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

% *Date of Judgment: 18th August, 2020*

+ **W.P.(CRL) 562/2019 & CRL.M.A. 3920/2019**

VINAY MITTAL

..... Petitioner

Through: Mr Mohit Mathur, Sr. Advocate
with Mr Tarun Sharma, Mr Misbah
Khan and Mr Gautam Sharma,
Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr Ripudaman Bhardwaj, SPP for
CBI.
Mr Rajeev Sharma, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **18.08.2020**

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, praying as under:

“I. Issue writ/order/directions in the nature of certiorari or any other appropriate writ/order/directions, thereby quashing the order of arrest dated -(A) 02/11/2018 passed in RC NO.220/2014/E/0010, (B) 20/11/2018 passed in RC NO. -220/2014/E/005, (C) 02/11/2018 passed

in RC NO.-220/2014/E/006-CBI/EOU-V/EO-II, (D) 14/11/2018 passed in RC NO.- 220/2014/E/0009-CBI/EO-II/EOU-V/NEW DELHI, (E) 20/11/2018 passed in RC NO. - 220/2014/E/0013/EOU-V/EO-II/NEWDELHI, (F) ORDER DATED 22/01/2019 passed in RC NO. – 220/2016/E/0012/CBI/EOU-V/EO-II/NEW DELHI, and all other consequential proceedings in the aforesaid matters; and/or

II Pass any other order(s) as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. The petitioner claims that he was an employee of one Mr Bharat Rana Chaudhary, drawing a salary of ₹25,000 to 30,000/-, and has been falsely implicated by the Central Bureau of Investigation (hereafter 'CBI') in various cases alleging siphoning of funds of Punjab National Bank(PNB). The petitioner claims that initially he had joined the investigation and cooperated with the prosecution. He submits that he is neither the prime accused nor the prime beneficiary of the alleged offences. However, the CBI disregarded his role and in the year 2014 filed chargesheets against him in various cases. Although the petitioner was being investigated in several cases, he was not arrested in those cases.

3. The petitioner left this country in May, 2015 and failed and neglected to appear before the Courts in the proceedings instituted by the CBI.

4. In view of the petitioner's failure to attend the court

proceedings, a red corner notice was issued against the petitioner on 21.10.2016 – Red Corner Notice No. Control: A-9525/10-2016, dated 21.12.2016.

5. Pursuant to the said notice, the Indonesian Authorities arrested the petitioner on 16.01.2017 in Denpasar, Indonesia.

6. The petitioner was extradited in terms of a decree dated 04.06.2018 passed by the President of the Republic of Indonesia pursuant to an extradition request made by the Government of India.

7. The petitioner was brought to India by the CBI on 20.09.2018. He was produced before the Special Judicial Magistrate, Ghaziabad on 22.09.2018 and was remanded to judicial custody.

8. The petitioner contends that his arrests in other cases are illegal and violate Section 21 of the Extradition Act, 1962. It is contended on behalf of the petitioner that since he was extradited only in one matter (RC 220 2013 E0014 CBI EQU-V- E0-II New Delhi), he could not be prosecuted in other cases filed against him. It is contended that the same is not permissible in view of the Rule of Speciality as embodied in Article 14 of the extradition treaty between Republic of India and Republic of Indonesia.

9. The petitioner is involved in seven separate cases instituted by the CBI – (i) RC 220 2013 E 0014, (ii) RC 220 2014 E 0005, (iii) RC 220 2014 E 0006, (iv) RC 220 2014 E 0009, (v) RC 220 2014 E 0010, (vi) RC 220 2016 E 0012 & (vii) RC 220 2014 E 0013. The CBI

alleges that the petitioner was a proprietor of two firms, namely, M/s Krishna and Krishna Enterprises and M/s Mittal Metals. And, the bank account of these firms were used to siphon off funds from the banks. It is alleged that an aggregate amount of funds involved in the seven cases is approximately ₹4319.56 lacs. After completion of the investigations, chargesheets were filed in all seven cases against the petitioner in different courts in Delhi and Ghaziabad.

10. During the course of the trial, the petitioner absconded from this country and was, thereafter, declared a proclaimed offender. CBI claims that after the petitioner was located in Indonesia and accordingly, an extradition request in CBI RC 220 2013 E 0014 was sent through proper channels to the Indonesian Authorities. Thereafter, six separate extradition requests in the remaining six cases, were also made through diplomatic channels.

11. Admittedly, the petitioner has been extradited in CBI RC 220 2013 E0014. It is stated that the CBI has taken up matters through the Ministry of External Affairs to expedite the other extradition requests but a decision is awaited.

12. A copy of the extradition request sent by the CBI in case no. RC 220/2013 E 0014 has been placed on record and the same indicates that it was limited to the First Information Report (RC 220 2013 E 0014 of CBI EOU-VEO-II New Delhi) which was registered on 23.12.2013 on the basis of a written complaint dated 20.11.2013 received from one Mr Anjan Chattopadhyay, Assistant General

Manager, Punjab National Bank. It is alleged in the said complaint that one Mr Ramesh Suri and some unknown persons had committed the offence punishable under Sections 419/420/467/468/471 read with section 120B of the Indian Penal Code. The complainant alleged that Mr Ramesh Suri, proprietor of M/s Orient Trading Company, had availed of a loan of ₹ 325 lacs and had offered immovable property bearing no. 383, Sector 15A, Noida, Uttar Pradesh, India as a collateral to secure the payment obligations. The loan account of M/s Orient Trading Company (Mr Ramesh Suri) was classified as a non-performing asset (NPA) on 31.12.2012. The amount outstanding and payable to PNB on that date was ₹389 lacs. The officials of PNB made efforts to contact the borrower as well as the guarantor at their given address but found that they were unavailable. The Punjab National Bank also found that the collateral provided as security for the said loan (immovable property bearing no. 383, Sector 15A, Noida, Uttar Pradesh) was also disputed.

13. Investigations were conducted by the CBI. It is alleged that the petitioner was part of a criminal conspiracy to defraud Punjab National Bank and their actions had resulted in a wrongful loss of approximately ₹389 lacs to the Punjab National Bank.

14. Undisputedly, in terms of the extradition treaty entered into between India and Republic of Indonesia, a person extradited in accordance with the treaty cannot be proceeded against for any offence committed by that person before he was surrender or extradited, other than the offence for which the extradition is granted.

Article 14 of the said Treaty which sets out the Rule of Speciality is set out below:

“ARTICLE-14

RULE OF SPECIALITY

The person extradited in accordance with this Treaty shall neither be proceeded against nor subjected to the execution of sentence in the Requesting State for an offence committed by that person before his surrender other than the offence for which the extradition is granted, not shall that person be re-extradited to a third Country, unless:

- a. the Requested State has consented in advance. For the purpose of such consent, the Requested State may require the submission of the documents and information mentioned in Article 6 of this Treaty:
- b. that person has not left the Requesting State within 30 (thirty) days after having been free to do so or that person has voluntarily returned to the Requesting State after leaving it. However, this period of time shall not include the time during which that person fails to leave the Requesting State for reasons beyond his control: or
- c. any lesser offence disclosed by the facts for the purpose of securing his return, other than an offence for which extradition could not lawfully be made.”

15. It is also relevant to refer to Section 21 of the Extradition Act, 1962. The said Section reads as under:

“21. Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences.—Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than—

(a) the extradition offence in relation to which he was surrendered or returned; or

(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(c) the offence in respect of which the foreign State has given its consent.”

16. It is clear from the language of Section 21 of the Extradition Act, 1962 that a person who has been extradited and returned by a foreign State cannot be tried in India for an offence other than the extradition offence in relation to which he was surrendered or returned.

17. In *Daya Singh Lahoria v. Union of India and Ors.:(2001) 4 SCC 516*, the Supreme Court had explained the ‘Doctrine of Speciality’ as follows:

“The doctrine of specialty is yet another established rule of international law relating to extradition. Thus, when a person is extradited for a particular crime, he can be tried for only that crime. If the requesting State deems it desirable to try the extradited fugitive for some other

crime committed before his extradition, the fugitive has to be brought to the status quo ante, in the sense that he has to be returned first to the State which granted the extradition and a fresh extradition has to be requested for the latter crime. The Indian Extradition Act makes a specific provision to that effect. In view of Section 21 of the Indian Extradition Act, 1962 an extradited fugitive cannot be tried in India for any offence other than the one for which he has been extradited unless he has been restored to or has had an opportunity to return to the State which surrendered him. The doctrine of specialty is in fact a corollary to the principles of double criminality and the aforesaid doctrine is premised on the assumption that whenever a State uses its formal process to surrender a person to another State for a specific charge, the requesting State shall carry out its intended purpose of prosecuting or punishing the offender for the offence charged in its request for extradition and none other. (See M. Cherif Bassiouni – International Extradition and World Public Order.) In the book International Law of D.P. O’Connell, the principle of specialty has been described thus:- According to this principle the State to which a person has been extradited may not, without the consent of the requisitioned State, try a person extradited save for the offence for which he was extradited. Many extradition treaties embody this rule, and the question arises whether it is one of international law or not.”

18. In view of the above, the petitioner’s contention that he cannot be arrested in any other case till the pending extradition requests are acceded to by the Republic of Indonesia, is merited.

19. Mr Bhardwaj, learned SPP appearing for CBI does not counter the contentions advanced on behalf of the petitioner; however, he submits that it ought to be clarified that in the event Republic of

Indonesia accedes to the extradition requests in respect of other cases that are pending with the Indonesian Authorities, there would be no impediment in arresting the petitioner in those cases.

20. In view of the above, the present petition is allowed. The following arrest orders are set aside: (i) order dated 02/11/2018 passed in RC NO.220/2014/E/0010; (ii) order dated 20/11/2018 passed in RC NO. -220/2014/E/005; (iii) order dated 02/11/2018 passed in RC NO. - 220/2014/E/006-CBI/EOU-V/EO-II; (iv) order dated 14/11/2018 passed in RC NO. - 220/2014/E/0009-CBI/EO-II/EOU-V/NEW DELHI; (v) order dated 20/11/2018 passed in RC NO. - 220/2014/E/0013/EOU-V/EO-II/NEWDELHI; and (vi) order dated 22/01/2019 passed in RC NO. - 220/2016/E/0012/CBI/ EOU-V/EO-II/NEW DELHI.

21. It is, however, clarified that there would be no impediment in the CBI prosecuting the petitioner in other cases ones the extradition requests in respect of those cases are acceded to by the Republic of Indonesia.

22. The pending application is also disposed of.

VIBHU BAKHRU, J

AUGUST 18, 2020
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