

State Of West Bengal vs State Of Nct Of Delhi & Anr on 27 February, 2025

Author: Sanjeev Narula

Bench: Sanjeev Narula

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 673/2025 & CRL.M.A. 6285/2025

STATE OF WEST BENGAL

STATE OF NCT OF DELHI & ANR.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA
ORDER

% 27.02.2025

1. The present writ petition under Article 226 of the Constitution of India, 1950 read with Section 482 of Code of Criminal Procedure, 1973, is directed against order dated 24th February, 2025 passed by the Duty Judicial Magistrate First Class, Shahdara, Karkardooma Courts, Delhi in the proceedings emanating from FIR No. 60/2024 under Sections 66C/66D of "CrPC"

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The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2025 at 22:25:10 the Information Technology Act, 2000, read with Sections 120-B, 170, 384, 419, 420, 465, 467, and 471 of the Indian Penal Code, 1860 registered at Cyber Police Station, Kolkata on 17th June, 2024. Through the said order, the Magistrate declined the request made by the Petitioner/State of West

Bengal for transit remand of Respondent No. 2, and instead, granted Respondent No. 2 interim/transit bail to enable him to approach the competent court for seeking appropriate relief in accordance with law.

2. On 25th February, 2025, this Court, after extensive arguments, issued an interim order staying the directions in the impugned order. At that stage, although counsel for Respondent No. 2 was granted an opportunity to conclude their arguments, however, they sought a short accommodation to file a reply. Accordingly, the matter was listed for today, i.e., the next working day, considering the urgency of the issue at hand.

3. Today, Respondent No. 2 is represented by Mr. Hariharan, Senior Counsel, assisted by Mr. Vivek Aggarwal, Advocate. They could not file their vakalatnama today, as Respondent No. 2 is in custody, however, they have assured the Court that the same will be filed at the earliest possible opportunity.

4. Nonetheless, Mr. Hariharan, on instructions, has stated that no reply to the petition is necessary, and instead, he would make oral submissions.

5. Accordingly, the Court has proceeded to hear the matter.

Petitioner's Case

6. In addition to the facts noted in the previous order, Mr. Tanveer Ahmed Mir, Senior Counsel for Petitioner, has filed a note highlighting the role of Respondent No. 2 in the alleged offence, with copy to the other side.

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6.1 FIR No. 60/2024 was registered at Cyber Police Station, Kolkata, pursuant to the complaint of Ms. Debeshi Datta, alleging that she received messages from law enforcement agencies claiming that she was involved in money laundering. She was asked to remit money into accounts of the following entities: (i) Valley Aluminium; (ii) M/s Bhat Gas House; and (iii) Brainburst Robotics and others.

6.2 Following the complaint, the investigation revealed a transfer of INR 47 lakh into a bank account at Jana Small Finance Bank in Kolkata, under the name of M/s Brain Burst Robotics, with Ms. Uma Jacinta Burney (Accused No. 1) as the beneficiary. She was arrested and disclosed her association with M/s Donedeal, operated by Chirag Kapoor in Patuli, Kolkata.

6.3 A raid at M/s Donedeal's office and Chirag Kapoor's residence led to the arrest of Accused Nos. 1 to 7, who admitted to opening bank accounts in their names in exchange of a commission, under the direction of one Chirag Kapoor. Accused No. 8 was also arrested, and further disclosure statements were made.

6.4 Digital data seized in the case revealed that Chirag Kapoor had opened over 500 fake accounts, for which purpose toolkits were created, including registered mobile numbers, SIM cards, registered login data, and login credentials, enabling him to manage bank accounts, particularly regarding the inflow and outflow of funds.

6.5 Chirag Kapoor, upon his arrest, disclosed that he was operating under the instructions of Yogesh Dua (Respondent No. 2) and Aditya Dua, based This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2025 at 22:25:10 in Delhi, with one Onkar Singh operating as their frontman. It was as per their directions that Chirag Kapoor sent all the bank account toolkits, including SIM cards, registered mobile numbers, and login credentials, to Onkar Singh.

6.6 Prior to this, Onkar Singh was also apprehended and had given a disclosure statement. Certain recoveries were made from Onkar, and he revealed he was acting under the directions of Respondent No. 2 and Aditya Dua.

6.7 The residences of Respondent No. 2 and Aditya Dua were raided, but they refused to provide access. Respondent No. 2 was issued investigation notices, which he failed to comply with, while Aditya Dua fled to the UAE. 6.8 Further investigation revealed 500 similar complaints lodged on the National Cyber Crime Reporting Portal, thereby supporting the complainant's allegations.

6.9 Subsequently, Respondent No. 2 was arrested, and recoveries were made. Upon his arrest, it was discovered that he was still operating his mobile number, although he had wiped the contents off WhatsApp. Nevertheless, the mobile number and mobile device seized from Respondent No. 2 matched the WhatsApp conversations with Onkar Singh, in which most of the directions were issued to Onkar Singh by Respondent No. 2 and Aditya Dua. These directions pertained to the management of bank accounts, registered mobile numbers, changes in mobile numbers, and the inflow and outflow of funds in the bank accounts.

7. Based on the foregoing facts and circumstances, Mr. Mir submits that the arrest of Respondent No. 2 was fully justified, and that his custody upon a transitory remand is crucial in light of the large-scale cyberspace scam This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 27/02/2025 at 22:25:11 being operated by these individuals. He submits that is not a case that can be thoroughly

investigated without the custodial interrogation of Yogesh Dua. Therefore, he contends that the observations made by the Duty Magistrate in the impugned order are totally perverse and contrary to the record, as this was certainly not a case where the transit remand should have been denied.

Respondent No. 2's Case

8. Mr. Hariharan, Senior Counsel for Respondent No. 2, on the other hand, strongly opposes the Petitioner's request for transit remand. He submits that the impugned order is well-balanced and does not prejudice the Petitioner in any manner. He makes the following submissions:

8.1 Respondent No. 2 is not a flight risk and has deep roots in the society. 8.2 The reason for Respondent No. 2's inability to appear before the Investigating Officer in response to notices under Section 41A CrPC, was communicated by his Advocate via e-mail to the IO of Kolkata Police. In fact, Respondent No. 2 was attending to his mother, who had suffered a brain stroke. This reason was acknowledged in the impugned order, indicating there was no intention to evade the investigation. 8.3 The merits of the case must be scrutinised by the concerned Judicial Magistrate. However, it must be emphasized that the Petitioner has no grounds to implicate Respondent No. 2. The Prosecution's case relies solely on the alleged disclosures of Onkar Singh, which again, must be evaluated by the concerned Judicial Magistrate.

8.4 Furthermore, all the recoveries have already been effected during the search conducted at Respondent No. 2's residence, which aspect has also been taken note of in the impugned order.

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8.5 The purpose of granting bail to Respondent No. 2 was solely to allow him to exercise his legal remedies and preserve his personal liberties. The impugned order merely enables him to approach the concerned court in Kolkata to seek appropriate orders under CrPC. The bail is for a short duration and serves this limited purpose.

8.6 In any event, the impugned order also enables the Prosecution to investigate the matter, as the bail includes a condition for Respondent No. 2 to join the investigation, as and when required.

8.7 If the Petitioner were dissatisfied with the bail, their remedy was to file a petition for cancellation of bail, and not the present petition. In this regard, the Magistrate was obligated to accept the bail bonds furnished by Respondent No. 2. Therefore, the Petitioner could not have circumvented the proper procedure for seeking bail cancellation through this petition. 8.8 Alternatively, once the Magistrate concluded that the transit remand was not warranted, Respondent No. 2 should have been released immediately. Therefore, his continued custody following the impugned order, was illegal.

Analysis

9. The Court has duly considered the aforementioned contentions. Indeed, Respondent No. 2 was granted bail, as per the impugned order, but was taken into custody due to his inability to present the requisite bonds/ sureties. However, whilst he was in judicial custody, the present petition under Article 226 of the Constitution was filed, seeking the intervention of this Court to challenge the merits of the decision rendered by the Magistrate in the impugned order.

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10. Upon finding a strong prima facie case in favour of the Petitioner, as noted in the previous order, the Court issued interim directions as a result whereof he continued to remain in judicial custody.

11. As regards the relief sought in the main petition, the Petitioner's emphasis is on the merits of the decision in the impugned order, particularly the grounds of refusal of their request for transit remand, which also resulted in the grant of transitory bail to Respondent No. 2, thereby enabling him to seek appropriate relief from the concerned Court.

12. At the outset, it is essential to emphasize that the primary objective of transit remand is to facilitate transfer of a person in custody from the place of arrest to a place where the investigation and trial can proceed. There may, however, be instances where the police and investigating authorities fail to exercise appropriate restraint while operating within their legal remit. For this reason, when the accused is presented before the Magistrate with a request for transit remand by the investigating agency, the Magistrate must carefully consider the facts of the case and should not grant the remand in a mechanical or automatic manner. The Magistrate is obligated to ensure that there is sufficient material, such as entries in the case diary, that justifies the request for transit remand. The decision to remand an accused is inherently judicial in nature, and the Magistrate acts in a judicial capacity rather than an executive one when ordering the detention of the accused.²

13. In the instant case, the Magistrate, while declining the request of the Petitioner, made the following observations:

"The offence has taken place outside Delhi and thus the applicant Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314, Priya Indoria v State of Karnataka (2023) SCC OnLine SC 1484.

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and apply for bail and the present bail application is not maintainable before this Court.

On the contrary, it is submitted by Ld. Counsel for accused that after the registration of the FIR, eight accused persons were arrested from Kolkata and Assam and recoveries were also effected from them. It is submitted that the applicant has no concern from the persons arrested by the police. It is submitted that one employee of applicant / accused namely Onkar Singh was arrested by the police and upon his disclosure statement, the present applicant / accused has been apprehended by the Investigating Agency. When notice was issued to the applicant / accused to join the investigation in the present case, he could not do so as mother of accused has suffered from brain stroke. Thereafter, applicant / accused was arrested on 23.02.2025.

It is to be noted that accused no.10 Onkar Singh on whose disclosure statement, applicant / accused was apprehended is already on bail. All the recoveries have already been effected by the Investigating Agency and seizure list had been prepared accordingly. Thus, no purpose would be served by taking the accused to Kolkata on transit remand.

Further, it is submitted by the Investigating Agency that his brother Bharat Bhushan is also involved in the present FIR case. However, no document whatsoever is placed on the record to show the alleged link.

The perusal of FIR shows that the victim Debeshi Datta was duped on Rs. 47 lacs when she had transferred the said amount in different bank accounts. However, it is not shown as to how the said transactions are linked to applicant / accused Yogesh Dua. Thus, prima facie the Investigating Agencies have failed to show why the applicant / accused should be taken to Kolkata and for what investigation he is required in the present FIR. No cogent evidence is brought on record as to why the transit remand should be granted to the Investigating Agencies.

Thus, this Court deems it fit to grant seven days interim bail to applicant / accused Yogesh Dua, with rider that he shall make himself available to the Investigating Agency at all times as & when required to bring out true facts. In view of the above, the instant bail application is allowed. Applicant / accused Yogesh Dua is granted seven days interim bail on executing bail bond to the sum of Rs.1,00,000/- with two sureties of like amount each. This protection of interim bail is granted for a period of seven days only from today to enable the applicant to approach the competent court for seeking appropriate relief in accordance with law.

In case, applicant fails to appear within the time stipulated, no further time would be extended and the interim protection shall stand automatically vacated.

It is made clear that observations made hereinabove shall have no bearing on the merits of the case.

Both the applications stand disposed off accordingly. Since accused has not furnished the bail bonds / surety bonds, This is a digitally signed order.

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Copy of this order be given dasti."

14. The Magistrate has remarked that the investigating agencies have failed to demonstrate as to why Respondent No. 2 should be transported to Kolkata or what specific aspect of the investigation in the present FIR necessitates his transfer. Additionally, the Magistrate has made a strong observation that no "cogent evidence" has been presented to justify the grant of transit remand to the investigating agencies.

15. While this Court is not sitting as a court of appeal over the Magistrate's decision, however, the case diary produced reveals that the impugned decision has not been made objectively. Contrary to the decision rendered by the Magistrate, a review of the case diary submitted by the Petitioner, coupled with the submissions made by Mr. Mir, reveals that there is prima facie evidence to implicate Respondent No. 2. The threshold of "cogent evidence" applied by the Magistrate in this regard, is untenable, as the decision to grant transit remand must be based on a prima facie analysis of the case diaries, rather than on the submission of cogent evidence by the investigating agencies.

16. At this juncture, it is important to emphasize that this Court is not delving deeply into the material, as any observations made at this stage could potentially prejudice one party or the other. This concern was also highlighted by Mr. Hariharan during the course of arguments, and the Court acknowledges his contention. Therefore, while refraining from a detailed analysis of the case facts, yet the Court is firmly of the view that the material presented does not support the observations made in the impugned order. It This is a digitally signed order.

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circumstances, this Court is inclined to grant the Petitioner's request for transitory remand.

17. At this juncture, Mr. Hariharan points out that since the material seized by the prosecuting agency is in digital form, the Court should issue appropriate directions to prevent any tampering with such material during transit.

18. In light of the aforesaid discussion, the present petition is allowed with the following directions:

18.1 The impugned order dated 24th February, 2025 is set aside. 18.2 Respondent No. 2 shall be produced before the concerned Court / Duty JMFC, SHD, who shall after ensuring that his medical examination has been conducted, transfer the custody of Respondent No. 2 to Mr. Debashish Dutt, IO, Kolkata Police.

18.3 The IO shall thereafter facilitate the production of Respondent No. 2 before the competent court in Kolkata within 48 hours from handing over of the custody, i.e., after the completion of formalities.

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18.4 The concerned Court / Duty JMFC, SHD shall ensure that the digital/ electronic material recovered from Respondent No. 2 is property sealed.

19. Needless to state that the observations made above are only for the purpose of deciding the present petition and the concerned Court shall examine the request made by either party for further directions, on its own merits, uninfluenced by any observations made above.

20. In view of the foregoing, the present petition is disposed of, along with the pending application.

21. Dasti under the signatures of Court Master.

SANJEEV NARULA, J FEBRUARY 27, 2025 d.negi This is a digitally signed order.

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