Court in FIR No.147/2020, vide which application filed by the applicant seeking cancellation of NBWs and seeking the setting aside of the process issued under Section 82 of the Cr.PC, 1973 was declined.

At the outset, it has been submitted on behalf of the State that the

provisions of Section 482 of the Cr.PC, 1973 cannot be invoked in the instant case, which is refuted on behalf of the petitioner. It has been submitted on behalf of the State that the appropriate remedy for the petitioner would be to seek grant of anticipatory bail, which is also opposed on behalf of the petitioner.

In the facts and circumstances of the instant case and the documents on the record, it is held that the petition is maintainable.

The submissions that have been made on behalf of the petitioner are to the effect that he has been repeatedly making a request that he be allowed to join the investigation of the case through video conferencing and all that the Investigating Agency had issued was a notice under Section 41A of the Cr.PC, 1973 and even as per the impugned order dated 30.03.2021, it is reflected vide observations at page 2 of the said order of the learned trial Court to the effect:

*“The facts indicate that accused left India just the next day when the complaint was filed against him at EOW. Accused left India to France on 02.09.2020 in the midst of the pandemic. Accused has already vacated his office and both residential premises. The plea of the accused that his travel to India is not possible due to pandemic is baseless as if can travel from India to France, he can very well return India. **Accused has proposed to appear through VC in front of Investigating Officer following notice u/s 41A Criminal Procedure Code, 1973 for interrogation, however as per Investigating Officer physical appearance of the accused is must for interrogation as in case accused is found to be evasive subsequent action can be taken which is not possible through VC.**”*

to submit to the effect that apparently the applicant's arrest was not required and all that the IO had sought was the presence of the applicant for

interrogation submitting to the effect that his physical presence was required for interrogation in as much as **in case** he was found to be evasive, subsequent action to be taken which would not be possible through video conferencing.

It has been submitted on behalf of the applicant that the applicant thus would be protected by Article 20(3) of the Constitution of India qua his right of silence against self-incrimination.

It has been submitted on behalf of the State by learned APP for the State that the applicant in the instant case left for France on 02.09.2020 which is the next day after a complaint was submitted to the EOW on 01.09.2020 by Mr. Anuj Tyagi against the applicant and other persons.

It has been submitted on behalf of the applicant that he is willing to join the proceedings through video conferencing and also willing to return to India once he is vaccinated in as much as he is presently at France. It is submitted on behalf of the State that the applicant left for France on 02.09.2020 after the complaint was filed on 01.09.2020 and thus the false premise made by the applicant that he cannot return in view of the pandemic ought not to be accepted.

It is essential to observe that the provisions of Section 41A of the Cr.PC, 1973, through which, the petitioner was called upon to join is for the appearance before the police officer for the purpose apparently qua furtherance of investigation. Section 41A of the Cr.PC, 1973 reads to the effect:

“41-A. Notice of appearance before police officer.—(1) The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a

reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.”

The IO has apparently issued the notice under Section 41A of the Cr.PC, 1973 on 22.10.2020, the applicant having already left India on 02.09.2020. In as much as no notice had been issued prior to 02.09.2020 to the applicant, it cannot be presumed that the petitioner was fleeing from justice and evading the process of law. The purpose of NBWs, a Section 41A of the Cr.PC, 1973 notice and proceedings under Section 82 of the Cr.PC, 1973 are only to compel the person alleged of a commission of an offence to join the investigation as also to face trial before the Court.

Apparently, the investigation in the matter has not yet been completed. The applicant has undertaken to join the investigation. In as much as it is informed on behalf of the State that there is no prohibition to travel back from France to India presently, the petitioner, in the circumstances, is directed to appear before the Investigating Officer at EOW Office, Mandir Marg on 30.04.2021 between 10 am to 5 pm.

In the event of such appearance of the petitioner, the petitioner be

not arrested on that date without further prayer made to the learned trial Court.

In the meantime, till the date 30.04.2021, the applicant shall however join the investigation of the case before the Investigating Officer through Video Conferencing, for which the appropriate links may be sent by the Investigating Agency. The issuance of NBW and the process under Section 82 of the Cr.PC, 1973 are thus kept in abeyance subject to appearance of the petitioner before the Investigating Officer physically on 30.04.2021.

The petition calls for no further action and is disposed of.

ANU MALHOTRA, J

APRIL 8, 2021

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