

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Appellate Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2665 of 2022

**Enforcement Directorate
-Vs.-
Partha Chatterjee**

**For the petitioner : Mr. Suvyaprakash V. Raju, Ld. ASG
Mr. Phiroze Edulji, Advocate
Ms. Anamika Pandey, Advocate
Ms. Amrita Pandey, Advocate
Mr. Ghanshyam Pandey, Advocate
Ms. Sneha Singh, Advocate**

**For the Opposite party : Mr. Debashish Roy, Advocate.
Mr. Ayan Bhattacharjee,
Advocate
Mr. Soumen Mohanty, Advocate
Mr. Ayan Poddar, Advocate
Mr. Piyush Kumar Ray,
Advocate.
Mr. Agnish Basu, Advocate.**

Heard & Judgment on: 24.07.2022

Bibek Chaudhuri, J.

The Assistant Director, Enforcement Directorate, Kolkata Zonal Office has filed the instant criminal revision challenging legality, validity and propriety of two orders dated 23rd July, 2022

passed by the learned Chief Metropolitan Magistrate (in charge), Calcutta subsequent to rejection of an application for bail filed by the accused/opposite party herein.

Materials on record suggests that Enforcement Directorate (hereafter referred to as E.D. for short) instituted E.C.I.R. No.KLZO-II/19/2022 dated 24th June, 2022 on the basis of an FIR filed by the CBI on the basis of directions passed by this Court in WPA No.9979 of 2022. The opposite party is an FIR named accused. In gist the allegation against the opposite party is that he along with other FIR named accused persons were involved in gross corruption of financial irregularities by offering jobs of primary teachers to various persons in lieu of money. By such corrupt practice the accused persons illegally accumulated huge amount of money from unscrupulous job seekers.

During investigation, on the basis of the materials collected by the CBI, a *prima facie* case of money laundering was found. Therefore, E.D. started investigating into the case. During investigation, E.D. conducted raid simultaneously in the houses of 14 (fourteen) suspects. During raid, the E.D. could collect sufficient evidence in respect of involvement of the opposite party and one Ms. Arpita Mukherjee in support of their involvement in the process connected with the proceeds of illegally obtained money from the job seekers including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. During raid, complicity of the opposite party and the said Ms. Arpita Mukherjee was *prima facie* established. Huge sum of money amounting to more than Rupees 21 Crores, gold ornaments and foreign currency were recovered and seized from the possession of Ms. Arpita Mukherjee. Ample evidence was collected against the opposite party that Ms. Arpita Mukherjee is a close aide of the opposite party. Therefore, he was arrested and produced

before the learned Chief Metropolitan Magistrate (in charge), Calcutta on 23rd July, 2022.

The learned Magistrate rejected the prayer for bail moved on behalf of the opposite party on the ground that a case under the PML Act is triable by the Special Court and the learned Magistrate had no jurisdiction to entertain the application for bail of the accused. The accused was remanded to the custody of the E.D. till 25th July, 2022.

Subsequent to the order stated above, the learned Magistrate passed following two orders:-

"Later :

The learned Advocate for the accused persons files a petition u/s 41(D) Cr.P.C. praying for allowing an Advocate to accompany the accused person during investigation.

Heard. Considered.

The prayer is allowed for ends of justice.

L.Advocate Anindya Kishor Routh is allowed to accompany the accused during the investigation."

"Later:- The Ld Advocate for the accused person files a petition stating that he is feeling extremely unwell and needs immediate medical attention.

Considering the age of the accused person and from various documents filed, the accused is suffering from various diseases, the prayer of the accused person is allowed.

The I.O. is directed to take the accused person to S.S.K.M. Superspeciality Hospital at once for his check up and treatment, if necessary.

Medical Superintendent, S.S.K.M. Hospital is directed to submit report before the Special Court on 25.07.2022."

Mr. Raju, learned Additional Solicitor General, has vehemently criticized the aforesaid two orders passed by the

learned Magistrate. In order to substantiate his contention, it is submitted by Mr. Raju that the learned Magistrate hopelessly failed to understand the scope and purport of the right of arrested person to meet an Advocate of his choice during interrogation under the provision of Section 41D of the Code of Criminal Procedure. Section 41D entitles an arrested person to meet an Advocate of his choice during interrogation after his arrest, **though not throughout interrogation.** The impugned order passed by the learned Magistrate gave an unfettered right to the accused to be interrogated by the Investigating Agency all throughout his investigation. Such order is bad in law. In support of his contention he refers to a decision of the Hon'ble Supreme Court in ***Union of India & Ors. Vs. Pratap Narain & Ors.*** reported in ***(1992)3 SCC 268.***

It is held by the Apex Court in the aforesaid report that the presence of lawyers at the time of interrogation cannot be insisted upon on the basis of Article 21 of the Constitution. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the person in possession of useful information are allowed to prevail. For achieving the object of such enquiry, if the appropriate Authorities be of the view that such person should be dissociated from the atmosphere and the company of person who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company.

Referring to a decision of the Hon'ble Apex Court in the case of ***Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni*** reported in ***(1992)3 SCC 141*** that the learned Magistrate has no power to remand an accused in the custody of the Investigating Agency beyond the period exceeding 15 days in the whole. After the expiry of first

period of 15 days, the further remand during the period of investigation can only be in judicial custody.

It is contended by the learned A.S.G. that the learned Magistrate after passing of the order of remand to P.C., practically refused to give effect to such order by passing the subsequent order directing the Investigating Officer to take the accused to the S.S.K.M. Super speciality Hospital for his check up and treatment. It is also submitted by him that S.S.K.M. Super speciality Hospital is run by the State Government. The said Hospital is consistently used as a safe shelter of the accused persons having strong political connections as well as the leaders of the ruling political party. The opposite party is senior most Cabinet Minister of the State of West Bengal. The Investigating Agency reasonably apprehends that the accused will exert his political and administrative position and prevail over the Doctors to submit a false medical report as to his health condition and safely stay in the said hospital during the period of first 15 days within which he may be remanded to the custody of the Investigating Agency.

Mr. Raju also submits that after his arrest, the accused was medically examined in compliance of the directions of the Hon'ble Supreme Court in the case of ***D.K.Basu Vs. State of West Bengal***, reported in ***(1997)1 SCC 416***. He was medically examined by the Doctor at E.S.I.-PGIMSR & E.S.I.C. Hospital & ODC (EZ), Joka, Kolkata and on examination the Medical Officer found him fit. Only after his prayer for bail is refused and he was remanded to E.D., he filed the above-mentioned applications only for the purpose of avoiding further investigation and interrogation by the E.D.

The learned A.S.G. submits that the subsequent order passed by the learned Magistrate might have been justified if the Investigating Agency was directed to medically treat the accused in any super speciality hospital. On the contrary, the learned

Magistrate directed the Investigating Officer to take him to S.S.K.M. Super speciality Hospital for his medical treatment and immediately after his production before the said hospital authority, he was admitted to Intensive Care Unit.

The learned A.S.G. also submits that the above-mentioned two orders impugned are nullity because the said orders were passed without giving opportunity to the prosecution of hearing.

Mr. Debashish Roy, learned Advocate for the accused, on the other hand, submits that both the applications, upon which the learned Chief Metropolitan Magistrate (in charge) passed the impugned orders were served upon the learned Public Prosecutor on behalf of the E.D. He did not make any submission raising objection against the prayers made on behalf of the accused by filing the said two applications. Therefore, the objection raised by the learned A.S.G. regarding denial of the right of hearing to the prosecution before passing the impugned order is false and should not be considered by this Court.

Though Mr. Roy has not raised any legal issue challenging the scope of Section 41D of the Code of Criminal Procedure, he supports the impugned order passed by the learned Magistrate regarding medical treatment of the accused in S.S.K.M. Super speciality Hospital. It is submitted by him that from the medical report of the accused after his examination after arrest, it appears that the accused is a known patient of hypertension, T-2 D.M., bifascicular block, nephropathy, obstructive sleep apnoea, obstructive air way disease etc. From the said report, it is clear that the accused is suffering from serious ailments. He is aged about 70 years. Considering the age and nature of ailment, the learned Magistrate directed the Investigating Officer to take step for his medical examination in the S.S.K.M. Super speciality Hospital. The learned A.S.G. in his submission has doubted credibility of medical officers attached to S.S.K.M. Super speciality

Hospital on apprehension that they would submit a report on 25th July, 2022 before the learned Special Judge in such a manner that the Investigating Agency would not be able to take the accused in its custody for interrogation.

Therefore, it is submitted on behalf of the accused that the entire matter ought to be placed before the learned Special Judge under PML Act to decide the issue without being influenced in any manner by any order that may be passed by this Court.

Having heard the learned Counsel for the parties and on perusal of the entire materials on record as well as the decisions referred to by the learned A.S.G., this Court is of the view that the order passed by the learned Magistrate allowing an Advocate on behalf of the accused to remain present during his interrogation suffers from patent illegality and liable to be set aside. On this score, this Court profitably records the view of a Co-ordinate Bench of the High Court of Delhi in the case of ***Directorate of Enforcement Vs. Satyendar Kumar Jain (CRL.M.C.2869/2022 and CRL.M.A.11846/2022, decided on 3rd June, 2022)*** : -

"14.Thus in view of the above since there is neither any FIR nor a complaint against the respondent thus he cannot as a matter of right claim to have the presence of his lawyers during the course of recording of his statement per Ramesh Chander Metra (supra) and Anant Brahmchari (supra). Even otherwise, admittedly, his entire recording of statement is videographed and audiographed which certainly would dispel the apprehension of any coercion, threat to the respondent. Even otherwise, in Sandeep Jain (supra) the Division Bench of this Court held the apprehension of coercive measures being employed need to be real and like so that the principle of presence of an advocate, at visible, but not audible distance be applied. Sandeep Jain (supra) has relied upon Poolpandi case and have also dealt with Birender Pandey vs. UOI in W.P.(CRL.) No.28/2012 and held the presence of the advocate was

allowed in Birender Kumar Pandey (supra) during the recording the statement under Section 108 of the Act only because the petitioner therein was apprehensive that coercive attempts can be made to extort confession from them. Sandeep Jain (supra) rather went on to say if a litigant in a particular case is able to produce credible material to indicate the real and live apprehension of a possible threat, coercion being employed, while recording his statement, this Court can always permit at visible, but not an audible range during the course of recording of the statement but since there is no apprehension raised in the present matter, hence as a matter of right such direction ought not to have been given in the recording of statement. Thus, the impugned direction in para No.26 of order dated 31.05.2022 stands stayed. CrIM.A.No.11846/2022 stands disposed of."

In the petition filed on behalf of the accused before the learned Magistrate, an order allowing the learned Advocate for the opposite party to remain present during investigation was prayed for stating, *inter alia*, that during raid, the E.D. did not allow the Advocate of the opposite party to be present which allegedly violated constitutional safeguard of the accused. However, on perusal of the case diary, I find that the learned Advocate was present during raid conducted by the E.D. in the house of the accused and he talked to the accused. Therefore, the allegation against the E.D. that the Advocate of the accused was not allowed to be present at the time of raid is palpably a false statement.

Therefore, the impugned order allowing the learned Advocate for the accused to be present during interrogation of the accused is set aside.

Now comes the question as to the legality and validity of the order passed by the learned Magistrate directing the Investigating Officer to take the accused to S.S.K.M. Super speciality Hospital for his medical treatment. As per the direction of the Hon'ble Supreme

Court in **D.K.Basu (supra)** the Investigating Agency is under obligation to get the accused examine medically. The Investigating Officer is also under obligation to get an accused medically treated after every 48 hours during the period of remand under police custody. It is on record that the accused was declared fit by a hospital run by the Central Government after he being medically examined after arrest. From the first order passed by the learned Magistrate rejecting the prayer of the accused for bail and remanding him to the custody of E.D., this Court does not find any submission made on behalf of the accused regarding his physical illness immediately after arrest, the accused became so ill that he was admitted to S.S.K.M. Super speciality Hospital.

It is needless to say that the Doctors start medical treatment of the patient after taking **HIPPOCRATIC OATH**. Therefore, incredibility of medical practitioners and doctors should not be assumed. However, our experience as a common man with regard to the role of the doctors attached to S.S.K.M. Super speciality Hospital is not happy. In recent past, more than one high ranking political leaders belonging to the ruling political party were arrested or directed to appear before the Investigating Authority for interrogation and they successfully avoided interrogation by the Investigating Agency taking shelter in the said hospital. When they found that there was no possibility for the Investigating Agency to interrogate the suspects having strong political background under the umbrella of ruling political party, they were discharged from S.S.K.M. Super speciality Hospital. They avoided even production before the Court on the strength of medical report issued by the said hospital authority.

Under such background and considering the fact that the accused is the senior most Cabinet Minister in the State of West Bengal having immense power and position, it would not be impossible for the accused with the aide of other political

executives to take shelter under the garb of serious illness and medical treatment to evade interrogation. If this happens, the Lady Justice will be cursed by the tears of hundreds and thousands of deserving candidates whose future was sacrificed in lieu of money.

This Court has given anxious thought over the matter. This Court also considers that the learned Special Judge under PML Act shall consider the prayer of the prosecution for remand of the accused to the custody of the E.D. and the learned Special Judge will have to depend on the medical report of the accused at the time of consideration of such prayer.

In order to facilitate the learned Trial Judge to take proper decision on the above issue, this Court passes the following direction:-

- (i) The Investigating Agency is directed to take the accused by air ambulance to AIIMS, Bhubaneswar in the early morning on 25th July, 2022.
- (ii) The accused shall be taken to NSC Bose Airport, Calcutta by an ambulance of S.S.K.M. Super speciality Hospital.
- (iii) He will be accompanied by a doctor of S.S.K.M. Super speciality Hospital and an Advocate for the accused.
- (iv) The AIIMS, Bhubaneswar Authority is directed to medically examine the accused by a team of specialist doctors of Cardiology, Nephrology, Respiratory Medicines and Endocrinology.
- (v) The AIIMS, Bhubaneswar will prepare a report and handover the copies of the same to the Investigating Officer, Medical Officer of S.S.K.M. Super speciality Hospital and the learned Advocate for the accused by 3:00 p.m. on 25th July, 2022.

- (vi) The Investigating Officer shall forward soft copy of the above-mentioned medical report to his counterpart in Calcutta who, in turn, shall produce it before the learned Special Judge under PML Act.
- (vii) The learned Special Judge, shall take up the hearing of the case No.ECIR/KLZO-II/19/2022 dated 24th June, 2022 at 4:00 p.m. on 25th July, 2022.
- (viii) The Investigating Officer shall make necessary arrangement for the production of the accused through the medium of electronic video linkage under amending provision of Clause (b) of sub-section (2) of Section 167 of the Code of Criminal Procedure (West Bengal Act 20 of 2004, Section 3).

The instant revision is accordingly **disposed of** on contest.

(Bibek Chaudhuri, J.)