

2023/DHC/001420

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

% Reserved on: 20th February, 2023
Pronounced on: 27th February, 2023

+ **W.P.(CRL) 2499/2022 CRL.M.A. 22246/2022**

BERND ALEXANDER BRUNO WEHNELT Petitioner

Through: Mr. SatyamThareja (DHCLSC)

versus

UNION OF INDIA Respondent

Through: Mr. Ajay Diggpaul, (CGSC) with
Mr. Anil Soni, Ms. Kamal
Diggpaul & Ms. Swati,
Advocates.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL
JUDGMENT

ANISH DAYAL, J.

1. This petition has been filed by the petitioner to set aside the Extradition Inquiry Report dated 24th August 2022 and the order/letter dated 16th September 2022 of the respondent (Union of India).

2. The background facts of the matter are that an extradition request was received from the Government of Federal Republic of Germany through diplomatic channels for the extradition of the petitioner, who is a German national. Petitioner was an accused in Germany as per a complaint filed before the District Court Muhldorf a. Inn. The allegations related to September 2003, when, as per the case of the prosecution, the petitioner had approached two children of four years and six years old while they were playing and took several pictures of them including asking one of them to pull down their

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trousers and underpants. Subsequently, after an investigation, his locker in the faculty of Biology and Preclinical Medicine at the University of Regensburg, was found to have numerous CDs and DVDs where images of both male and female children were stored performing sexual acts with adult persons. Accordingly, the petitioner was alleged to have committed the following offenses under the German Criminal Code: Section 176, (sexual abuse of children); Section 184 (b) (dissemination/procurement and possession of child pornography); Section 223 (bodily harm); Section 230 (request to prosecute); Section 234 (kidnapping); Section 52 (several offences committed by one act); Section 53 (joinder of offences).

3. The Republic of Germany as the Requesting State sent a formal request for extradition of the petitioner *vide* Note Verbale No. 358 / 2020, dated 27th July 2020 along with supporting documents to the Government of India, (the Requested State). Consequently, the Ministry of External Affairs, Government of India made a request on 17th March 2022 under Section 12 of the Extradition Act to conduct an inquiry proceeding *qua* the petitioner. It had also transpired in the meantime that the petitioner had been arrested in 2020 in the state of Karnataka in India for violation of the Foreigners Act 1946, Section 14 (c) and was facing trial in SC No. 5023 of 2021, PS. Hebbagodi, Karnataka before the learned, ASJ, Anekal, Bengaluru, Courts. The learned ACMM before whom the inquiry proceedings were initiated issued production warrants on 22nd March 2022, pursuant to which the petitioner was produced on 1st April 2022 and has since been in custody in Tihar Jail, Delhi.

4. The learned ACMM as part of the process of the inquiry, adverted to the Note Verbale and other attendant documents, the

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endorsement certificate issued by the Central Government under Section 15 of the Extradition Act 1962 and the Extradition Treaty between the Federal Republic of Germany and Republic of India. The Union of India examined one witness as CW-1, the Deputy Secretary (Extradition), Ministry of External Affairs. The learned ACMM upon examination of the settled law for conducting inquiries under the Extradition Act noted that two aspects had to be examined- *firstly*, whether the endorsed warrant for the apprehension of the fugitive is duly authenticated; and *secondly*, whether the offense for which the fugitive is accused is an extradition offence.

5. Proceeding on this limited scope of inquiry, the learned ACMM arrived at a finding that since the offences in question constituted an illegal / criminal act under laws of both the requesting as well as the requested state and are punishable by a maximum term of imprisonment for a period of at least one year, in both the countries, the principle of dual criminality was duly satisfied and the offences in question were therefore extraditable offences. This conclusion was reached on the basis of Article 2 (1) (3) of the Extradition Treaty and Section 2 (c) (i) of the Extradition Act. For the second limb of the inquiry, the learned ACMM arrived at the conclusion that the documents which had been sent with the request from Germany, including the arrest warrant and the information concerning the identity and nationality of the petitioner were duly endorsed and therefore authentic, as also had been authenticated by the Ministry of External Affairs, Union of India. Based upon the these two conclusions, the learned ACMM concluded the inquiry report and recommended to the Union of India the extradition of the petitioner. Further, the petitioner was informed of his right to file written

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statement /representation in terms of Section 17 (3) of the Extradition Act 1962.

6. The petitioner filed his written statement refuting the allegations made against him. Consequently, after examination of this representation/ written statement dated 1st September 2022, Union of India considered the same and recommended extradition of the petitioner from India to Germany for standing trial in Germany for the offences stated above.

7. The learned counsel appearing for the petitioner submitted in support of the petition before this Court that as per Article 12 (2) (a) of the extradition treaty between India and Germany (as notified on 28th May 2004), the request for extradition should be accompanied by *“all available information concerning the identity and nationality of the person sought”* and as per Article 12 (5) *“these documents should be signed by a judge or a competent official and authenticated by the official seal of the competent ministry”*. Attention was drawn to Exhibit CW-1/E which was the personal identification documents (total of 11 pages) of the petitioner including copy of the passports, photographs and fingerprints. The learned counsel for the petitioner stated that as per para 11 of the impugned order by the learned ACMM, it was noted that CW-1 had admitted that Exhibit CW-1/E does not contain the seal of the competent authorities of Germany. An English translation of the said document was not found on record (however CW-1 also stated that it was received through diplomatic channels). This issue was argued before the learned ACMM as evident from para 13 of the impugned order. However, it is contended, that the learned ACMM does not deal with the said issue in detail and merely arrives at a conclusion that the documents were duly signed and

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sealed. According to the learned counsel for the petitioner, finding by the learned ACMM was thus untenable and constitutes an infirmity in the process of extradition, not being in compliance with the treaty between the countries.

8. Learned Counsel (CGSC) appearing for the UOI refuted this contention by the petitioner and submitted that as per the Note Verbale received, the name, date of birth and place of birth had been categorically noted and it was specifically stated that the personal data may be restrictively used. The Note Verbale was accordingly signed with the seal of the Republic of Germany through its Embassy in New Delhi. Further, the arrest warrant, which further contained the details of the offences involved against the petitioner was dated 12th August 2019 and was duly signed with an official seal. The English translation of the said arrest warrant was also made available and was signed and the seal of the translator from German to English was also impressed on the document. Further, certification and statement of offences was also made available along with its English translation, both of which were duly signed with a seal. The identity documents formed part of this record which had been set along with the Note Verbale and therefore, considered as duly authenticated. It was further submitted that the petitioner's contention regarding any infirmity in the identification documents was untenable since he does not deny anywhere that the person to whom the identity documents relate to, is not him. Further, even in his written statement, the petitioner has at various places made statements which would clearly demonstrate that he is the person who is the one facing and defending charges in Germany. It was also submitted that the judgment convicting the petitioner for offences in India under the Foreigners Act, passed by the

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learned Additional District & Sessions Judge in Bengaluru also noted the identification of the petitioner along with his passport details and address. Reliance was placed on the Extradition Act to state that since there was a treaty with Germany, Chapter III would apply to the facts of this case and not Chapter II. Learned Standing Counsel for UOI substantiated this by reference to the decision of this Court in **Ram K. Mahbubani v. Union of India & Anr** 2008 (106) DRJ 906 (DB) decision dated 12th September, 2008.

9. Having perused the records before this Court, including the impugned order, the written statement filed by the petitioner, the order/letter issued by the UOI and the record of the proceedings before the learned ACMM and having appreciated and assessed the contentions of the parties, this Court is of the considered opinion that the impugned order passed by the learned ACMM recommending the extradition of the petitioner to the Requesting State (Government of Federal Republic of Germany) to face trial for offences, as stated above, under the German Criminal Code, did not suffer from any infirmity and would be upheld, and the petition before this Court of the petitioner would be dismissed, for *inter alia* the following reasons:

a) The municipal law applicable locally in India (the Requested State) relating to extradition is the Extradition Act 1962. Section 2 (f) provides a definition for “*fugitive criminal*” who is a person accused or convicted of an extradition offence within the jurisdiction of a foreign state. Section 2 (c) defines an extradition offence, in cases where a treaty exists, as an offence provided for in the extradition treaty. The procedure for the return of such fugitive criminals to foreign states where India has an extradition arrangement is placed under Chapter III of the Extradition Act. As per Article 15 of the said

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Act, the Government in India has to be satisfied that the warrant issued against the fugitive is issued by a person having lawful authority and accordingly if the Indian government endorses the same, the said fugitive would be brought before a Magistrate in India. Once the fugitive is brought before a Magistrate, an enquiry is to be conducted by that Magistrate under Section 17 which involves confirming if the endorsed warrant is duly authenticated and whether the offence in question is an “*extradition offence*”. If the Magistrate is satisfied on these two counts, the report is sent to the Central Government with a certificate of committal of the fugitive to prison, along with any written statement which the fugitive may desire to submit for the consideration of the government.

b) In order to examine whether the offences were “extradition offences”, the reference would have to be made to the Extradition Treaty between Germany and India. As per Article 2 of the said Treaty, the extraditable offences are those which are punishable under the laws of both the countries by a maximum term of punishment of at least one year. It is quite evident that, as per the nature of the offences which the petitioner has been accused of, the same are punishable in India *inter alia* under the Protection of Children from Sexual Offences Act 2012, (POCSO), where punishments for such offences range from a minimum of 3 years up to life imprisonment. Undoubtedly, these offences in question, as regards the petitioner, would be extradition offences.

c) As regards the fact whether the arrest warrant issued by the Republic of Germany was duly endorsed and authenticated, it is evident from a perusal of the said arrest warrant that it bears the signature of the Judge Sauter Orengo of the District Court with the

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stamp of the District Court Muhldorf, Bavaria as also containing an endorsement and signed by the clerk of the registry Wimosterer (Judicial Administration Inspector) that these copies were identical to the original documents. This detail is evident from the translation to English of the said warrant which is also in turn duly signed with the seal of Lisa Schraner (the translator from German to English). The accompanying certification for the arrest warrant is also duly signed by the public prosecutor as evident from the English translation which is also duly signed and certified with the seal of the translator from German to English. These documents in turn have been duly endorsed, as is required by the provisions of the Extradition Act, by the Ministry of External Affairs (UOI) through the Deputy Secretary (Extradition) who certifies that the said warrant was issued by judicial authority in Germany having lawful authority to issue such warrant. This endorsement and authentication was signed on the 17th March 2022. To this extent the provisions of the Extradition Act and the procedure to be adopted would stand duly satisfied and would not require any further examination.

d) However, the limited issue which has been raised by the learned counsel for the petitioner relates to the identity papers which as per Article 12 (2) (a) and (5) ought to be duly authenticated. It is evident from a perusal of the record that these identification documents including the passport, the fingerprints, and the photographs were sent under cover of the Note Verbale by the German government through the Embassy in India. The Note Verbal is duly issued by a competent authority and these documents are appended along with the arrest warrant, which as already stated above is duly authenticated and endorsed. It would therefore be implicit that the said documents would

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also be considered as authenticated and endorsed as part of the dossier of documents which were received with the Note Verbale. Separate endorsement may not be necessary on these documents appended to the request, which was duly authenticated and endorsed. This is further substantiated by the fact that the reference to the name, date of birth, place of birth, residence, nationality as per the arrest warrant is the same as that in the identity documents. Even the Note Verbale mentions the name, date of birth and place of birth of the petitioner. Further, the petitioner has nowhere denied that he does not possess this identity as per the said identity documents. Also the written statement filed by the petitioner notes that the documents related to the said matter were transmitted to his lawyer in Germany in 2015 and that there were various aspects of the evidence relating to the details of the incidents that the petitioner adverted to and placed his defense in that regard. He states that the police had also seized his phone as well as his computer on 20th February, 2015. These references are merely to substantiate that the question of identity and the fact that he was indeed the accused in the complaints which were investigated in Germany is not controverted. What is controverted, are merely various aspects of evidence, on the basis of which he has been implicated.

e) The contention by the learned counsel for the petitioner is therefore untenable considering that the identity papers of the petitioner form part of an authenticated chain of documents including the Note Verbale, the arrest warrant, the certification of the arrest warrant and duly endorsed by the Union of India. The objection of the petitioner is therefore extremely hyper-technical in nature, and cannot be sustained in light of the provisions of the Extradition Act, provisions of the Extradition Treaty between the two countries and

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does not erode the substance of the extradition request, in any manner whatsoever.

10. Accordingly, the petition is dismissed and the impugned order is upheld. The petitioner would therefore be extradited by the Government of India to the Federal Republic of Germany in accordance with applicable procedure.

11. Accordingly, the petition is disposed of. Pending applications (if any) are disposed of as infructuous.

12. Judgment/Order be uploaded on the website of this Court.

ANISH DAYAL, J

FEBRUARY 27, 2023/RK

