THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE DISTRICT COURTS,
NEW DELHI

IA-8/2024
CNR No. DLCT11-000146-2023
CT No. 5/2023

Enforcement Department (ED)
Vs.

M/s Hind Agro Industries Ltd & Ors.
ECIR/DLZO-I/25/2020

19.03.2025

Present : Sh. Sushant Bali, Ld. Counsel for applicant/ A-26 Mohd. Naseem Qureshi. **(through VC)**

Sh. Shailesh N. Pathak and Sh. Simon Benjamin, Ld. Spl. Public Prosecutor for Enforcement Directorate (E.D)/non-applicant **(through VC)** alongwith Mirnal Randhewal, Advocate.

The arguments on the application **(IA-08/2024)** under Section 72 (2) of BNSS, 2023moved on behalf of A-26 Mohd. Naseem Qureshi seeking cancellation/ recalling of NBWs as well as proceedings under 82 of Cr.P.C are already heard .

<u>O R D E R</u>

1. It is, inter alia, pleaded on behalf of the applicant/ A-26 that he was never aware about the proceedings of the present case as he has been residing in Dubai for last many years. He was informed by his cousin who is a resident of New Delhi that notice titled "Proclamation requiring appearance of a person accused" has been published in the newspaper 'Indian Express' regarding

involvement of applicant in certain cases and the applicant being absconding. Copy of the said newspaper dated 27.09.2024 is annexed as Annexure-A-1 No communication was ever received by him regarding pendency of the present case. He has not been to India for last several years and he was lastly in India on 01.12.2019. It is further pleaded that the alleged service of process has been effected on property bearing no. D-1109, New Friends Colony, New Delhi. The possession of the said property was taken by Syndicate Bank (now merged with Canara Bank) on 16.11.2021 and the same was sold thereafter by the said bank. Copy of documents showing possession of property are annexed as Annexure A-2.

1.1 It is further pleaded that on perusal of order-sheets on website, the applicant came to know that NBWs against him were issued vide order dated 30.07.2024 and thereafter, process under Section 82 Cr.P.C was also issued vide order dated 05.09.2024. The applicant immediately moved the present application seeking cancellation of NBWs and Process under Section 82 Cr.P.C. It is reiterated that applicant never received any notice or summon /warrant/ process in the present case. He has also mentioned his fresh address in para-11 of the application for future correspondence. It is therefore, pleaded that non-appearance of the accused/applicant was not deliberate or intentional.

It is further argued by Ld. Counsel for accused/applicant that applicant/A-26 is ready to submit to the jurisdiction of this Court and the accused has been appearing through Video-Conferencing (V.C). Hence, prayer is made for cancellation of NBWs and Process under Section 82 Cr.P.C and also permitting the accused/applicant to appear through V.C.

1.2 It is further argued on behalf of A-26/applicant herein that the service effected upon A-26/applicant is defective as he was never available at Property No. D-1109, New Friends Colony, New Delhi and the said fact was within the knowledge of Canara Bank as well as Enforcement Directorate.

1.3 It is further pleaded on behalf of the accused/applicant that he has been facing threats from other enforcement agencies and other persons due to which the permission be given to him for appearance through Video-Conferencing. The right to appear through V.C is well recognized under the BNSS 2023 as well as through various judgments.

1.4 In support of pleas taken in the application, the Ld. Counsel for the accused/applicant herein has relied upon the following judgments :

(I) Veena Parmar V. State of Punjab, CRM-M No.13898 of 2024 of Hon'ble Punjab & Haryana High Court

(II) Jacob V. State, Crl. O.P No.23933/2024 of Hon'ble High Court of Judicature at Madras

(III) State of Maharashtra V. Praful B. Desai (Dr) (2003) 4 SCC 601

(IV) S. Jaitley V. State of NCT of Delhi 2023 SCC OnLine DEL 5551.

(V) Kulvir Ram @ Mati V. State of Punjab & Anr., CR-M No. 40097 /2024

2. Per contra, in the reply filed on behalf Enforcement Directorate , it is pleaded that the application is devoid of merits and is liable to be dismissed *in limine*. The same is an attempt to thwart the trial in the present case.

2.1 It is further pleaded that the present case has been registered under PMLA Act 2002 on the basis of FIR bearing RC050202050011 registered by CBI, SCII under Section 120-B read with 420 IPC and 13 (2) r/w 13 (1) (d) of PC Act 1988 against M/s Hind Agro Industries Ltd and its directors, unknown public servants and others. As per the FIR, A-1 company is engaged in the business of processing and exporting meat and meat products and through its Directors Sirajuddin Qureshi, Samar Qureshi, Kiran Qureshi, S.K. Ranjhan, B.B Gupta , Har Sharan Das, Dinesh Kumar Singh, Rakesh Gupta and K.D Sharma alongwith unknown public servants siphoned off credit facilities to the tune of Rs.221.72 crores availed through Consortium of Banks led by PNB. On the strength of FIR, an investigation under PMLA was intiated vide ECIR No. ECIR/DLZO-1/25/2020. The Section 120-B and 420 IPC and Section 13 (2) r/w 13 (1) (d) of PC Act 1988 are scheduled offences under the provisions of Prevention of Money Laundering Act, 2002.

2.2 It is further pleaded qua the role of A-26 Naeem Qureshi/ applicant herein that he was the principle operator and second-in-command after A-2 Sirajuddin Qureshi. Applicant was the principle conspirator and was responsible for all round tripping, debtor and creditor assignments etc. He is also the owner and directors of companies such as Ms Aliffa Agro India Pvt. Ltd, M/s Adimush Agros and M/s AL Juanid Food Products Pvt Ltd. His companies have knowingly assisted in the process and activity of offence of Money Laundering as detailed Para-10 to 14 of their reply.

2.3 It is further pleaded that E.D issued summons under Section 50 of PMLA Act to A-26/applicant herein to appear on 25.01.2023 which were duly served at his address. However, neither the accused nor his authorised representative joined the investigation. Thereafter, E.D filed the present complaint case before this Court on 06.02.2023 against accused persons/entities. Cognizance was taken and process was issued vide order dated 24.02.2023. However, the applicant herein neither appeared on summons under Section 50 of PMLA during the course of investigation nor obeyed the summons issued by this Court. The applicant herein right from the order of cognizance dated 24.02.2023 till issuance of NBWs on 30.07.2024, has been served with summons as recorded in orders dated 24.03.2023, 12.04.2023, 17.05.2023 and 12.07.2023 etc. Vide order dated 09.02.2024, complainant was directed to effect the service of Bailable Warrants through publication and thereafter vide order dated 16.03.2024, complainant was directed to furnish service report through affixation and publication on the last known address. The said orders were complied with. NBWs were issued against the accused/applicant herein vide order dated 30.07.2024 and 21.08.2024. Thereafter, due to deliberate non-appearance of applicant herein, process under Section 82 Cr.P.C has been issued. The E.D filed compliance report in terms of order dated 05.09.2024.

2.4 Therefore, it is submitted that all the legal formalities under the Cr.P.C have been complied with for issuance of NBWs and initiation of P.O proceedings under

Section 82 Cr.P.C. The applicant continued to remain absent and avoid the trial.

2.5 Reliance is placed upon judgment of Hon'ble Delhi High Court in case titled **Vinod Kumar Khanna V. State 1988 SCC OnLine Del 92, Sunil Tyagi V. Govt of NCT of Delhi & Anr, 2021 SCC OnLine Del 3597.**

2.6 It is further pleaded on behalf of Enforcement Directorate that the property at D-1109, New Friends Colony was the last known address as per the official records including the documents submitted by applicant himself. The process was served at the said address as per law. The applicant herein without even bothering to appear in person is monitoring the proceedings from outside only ,which is an attempt to defeat the essence of NBWs. Other pleas of the applicant herein have been denied parawise.

3. Ld. Spl. PP for E.D vehemently opposed the present application stating that the accused/applicant herein is an absconder. He is absconding from India for the last many years and therefore no ground for cancellation of coercive process is made out . He has been duly served upon at the last known address available with them. His request for appearance through V.C before the Court cannot be allowed as he is not available in India since 2019.

4. Heard and considered.

5. The accused/applicant herein has been arrayed as A-26 in the prosecution complaint filed under Section 44,45 read with 17 of Prevention of Money Laundering Act 2002. He is alleged to be the principle operator and second in command after principle conspirator after Sirajjudin Qureshi who is arrayed as A-2. The detailed role of A-26 as well as his companies viz; Ms Aliffa Agro India Pvt. Ltd, M/s Adimush Agros and M/s AL Juanid Food Products Pvt Ltd is culled out on Page No. 194 and 195 of the prosecution complaint.

5.1 The cognizance of the said complaint was taken by the Ld. Predecessor and all the accused persons were ordered to be summoned vide order dated 24.02.2023. The next sequence of events concerns the present application. It is matter of record that all the accused named in the prosecution complaint were not arrested during investigation. In Column No.7 of the prosecution complaint, the status of arrest of accused persons is clear. Apart from that Clause-16 of the complaint also points out the reasons for not seeking NBWs against the accused named to be "Nil". Thus the only presumption that can be drawn from the said assertion in the complaint is that there was no justification or reason available with the prosecuting agency to arrest the accused persons and they having co-operated during investigation. Though in the reply to the present application, the claim of E.D qua the applicant/A26 is to the contrary.

6. **Be that as it may be, the limited issue herein is as to whether there was due service of summons pursuant to the summoning order dated 24.02.2023 upon the accused/applicant**

or not. The orders w.e.f 24.03.2023 onwards reflect that no service was effected upon accused/applicant herein and it was informed by ED only on 12.04.2023 that A-26 has left the country and shifted to Dubai. Time was sought by E.D for finding out the fresh whereabouts of A-26/applicant herein. Thereafter, E.D kept on seeking time, but without any success. Lastly, the submission was made on 16.03.2024 that the service may be effected upon the said accused persons through publication as the address furnished by them is the last known address of the accused persons. The said request was accordingly allowed and the accused/applicant herein as well his companies were allowed to be served by way of affixation as well as through publication at the last known address of the accused persons. Accordingly, they were served through affixation and publication.

As no appearance was received on their behalf, coercive process was issued against A-26/applicant herein vide order dated 22.05.2024. Due to the issuance of said coercive process, the present application under Section 72 (2) of BNSS 2023 has been filed seeking cancellation of coercive process.

7. The only issue to be seen here is the correctness of submission of Enforcement Directorate that the address furnished by them was the last known address of the accused/applicant herein or not. The accused/applicant herein has placed reliance upon proceedings initiated against him (A-26) by Canara Bank (complainant bank) with Hon’ble DRT. The copy of the notice under Section 13 (4) of SARFAESI Act 2002 dated 30.05.2022 and the copy of sale notice dated 30.05.2022 are also relied upon

by the accused/ applicant herein. As per the accused/applicant herein, the possession of the last known address was taken over by the said bank under the SARFAESI Act 2002 and therefore, it cannot be assumed that the service of summons at the last known address was a valid service.

8. Apart from that the applicant herein has also placed upon series of emails exchanged between him and the bank concerning the auction of the last known address furnished in the complaint i.e D-1109, New Friends Colony, New Delhi. The said communication between the applicant herein and Canara Bank reflect that possession of the said property was already taken over by the bank and therefore, at the time of issuance summons on 24.02.2023, the applicant was not available at the said given address. The record filed by the accused/applicant herein further reflects that he also preferred Securitisation Application before the DRT-1, New Delhi on 15.06.2022 wherein the address for communication in the memo of parties concerning A-26 was mentioned as under :

> **"2. Dr.Naseem Qureshi S/o Sh. Haji Islamuddin Qureshi**
> **(thorugh its letter of authority/parokar)**
> **Address for Communication**
> **Unit No.248, Second Floor, Block No.3,**
> **Tribhuvan Complex, Ishwar Nagar, New Delhi-110085**
> **Email: mnaseemqureshi@hotmail.com."**

9. So, it is apparent from the record filed with DRT that the said fresh whereabouts of A26 were available with Canara Bank, which is part of Consortium of banks who lodged the complaint with CBI concerning the predicate offence which led to the filing

of the present complaint. But, surprisingly no effort was made by the E.D to find out the fresh whereabouts from the bank despite the availability of the above-noted address with the bank.

10. The Enforcement Directorate in this regard has filed the additional reply wherein it is reported that the said address of A-26 was now found locked and the name of the company was not found there.

11. The issue herein is that the said fresh address furnished by the accused/applicant herein for communication before the Hon'ble DRT was never brought to the notice of the Court while seeking the coercive process. **The submission of last known address as furnished in the complaint was wrong and is against the record. In the said backdrop, it has to be concluded that there was no due service upon the accused/applicant herein as he was never available at the given address as the possession of said property bearing no. D-1109, New Friends Colony, New Delhi was already with the bank as on date of issuance of summons to him.**

12. The mandate of Hon'ble Supreme Court in such type of situations where the accused is forwarded alongwith chargesheet/ complaint without being arrested, in case of **"Satender Kumar Antil V. CBI & Anr (2022) 10 SCC 51** comes into picture and the relevant extract of the judgment is reproduced hereunder:

CATEGORY-A

After filing of chargesheet/complaint taking of cognizance

a) Ordinary summons at the 1st instance/including permitting appearance through Lawyer.

b) If such an accused does not appear despite service of summons, then Bailable Warrant for physical appearance may be issued.

c) NBW on failure to failure to appear despite issuance of Bailable Warrant.

d) NBW may be cancelled or converted into a Bailable Warrant/Summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.

e) Bail applications of such accused on appearance may be decided w/o the accused being taken in physical custody or by granting interim bail till the bail application is decided.

13. In the said backdrop, **the application moved by the applicant/A-26 under Section 72 (2) of BNSS 2023 seeking cancellation recalling of NBWs as well as proceedings under 82 of Cr.P.C is allowed and the process under Section 82 Cr.P.C is hereby cancelled/recalled subject to the condition that A-26/applicant herein shall put in physical appearance before this Court for furnishing bond.**

14. As far as the request of accused/applicant for his regular appearance through Video -Conferencing is concerned, already during the pendency of present application, the accused/applicant herein has been appearing through VC and has been permitted to do so being his right under the BNSS 2023 and VC Rules 2021. Their is no dispute as to mandate of the judgments relied upon by the applicant on the said issue, but the facts of the situation in hand makes the case of the applicant distinguishable as he is settled in Dubai and it appears that reason for the same are to avoid the process of various investigating agencies and Bank. His

entire application is silent as to his long absence from India and reasons for his stay in Dubai.

15. The accused/applicant herein has to comply with the conditions of appearing physically while submitting the bond in terms of the mandate of Hon'ble Supreme Court in **Satender Kumar Antil (supra) case specially keeping in view the fact he is admittedly residing in Dubai and reason for the same is primarily to avoid the process of various enforcement agencies and lender Banks. Thus, in order to show his bonafides of submitting to the jurisdiction of the court , he has to appear physically as directed above, only then he can be permitted to join the proceedings through V.C.**

The application stands disposed off accordingly.

GAGANDEEP SINGH

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(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
Rouse Avenue District Courts,
New Delhi : 19.3.2025