

**CBI vs. Abhishek Tiwari and Ors.  
FIR no. RC2182021A0005  
PS CBI/AC-III/New Delhi  
CNR No. DLCT11-000488-2021**

**03.03.2023**

**This is an application seeking recalling/revoke/cancel warrants of arrest issued against the applicant Vikrant Shridharrao Deshmukh S/o Sh. Shridharrao Rangrao Deshmukh, vide order dated 05.07.2022.**

Present: Sh. V. K. Pathak, Ld. Sr. PP for CBI.  
None of the applicant/accused.

**-:: O R D E R ::-**

1. Vide this order, I shall dispose off the application moved on behalf of applicant/accused Vikrant Shridharrao Deshmukh seeking recalling/revoke/cancellation of NBWs issued against him by this court vide order dt. 05.07.2022.

2. Perusal of the record reveals that vide order dated 05.07.2022, an application for anticipatory bail moved on behalf of applicant/accused Vikrant Shridharro Deshmukh S/o Sh. Shridharrao Rangrao Deshmukh was dismissed and vide separate order of the same date, NBWs were ordered to be issued in respect of the above named accused.

3. The aforesaid order of issuance of NBWs passed by this court, was challenged by the applicant/accused before the Hon'ble High Court of Delhi.

4. Vide order dt. 20.02.2023 passed in CrI. M. C. No. 3624/2022 and CrI. M. A. No. 15214/2022, the Hon'ble High Court of Delhi has ordered as under :-

*“4. I have considered the submissions. Section 70(2) of the Code of Criminal Procedure (Cr. P. C.) specifically provides that the court issuing the warrants has jurisdiction to cancel the same. In view of the submissions made by learned senior counsel let an application for cancellation of NBWs be moved before the learned Special Judge. Learned Special Judge shall consider the same as per law without being influenced by the factum of filing of present petition and its withdrawal. It is also made specifically clear that this Court has not gone into the merits of the case and no expression made herein shall tantamount to be an impression on the merits of the case. Learned Special Judge shall decide the issue of cancellation of NBWs being moved by the petitioner independently.*

*5. Learned Special Judge is directed to dispose of the application of cancellation of NBWs within 7 days of the filing thus for two weeks i.e. till 06.03.2023, the NBWs issued against the petitioner shall not be executed.*

6. *In view of the above, the present petition along with pending application is disposed of.”*

5. Pursuant to the above, the present application seeking recall/revoke/cancellation of warrants of arrest issued against applicant/accused Vikrant Shridharrao Deshmukh S/o Sh. Shri Shridharrao Rangrao Deshmukh has been filed on 27.02.2023.

6. It has been stated that the NBWs were obtained by CBI on the basis of incorrect presentation of the facts.

7. Ld. Counsel for the applicant/accused has given a chronological list of events leading to the present application. It has been stated that the applicant/accused Vikrant Shridharrao Deshmukh was not named in the FIR and even in the challan/charge-sheet filed by the CBI on 29.10.2021, no role was attributed to the applicant/accused nor any accusation was made against him by the CBI. It is stated that vide order dt. 22.12.2021, Ld. Predecessor of this court took cognizance of the offence against the applicant/accused arraigned in the charge-sheet.

8. It is stated that the applicant/accused received the notices U/s 160 Cr. P. C. (Notice to a Witness) for joining investigation on 15.02.2022 at Mumbai, 18.05.2022 at Nagpur and on 06.06.2022 at Delhi Head Quarter.

9. It is stated that thereafter, on 10.06.2022, CBI moved an application to obtain the NBWs in respect of the applicant/accused, which was placed before the Ld. Link MM, who issuedailable

warrants for a sum of Rs.10,000/- against the applicant/accused, returnable for 15.06.2022 with the directions to appear before the investigating agency and since the applicant/accused was not aware about the aforesaid proceedings, nursing an apprehension of arrest, he sought for pre-arrest bail, notice of which was issued to the CBI for 22.06.2022. Reply dt. 22.06.2022 was filed by the CBI and subsequently, on 05.07.2022, further submissions in addition to the reply were also filed by the CBI. The said anticipatory bail was dismissed vide order dt. 05.07.2022.

10. It is added that on 05.07.2022, report regarding non-execution ofailable warrants dt. 10.06.2022 was filed before the court. The anticipatory bail application of the applicant/accused was also dismissed by the Hon'ble High Court of Delhi vide order dt. 14.07.2022. Thereafter, on 03.08.2022, the applicant/accused approached the Hon'ble High Court of Delhi for quashing the NBWs, ordered to be issued against the applicant. Hon'ble High Court of Delhi vide order dt. 13.09.2022 granted time to the CBI to seek instructions/response. It is stated that an oral undertaking was tendered by CBI that no coercive action would be taken against the applicant, which was subsequently denied to have been made.

11. It is further stated that owing to the turnaround made by the CBI before Hon'ble High Court disowning the oral undertaking of taking no coercive action against the applicant, the applicant approached the Hon'ble Supreme Court while assailing the original order passed by the Hon'ble High Court dated 14.7.2022 denying

anticipatory bail. The said SLP (Crl.) Diary No. 4538 of 2023 came up for hearing before the Hon'ble Supreme Court on 10.02.2023, however, on account of the pendency of the matter before the Hon'ble High Court in Crl. M.C. 3624 of 2022, the prayer for anticipatory bail was not pressed at that stage by Ld. Senior Counsel and SLP was dismissed as withdrawn.

12. The petition before the Hon'ble High Court of Delhi has been disposed off vide order dt. 20.02.2023 (supra).

13. In support of the application, Id. Counsel for the applicant/accused has argued that the notices which were issued to the applicant/accused were moved U/s 160 Cr. P. C. i.e. in the capacity of a witness only and the order passed by the Ld. Link Officer (Link Court) dated 10.6.2022 would leave no manner of doubt that the court was fully conscious of the fact that the applicant is being sought to be joined in investigations under Section 160 Cr.P.C. and considering the entire factual matrix, bailable warrant was issued and the application was disposed of. It is stated that the CBI in their reply also stated that the only accusation was that the applicant had been issued notices under Section 160 Cr.P.C. as a witness and yet failed to join investigation and had been evading or avoiding. No allegation of any criminality was levelled against him and no role was ascribed to him in the commission of any offence apart from not honouring or complying with the notices under Section 160 Cr.P.C. Further, the facts mentioned in the additional reply dt. 22.06.2022 were already in the knowledge of the CBI.

14. It is argued that the CBI has misled, misrepresented and created a façade of the applicant being involved in the commission of the offence has led to the issuance of Non-bailable Warrants of arrest. In support of the submissions reliance has been placed on ***State through Central Bureau of Investigation v. Dawood Ibrahim Kaskar (2000) 10 SCC 438.***

15. It is stated that applicant is involved in this case on the allegations that some WhatsApp messages were shared on a mobile phone allegedly procured by him. These allegations are not only flimsy, vague and generic, but the CBI must be put to task as to how, why, when and under what circumstances was the said fact detected and if it was detected prior to issuance of notices under Section 160 Cr.P.C. then why was it not brought to fore earlier? Was the intention of the CBI to call the Applicant as a witness under Section 160 Cr.P.C. and thereafter effect his arrest in a circuitous and high-handed manner?

16. It is further added that any person who does not comply with the notice under Section 160 Cr.P.C. issued by Investigating Officer, at the most can be hauled up in terms of Section 174 IPC which is a non-cognizable and bailable offence.

17. It is argued that as to whether the rejection of anticipatory bail may lead to an arrest of a person is no longer res integra and has been laid to rest by the Hon'ble Supreme Court inter alia in M.C Abraham & Anr. vs. State of Maharashtra & Ors. (2003)

2 SCC 649.

18. It is stated that a person against whom warrants/proclamation has been issued, is not required to appear personally for seeking cancellation/recall/revocation thereof and the said application is maintainable even if filed through a counsel along with a memo of appearance. Reference is placed on ***Chundru Ammanna v. Authority under A.P. Shops and Establishments; 2000 Cr.L.J. 2032 & Prem Cashew Industries and Ors. Vs. Zen Pareo in Crl. Rev. Pet. 55/1999 dated 22.09.2000.***

19. Reply to this application has been filed by CBI, wherein it has been stated that the Regular Case RC2182021A0005 was registered by the CBI on 31.08.2021 u/s 120-B IPC, 409 of IPC and Section 7 & 8 of PC Act, 1988 (as amended in 2018) against (i) Shri Abhishek Tiwari, Sub Inspector, CBI, AC-V, New Delhi, (ii) Shri Anand Dilip Daga, Advocate, and (iii) Unknown others, with the allegation that accused Abhishek Tiwari entered into criminal conspiracy with Anand Dilip Daga and unknown others and disclosed case sensitive and confidential documents to Anand Dilip Daga, an unauthorized person, for the purpose of subverting investigation of CBI RC2232021A0003 in lieu of undue advantage/illegal gratification to himself.

20. It is stated in the reply that after completion of investigation, chargesheet was filed on 29.11.2021 against accused persons, namely, (1) Abhishek Tiwari, (2) Anand Dilip Daga and (3) Vaibhav Gajendra Tumane for commission of offences punishable u/s

120B r/w 201, 379, 409 & 411 of Indian Penal Code r/w section 7 & 8 of Prevention of Corruption Act, 1988 (as amended in 2018) r/w section 43 r/w section 66 & 66B of Information Technology Act, 2000 and substantive offences thereof before Special Judge, (CBI-02), P.C. Act, Rouse Avenue Court Complex, New Delhi and further investigation in the case was kept pending against Unknown public servants and private persons.

21. It is further alleged that the applicant/accused Vikrant Deshmukh was served notices dated 12.02.2022, 17.05.2022 and 03.06.2022 u/s 160 Cr.P.C., but neither he joined the investigation nor any intimation was received from him as to why he has not joined the investigation. Thereafter, on 10.06.2022, CBI filed an application before this Court seeking issuance of a non-bailable warrant against the applicant, pursuant whereunto bailable warrant were issued against the applicant for a sum of Rs.10,000/- returnable for 15.06.2022 with the direction to appear before the investigating agency.

22. It is further stated that the bailable warrant issued on 10.06.2022 against applicant could not be executed as he evaded the process of law. Further investigation revealed that Sh. Vikrant Deshmukh (applicant), S/o Sh. Sridhar Rao Deshmukh, R/0- Plot No. 144, Reshim Bagh, Hanuman Nagar, Nagpur, Maharashtra, had actively participated in the criminal conspiracy with other accused persons to subvert the ongoing investigation of case in RC 2232021A0003 of CBI, AC-V, New Delhi and accordingly his status changed from that of witness to an accused.

23. It is further submitted that during the course of further investigation, CBI found certain incriminating material against him and found his active involvement in the present case. It is submitted that application for issuance of NBWs was moved by CBI and applicant immediately filed application for anticipatory bail which was dismissed vide order dt. 05.07.2022.

24. It is further alleged that vide order dated 05.07.2022, the court allowed application of the CBI for issuance of NBW's against the applicant on the ground that he is evading investigation and his anticipatory bail application has been dismissed. It is added that thereafter, the applicant filed anticipatory bail application before Hon'ble High Court which was dismissed vide order dated 14.07.2022.

25. CBI filed an application under section 82 Cr.PC for issuance of proclamation against the applicant, Sh. Vikrant Deshmukh which is still pending before this Court. It is further stated that as the examination of petitioner is essential for the investigation of the case and as he is absconding and deliberately concealing himself to avoid the process of law, the present application is liable to be dismissed especially when he has not joined the investigation till date and his anticipatory bail applications have been denied by this Court as well as by Hon'ble High Court of Delhi.

26. It is stated that that the NBW's issued against the applicant are very much in consonance with the guidelines laid down by the Hon'ble High Court, Delhi in "Sunil Tyagi vs Sate" bearing

2021 (281) DLT 533.

27. The submissions made by the applicant/accused in the application have been denied by the CBI in its reply and it is stated that the applicant did not join investigation despite service of several notices and he is intentionally evading the process of law and moving frivolous applications before this court.

28. It is further submitted that after considering the facts and circumstances of the case, this Court had issued non-bailable warrant against the applicant accused and despite best efforts, the same could not be executed. The record pertaining to the effort made for the execution of NBW is also submitted before the court.

29. It is stated that his wife Smt. Gauri Deshmukh and his business partners were duly intimated about the issuance of bailable warrant against the applicant but he never joined investigation. It is stated that the fact that the applicant never had access to the entire chronology of events which started from 10.06.2022 till 05.07.2022 is false and misleading and due procedure was followed in issuance of non-bailable warrant.

30. I have heard Ld. Counsel(s) for the applicant and Ld. Sr. PP for CBI and have perused the record.

31. Ld. Counsel(s) for the applicant/accused have vehemently argued that since the applicant/accused was given notice U/s 160 Cr. P. C. to appear as witness before investigating agency, NBWs cannot be issued against him for violating the same. As per

submissions of the applicant himself, he joined the investigation with the IO on 14.10.2021, 15.10.2021 as well as 16.10.2021 pursuant to the telephonic calls by IO. Ld. Predecessor of this court took cognizance on 22.12.2021 and directed the CBI to discreetly and thoroughly investigate the role of Sh. Anil Deshmukh in the present matter and thereafter, the present applicant who happens to be the relative of Sh. Anil Deshmukh evaded the process issued against him. The claim of the applicant that he was issued the notice U/s 160 Cr. P. C. only to appear as witness is of no use to him as in that case, he could have shown his bonafide by joining the investigation.

32. The next and important question that has been raised by the Ld. Counsel for the applicant is as to whether the coercive process can be issued against a person who has been summoned only as a witness under Section 160 Cr. P. C.

33. Here, it is relevant to note that role of the applicant/accused has always been under investigation by CBI as he was being interrogated even before filing of the charge-sheet. Further, the service of the notices has not been denied anywhere, nor any justified reasons for not honouring the summons has been given. The very fact that he chooses not to appear before the IO despite service of three summons, shows that he had no intentions to join the investigation.

34. Hon'ble High Court of Delhi in its order dt. 01.11.2010, passed in WP (Crl.) No. 152/2010, titled Satish Mohan Agarwal and Another vs. UOI and Ors. has held as under :-

2. Section 160 Cr.P.C reads as under:

"160. Police Officer's power to require attendance of witnesses. (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who from, the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

3. Section 160 is falls in Part-XII of Cr.P.C which deals with information to the police and their powers to investigate. Under section 154 Cr.P.C whenever an information regarding commission of a cognizable offence is given either orally or in writing to officer in charge of a police station, the same is to be reduced into writing by him or under his directions and entered into a book to be kept for this purpose at the police station. This record of information is called the first information report and once an information is W.P. (Crl.) No.1422/08 & 152/2010 Page 2 Of 7 recorded, Section 156 Cr.P.C obliges and casts a duty upon the officer in charge of the police station either to personally investigate the cognizable offence disclosed to have been committed as per the information or to assign this investigation to a police officer working under

him. Section 157 Cr.P.C obliges the incharge of police station (SHO) to send a copy of this information forthwith to the area magistrate as well and to proceed with the investigation personally or send some person for this purpose. Section 160 Cr.P.C empowers a police officer doing investigation under Chapter XII of Cr.P.C to require attendance before him of any person within the limits of his own police station or adjoining police station, who in his opinion appears to be acquainted with the facts and circumstances of the case. Thus, Section 160 Cr.P.C enables a police official to investigate the crime by calling such persons who have some kind of knowledge about the crime. Section 160 specifies that only a police official assigned with the investigation, can issue the notice only to any person. Thus power under Section 160 Cr.P.C of issuing notice is a power exercised in investigation of a crime and to know the facts and circumstances of the case from those who are acquainted with the facts and circumstances of the case. **Notice under Section 160 Cr. P.C can be issued to any witness and even to a suspect, so as to know from him the facts and circumstances of the case so that an effective investigation can be done of the crime committed. Thus, there is no question of infringement of any right of a person much less fundamental right. It is settled law that the power of investigating of a crime is a statutory right of the police and the court cannot interfere into this right of the police.**

4. The powers under Section 160 Cr.P.C are necessary for the police for proper and effective investigation of a crime. A police officer who receives information that a person may be acquainted with the facts of the case can issue notice under Section 160 Cr.P.C to call such

*person and interrogate him. No specific guidelines are required for issuing such notice as issuance of such notice would not in any way infringes the W.P. (Crl.) No.1422/08 & 152/2010 Page 3 Of 7 personal liberty of any person. Chapter IV of Cr.P.C casts a duty on the public person to provide necessary help to Magistrate and police as and when demanded regarding information about commission of a crime and help apprehending the criminals. A duty has been cast upon the public to give information of certain offences as mentioned in Section 39 Cr. P.C. Section 41 of Cr.P.C gives power to police not only to arrest a person, without warrants, if he has been involved in a cognizable offence or against whom credible information has been received of his having been involved in an offence. The Code of Criminal Procedure lays down different provisions as to how investigation is to be done. Section 160 Cr.P.C gives power to police officer to summon a person by issuing notice in writing. I find no illegality in this provision neither it encroaches upon any of the fundamental rights of a person nor give unbridled powers to police officials.*

*5. I find no force in this petition. The petition is hereby dismissed.*

35. Having placed reliance on the aforesaid decision of the Hon'ble High Court of Delhi, it is clear that notice U/s 160 Cr. P. C. can be issued to the applicant/accused even in the capacity of a suspect. Reference here has also been placed on **Nandini Satpathy vs. Dani (P.L.) and Anr., 1978 AIR 1025**. Even otherwise, whether a person is to be placed into the category of a witness, suspect or an accused is a step next to his interrogation, however, in the instant

case, the applicant/petitioner after having been issued a notice to join investigation, did not turn up before the IO. He even failed to give any justified reasons for his non-appearance.

36. While on one hand, the applicant/petitioner has claimed that he was being summoned by CBI only in the capacity of witness only, therefore, no coercive steps could have been issued against him, on the other side, he has moved an application for anticipatory bail thereby availing a remedy available to an accused or suspect to obtain pre-arrest bail, which has already been dismissed by this court as well as by the Hon'ble High Court of Delhi.

37. This court in its earlier order dt. 05.07.2022 while dismissing the application for anticipatory bail of the applicant/accused had observed as under :-

*“This court is still of the opinion that even after joining the investigation, whether or not to arrest the applicant/accused is a decision which is to be taken by the IO, which would certainly depend upon the role of the applicant/accused, his conduct and cooperation in the investigation, as well as the facts and circumstances of the case”.*

38. Despite the aforesaid observations, the applicant chose not to appear before the IO and join the investigation. This conduct of the applicant/accused of not joining the investigation despite the above observations of this court, has also been considered by the Hon'ble High Court of Delhi while dismissing his application for anticipatory bail vide order dt. 14.07.2022.

39. The attendance of accused can be best secured by

issuing Bailable Warrants or Non-Bailable Warrants and this court while passing above mentioned orders, took utmost care. Hon'ble High Court of Delhi while dismissing the anticipatory bail of the applicant/accused vide order dt. 14.07.2022 has observed regarding the WhatsApp messages, link of the applicant with Sh. Anil Deshmukh, leaking of Statement to Newspaper etc. Hon'ble Delhi High Court further observed that applicant herein is not cooperating with investigating and keeping in mind the said conduct of the present applicant and nature of offence, his application was dismissed.

40. There is no change of circumstances in the present case after the dismissal of the above stated applications by this court, by Hon'ble High Court and by Hon'ble Supreme Court. Hon'ble Delhi High Court has referred the order dt. 12.10.2021 passed in Anand Daga vs. CBI, Bail Application No. 3366/2021 and Abhishek Tiwari vs. CBI, Bail Application no. 3421/2021 whereby their applications for regular bail were rejected after considering seriousness of the offence.

41. In support of his contentions Ld. Counsel(s) for the accused persons have relied upon various judgments, but the cited judgments are not applicable in the present case as they are entirely on different facts.

42. Keeping in view aforesaid facts and circumstances, conduct of the applicant/accused, the findings of Hon'ble High Court in the order of anticipatory bail application, findings given by this

court in order for anticipatory bail, as well as on application for cancellation of NBWs, this court finds no merit in the present application for cancellation of NBWs moved on behalf of applicant/accused Vikrant Shridharrao Deshmukh. The present application is accordingly dismissed.

(Rakesh Kumar-III)  
Special Judge (PC Act)(CBI)-02  
Rouse Avenue District Court  
New Delhi/03.03.2023