

State (Nct Of Delhi) Through Dcp, Dwarka ... vs Dharmender Rana on 8 February, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 584/2022

STATE (NCT OF DELHI) THROUGH DCP, DWARKA DISTRICT

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Through: Mr. Avi Singh, ASC for State
Mr. Karan Dhalla, Advocate

versus

DHARMENDER RANA

...

Through: Ms. Neha Duhoon, Advo

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 08.02.2022 (THROUGH VIDEO CONFERENCING) Exemption allowed subject to just exceptions.

The application stands disposed of.

CRL.M.C. 584/2022 & CRL.M.A. 2523/2022 (Stay)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973, (hereinafter "Cr.P.C.") seeking quashing and/or modifications of the impugned Orders dated 2nd December, 2021, 16th December, 2021, 17th December, 2021, 18th December, 2021, 20th December, 2021, 21st December, 2021, 3rd January, 2022, 11th January, 2022, 17th January, 2022 and 2nd February, 2022 passed by the learned Additional Sessions Judge-05, Dwarka Courts, New Delhi.

2. The brief background of the case is that the Respondent is an accused member and a sharp shooter of a criminal gang, namely, the "Nandu Gang"

and is alleged to be running an organized extortion racket in New Delhi. Proceedings under the Maharashtra Control of Organized Crime Act (MOCCA) have been initiated against the Respondent. There are several FIRs registered against the Respondent including FIR No. 113/21 dated 7th March, 2021, registered at PS Najafgarh under Section 302/34 Indian Penal Code, 1860, (hereinafter "IPC") read with Section 25/27, Arms Act, 1959, FIR No. 96/21 dated 16th March, 2021 registered at PS

Kapashera under Sections 336/506/34 IPC read with Section 27, Arms Act, FIR No. 124/21 under Sections 384/419/506/120B/34IPC is registered at PS Kapashera and FIR No. 25/21 under Sections 302/34 IPC read with Sections 25/27, Arms Act registered at PS Jaffarpur Kalan.

3. Mr. Avi Singh, learned Additional Standing Counsel for State submitted that the Respondent had been evading arrest in all the above- mentioned cases and only on 31st March, 2021, the Respondent alongwith his co-accused was apprehended. It is submitted that, however, while the accused was apprehended and was asked to surrender, he alongwith the co- accused, tried to escape and in the process, he fired at the police officers, who in turn had no choice and fired in return. Thereafter, FIR bearing No. 32/21 was registered against the Respondent for open firing on the Police Officers under Section 186/307/353/34 IPC at PS Jaffarpur, on complaint of the Inspector.

4. It is submitted that in the abovementioned FIR No. 32/21, the Respondent applied for the bail, however, while hearing the said application, despite no application being moved by the respondent, the learned Additional Sessions Judge, Dwarka Courts, New Delhi, vide the impugned orders dating from 2nd December, 2021 to 2nd February, 2022, ordered for preservation and production of the Call Detail Records (hereinafter "CDRs") as well as the Location Records (hereinafter "LRs") of the raiding party comprising of the Special Staff, Delhi Police, Dwarka District. It is, further, submitted that the learned Additional Sessions Judge vide Order dated 20 th December, 2021, had shockingly granted bail to the respondent, observing the non-compliance of the Orders calling for CDRs and LR's and without going into the merits or discussing the parameters of the bail, including essential factors such as nature of crime, antecedents of the accused, possibility of tampering with evidence and possibility of fleeing from justice. The learned Additional Sessions Judge also, did not consider that on previous occasions the Respondent has jumped interim bail and not surrendered at the time his interim protection was over.

5. It is vehemently submitted by the learned Additional Standing Counsel for the State that as per the observations of this Court in State of NCT of Delhi vs Anwar Khan, Criminal. MC. 2784/2021, decided on 10th November, 2021, once the learned Additional Sessions Judge had passed the Order on bail, he become functus officio and could not have passed an Order regarding further investigation in the matter. It is submitted that the impugned Orders have been passed illegally and arbitrarily and the learned Additional Sessions Judge has been conducting his own investigation in a bail application de hors the settled principle that a Trial Court has no inherent powers and must act strictly in accordance with the provisions of the Cr.P.C.

6. Learned Additional Standing Counsel for the State, relying upon the judgment of Vinubhai Haribhai Malaviya vs State of Gujarat, (2019) 7 SCC 1, submitted that the power to order further investigation vests only with the learned Metropolitan Magistrate who is the competent authority to direct such investigation. It is submitted that the Respondent was produced before the learned Metropolitan Magistrate, who vide Order dated 31st March, 2021, was pleased to remand the Respondent to judicial custody. The remand Order recorded that the learned Metropolitan Magistrate was satisfied that the arrest made by the Investigating Officer was legal, in accordance with law and that the constitutional rights of the accused have been protected. It is strongly urged

that once the final report is accepted by the learned Magistrate under Section 173, Cr.P.C. without any application by the Respondent/Accused or suo moto direction for further investigation under Section 173(8), Cr.P.C., there is no provision in the Cr.P.C. that empowers that learned Trial Court to direct the Investigating Agency to further investigate and produce additional documents, particularly during a bail hearing.

7. Relying upon Attar Singh vs State (NCT of Delhi), Criminal MC No. 406/2016 dated 18th July, 2016 and Puneet Arora vs State of NCT of Delhi, Criminal Revision Petition 327/2020 dated 3rd December 2021, it is submitted that such the omnibus directions for preservation of the CDRs and LR's, would put the Special Staff, Delhi Police and their family at severe risk, along with the network of secret informers who enable them to apprehend hardened criminals.

8. Learned Additional Standing Counsel for the State, further, in view of all the submissions made prays for stay of the impugned Orders considering that the learned Additional Sessions Judge became functus officio as soon as the bail application was decided and disposed of and hence, was not empowered to pass the said Orders.

9. Heard the learned Additional Standing Counsel for the State and perused the impugned Orders along with the other material on record.

10. The learned Additional Sessions Judge has passed the Order on grant of bail without specifying any reasons pertaining to the antecedents of the Accused/Respondent, nature of the crime, previous conduct of the Respondent, amongst other factors to be considered while considering the bail application of an accused. Instead, while granting the bail to the Respondent, the impugned Order attached significance to the alleged conduct of the Investigating Agency with regard to compliance with the abovementioned impugned Orders and noted that there was alleged stone walling by the Investigating Agency of the attempt of the Court to preserve the evidence which may have possibly proven the innocence of the respondent.

11. In view of the submissions made by the learned Additional Standing Counsel and facts contented in the petition, this Court is inclined to issue Notice to the Respondent qua the Order of the Court below dated 20th December 2021, whereby it granted bail to the Respondent. Notice is accepted by Ms. Neha Duhoon, learned counsel appearing on behalf of the Respondent and prays for some time to file reply/objections. Let the same be filed within three weeks.

12. Further with regard to the jurisdiction of the Trial Court in adjudicating beyond its powers, this Court in the case of State of NCT of Delhi vs Anwar Khan, Criminal. MC. 2784/2021, decided on 10th November, 2021, has observed as under: -

"24. Furthermore, after the Ld. ASJ allowed the application filed by the Respondent seeking anticipatory bail vide order dated 13.08.2021, it became functus officio and as such could not have continued with the matter, more particularly on the aspects of investigation in the case."

13. Keeping in view the facts and circumstances preliminarily established by the learned Additional Standing Counsel for the Petitioner as well as the observations of this Court in Anwar Khan (supra), this Court is inclined to stay the entire proceedings in case bearing FIR No. 32/2021 titled as "State vs. Dharmender Rana" pending before the Additional Sessions Judge-05, South-West District, Dwarka Courts, New Delhi.

14. Mr. N. Hariharan, learned Senior Counsel, who is present before the Court (through VC) in some other matter, is requested to assist this Court in the present matter on the next date of hearing. State is directed to provide Mr. Hariharan with the entire set of the petition of the instant case, including all documents annexed, well before the next date of listing.

15. Accordingly, the CRL.M.A. 2523/2022, seeking stay, is disposed of.

16. List on 11th March, 2022.

CHANDRA DHARI SINGH, J FEBRUARY 8, 2022 gs/ms