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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 22nd September, 2025**Pronounced on: 19th December, 2025*+ CRL.M.C. 4362/2023 & CRL.M.A. 16540/2023, 16542/2023,
6462/2025

SACHIN DEV DUGGAL

.....Petitioner

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Arshdeep Singh Khurana, Ms.
Sulakshan S. Vedartham, Ms.
Khushboo Jain, Mr. Chetan Nagpal
Advocates.

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: Mr. Zoheb Hossain, Special Counsel
with Mr. Vivek Gurnani, Panel
Counsel, Mr. Kartik Sabharwal, Mr.
Pranjal Tripathi and Mr. Daanish
Abbasi, Mr. Mahesh Gupta, Mr. Navin
Kumar and Mr. Ashish Kapoor,
Advocates.**CORAM:****HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'CrPC') seeks the following prayers: -



“A) That this Hon’ble Court may be pleased to set aside the order dated 09.06.2023 in Misc DJ ASJ 98/2023 thereby quashing non-bailable warrants as issued against the Petitioner vide order dated 10.02.2023 Misc DJ ASJ 35/2023 as being bad in law and all the proceedings emanating therefrom, And/or
B) Pass such other or further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. The petitioner, who is a citizen of England, United Kingdom, has preferred the present petition challenging the impugned order dated 09.06.2023 whereby, the learned Special Judge, (PC Act), (CBI)-16, Rouse Avenue District Courts, declined to cancel the non-bailable warrants issued against the petitioner *vide* order dated 10.02.2023.

BACKGROUND

3. The Central Bureau of Investigation (CBI), New Delhi registered an FIR No. RC2172020A0002 on 23.06.2020 under Sections 120B and 420 of Indian Penal Code, 1860 (for short, ‘IPC’), and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, ‘PC Act’) against Shri Venugopal Dhoot and one unknown officer of the Consortium of Banks led by the State Bank of India.

4. As the offences alleged in the aforesaid FIR were scheduled offences, the respondent/Directorate of Enforcement (for short, ‘ED’) registered an ECIR bearing No. ECIR/HQ/08/2020 on 30.06.2020. The case of the respondent/ED is as under: -



4.1. During investigation, it was revealed that M/s Videocon Industries Ltd. (hereinafter referred to as, 'VIL') had raised foreign currency loan for the appraisal and development of Oil and Gas assets (Mozambique, Brazil Indonesia, Australia, and East Timor), through its overseas company Jupitor Corporation from July 2009 against Standby Letter of Credit ('SBLC facilities') issued by the Indian lender banks.

4.2. During investigation, it was subsequently revealed that in 2008, M/s Videocon Hydro Carbon Holdings Ltd. (hereinafter referred to as, 'VHHL'), a wholly owned step-down subsidiary of M/s Videocon Industries Ltd. ('VIL') required 10% participating interest in oil and gas assets in Rovuma area, 1 Block, Mozambique, from M/s Anadarko, which is a US petroleum company. Shri Venugopal Dhoot, was the Chairman and Managing Director of VIL and VHHL. Further, VHHL was registered at Cayman Islands and was dealing with the oil and gas business and having oil and gas assets in Mozambique, Indonesia, and Brazil.

4.3. Thereafter, it is alleged that VHHL also raised USD 400 million facilities from the Standard Chartered Bank, London for appraisal and development of oil and assets of the Videocon Group. In 2012, it is alleged that the VIL refinanced the abovesaid credit facilities under the consortium structure having various lender banks led by the State Bank of India. State Bank of India led consortium bank had sanctioned the SBLC facilities amounting to USD 2774 million approximately to VHHL between 2012-13.



4.4. The investigation revealed that V.N. Dhoot and P.N. Dhoot, authorized signatories of overseas oil and gas asset holding companies Videocon Group Companies, with a dishonest intention to cheat the lender banks had diverted the foreign currency loans availed by Jupiter and VHHL against the SBLC facilities issued by lender banks and SCB loan availed by VHHL against the oil and gas assets. Out of SBLC facilities, SCB facility and Jupiter facility of USD 1967,577,140 in total, was diverted and used for unintended purposes, USD 1813 million approx. were diverted to India during the period from July 2009 till 2015-16. Out of the funds diverted in India, some of the funds were re-routed to overseas entities by way of payment of refund of export advances and loan to overseas Videocon Group Companies.

4.5 The petitioner herein has been running his business in India as well as in the overseas jurisdictions. In India, he controls the business affairs of M/s Engineer.ai India Private Limited and its other group companies. Earlier, during the period from 2008-09, he was doing his business through M/s Nivio Technology India Pvt. Ltd. ('Nivio India'). The petitioner was running its business at overseas thorough his flagship company, 'nHoldings SA', USA, till 2014.

4.6 The investigation has revealed that Videocon Group Companies in India and overseas had transactions with the companies of the petitioner. Videocon group had made payments to M/s Nivio Technology India Pvt. Ltd. (Nivio India) amounting to Rs.18,44,77,000/- during the period from 15.12.2008 to 02.01.2011. However, a loan agreement was signed between Nivio Technology India Pvt. Ltd and Videocon Industries Limited (VIL),



only on 24.05.2011, whereby, VIL had lent an amount of Rs.17,31,98,430/- (equivalent to USD 3,789,900). The agreement was signed by the petitioner and Shri P.N. Dhoot on behalf of Nivio India and VIL respectively. This agreement, as per respondent/ED, appears to be after thought which needs further investigation.

4.7 On 23.10.2011, a loan agreement of USD 2.5 million was signed between the petitioner and M/s Jupitor Corporation INC wherein, the petitioner was the lender and M/s Jupitor Corporation INC was the borrower which meant that petitioner is receiving money from Videocon Group in India and paying funds to Videocon Group Overseas.

4.8. On 25.05.2011, a share purchase agreement was executed between nHoldings SA and M/s Jupitor Corporation INC, wherein, Jupitor agreed to invest CHF 3,789,900 at a price of CHF 563.55 per share. The agreement was signed by the petitioner on behalf of nHoldings SA. However, in the financial statement of nHoldings SA of 2010, there was mention of share price as CHF 597.28 per share. As per the respondent, the discrepancy in the share prices in the agreement *vis-a-vis* the financial statement of the company needs verification.

4.9. In November 2011, VIL had transferred funds equivalent to USD 1,952,964 to nHoldings SA through a complex web of transactions using various layers including Videocon Global Limited, Jupitor Corporation, M/s Goldcoast Invex INC. and M/s Global EPC Ventures Limited (all Videocon



group overseas companies). Global EPC Ventures Limited had transferred the funds amounting to USD 1,952,964 to M/s nHoldings SA on 23.11.2011.

4.10. During the period from July 2009 to 2015-16, Videocon Group Companies had diverted various credit facilities availed by the Overseas Videocon Group companies for the development of Oil and Gas assets of the Videocon Group. The diverted funds were utilized for the unintended purpose of leading the accounts to become Non-Performing Assets ('NPA') and causing loss to Indian Banks to the tune of Rs. 61,773 Crores approximately.

4.11. A part of the abovesaid diverted funds were retained by Videocon Group in various forms, *i.e.*, the creation of personal assets, investments/retention of funds in various Videocon Group companies and such diverted funds were used for the creation of the personal assets and as per respondent, this investment/retention of funds constitutes the proceeds of crime.

4.12 The investigation has further revealed that the company nHoldings SA had stopped the business in 2014, and was dissolved in the 2014 itself. During investigation, V.N. Dhoot had stated that they had not received any funds from nHoldings SA against their investments in nHoldings SA.

4.13. During the relevant time of investment, P.N. Dhoot and V.N. Dhoot were the Directors and Authorized Signatories of the accounts through which funds were routed and sent to Global EPC Ventures Limited for further



investment in nHoldings SA. It has not been confirmed from the investigation so far about the further travel of the proceeds of crime from nHoldings SA as the account statement of nHoldings SA was not provided.

4.14. In pursuance of the aforesaid investigation, the petitioner was summoned for his personal appearance and seeking information relating to the investments made by the Videocon Group companies, and in order to ascertain his role in his company and holding assets in siphoning off the investment funds in Videocon Group Companies. The sequence of summons issued to the petitioner as per the case of the respondent, as stated in their reply is as under: -

Date	Description
05.01.2022	Summons were issued to the Sh. Sachin Dev Duggal for his appearance on 27.01.2022
19.01.2022	Summons received back as undelivered at the given address.
19.01.2022	The summons were again sent to the another address of his company at GF 77B, Sector 18, IFCO Road Gurugram, Haryana.
26.01.2022	Postal authorities had returned the summons with the remark “refuse to accept”. However, the summons was served at the office address by hand.
27.01.2022	Email from Sh. Sachin Dev Duggal received on the next day requesting therein for adjournment of 2 weeks on the



	health grounds.
01.02.2022	Adjournment request on health grounds was considered and next date of appearance was fixed on 10.02.2022.
10.02.2022	Email received from Sh. Sachin Dev Duggal stating therein that he is a citizen of United Kingdom and requested to send a formal request through due process.
10.02.2022	An email was sent to Sh. Sachin Dev Duggal for obtaining his UK residential address but he did not respond to the email.
16.02.2022	A reminder email was sent to Sh. Sachin Dev Duggal to provide his overseas address. However, no reply in this respect was received.
17.02.2022	Summons to Sh. Sachin Dev Duggal issued and were sent through MLAT to UK.
19.10.2022	A reminder email was sent to Sh. Sachin Dev Duggal referring both the summons dated 05.01.2022 and 17.02.2022, for, his appearance on 01.11.2022 and submission of documents.
01.11.2022	Sh. Sachin Dev Duggal not appeared. However, a partial reply received through email along with the details of his UK address.
04.11.2022	A reminder email sent to Sh. Sachin Dev Duggal
07.12.2022	A reminder email sent to Sh. Sachin Dev Duggal
08.12.2022	
22.12.2022	A partial reply through emails were received from Sh.



and 29.12.2022	Sachin Dev Duggal; however, he did not appear.
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4.15. It is the case of the respondent that the petitioner has though furnished information in the form of documents through emails dated 01.11.2022, 08.12.2022, 22.12.2022 and 29.12.2022; however, he has failed to provide crucial documents including the copy of account statement of his company nHoldings SA maintained with UBS Bank and did not appear before the respondent explaining the transactions between the Videocon Group and his company, nHoldings SA.

4.16. Thereafter, the respondent moved an application for issuance of open ended Non-Bailable Warrants before the learned Special Court, Greater Bombay, PMLA. The said application, as per the case of the respondent, was rejected *vide* order dated 03.02.2023 by the learned PMLA Special Court, Greater Bombay, as the said Court was not the appropriate forum having jurisdiction in case. Thereafter, an application dated 07.02.2023, MISC ASJ/35/2023, was filed before the learned Special Court, PMLA, New Delhi, for issuance of Non-Bailable Warrants which was allowed *vide* order dated 10.02.2023. Thereafter, the present petitioner moved an application, MISC/DJ/ASJ/98/2023, for cancellation of the aforesaid Non-Bailable Warrants which was dismissed *vide* the impugned order dated 09.06.2023 passed by learned Special Judge, (PC Act), (CBI)-16, Rouse Avenue District Courts.



SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Learned Senior Counsel appearing on behalf of the petitioner, at the very outset, draws the attention of this Court to the order dated 03.02.2023 passed by the learned Special Court PMLA, Greater Bombay, and particularly, towards the following paragraphs: -

“12. I carefully examined all these facts. Also, I carefully gone through the copies of summons, E-mail correspondence between ED and Sachin Dev Duggal. Considering the allegations I asked the Assistant Director, what. is .the exact status of Sachin Dev Duggal? Whether he is an accused or a witness? He submitted that, Sachin Dev Duggal is a witness and not cooperating the summons. In such situation if any person is not attending in obedience to an order from the public Servant i.e., Investigating. Officer of ED, the proceedings for the same are prescribed under Sec. 174 of Indian Penal Code and ED had initiated many such proceedings in various matters by lodging complaints alleging offence under Sec.174 IPC, in the Court of Competent Jurisdiction. Therefore, such remedy is open for the ED, if the status of Sachin Dev Duggal is a witness. From the submissions made by the Assistant Director, ED, New Delhi. It is clear that Sachin Dev Duggal is not an accused at the moment, but not responding the summons. Therefore, straight way NBW cannot be issued as contended by the ED.

14. I am of the opinion that, if any person like Sachin Dev Duggal, who is allegedly not complying direction in the summons, remedy under Sec.174 IPC is there for the same. Admittedly, at the moment Sachin Dev Duggal is not an accused but a witness, as submitted by the Assistant Director, ED, New Delhi. Parameters for issuing NBW against any accused and parameters for issuing NBW against any witness during the course of investigation, are different. Prima-facie in view of the Notification vide S.O. 372(E) dt. 5th February, 2016 Designated Special Court under the PML Act for ECIR recorded is at New Delhi based on the CBI FIR which too recorded in New Delhi. Therefore, prima-facie the Court at Delhi appears to be the



Court of First Instance for proposed trial of this PMLA case as per the said Notification. Even if some CBI cases against various other accused are pending in CBI Special Courts in Mumbai, when PMLA case relating to this ECIR is proposed for trial, the ED will have to initiate proceedings as per Sec. 44(1)(c) of the PML Act. Rather taking resort for such administrative purposes, invoking jurisdiction of this Court for the prayers made in this application is not justified. Hence, following order is passed.”

6. Learned Senior Counsel submits that clear statement was made before the learned Special Court, Greater Bombay, that the present petitioner was being summoned as a ‘witness’, which is contrary to the stand now taken by the respondent in their reply. It is submitted that findings of the learned Special Court to this effect were never challenged by the respondent.

7. Learned Senior Counsel draws the attention of this Court to paragraph 23 of the impugned order dated 09.06.2023, wherein, it has been recorded that the Enforcement Directorate/respondent never admitted that the petitioner was a ‘witness’, which is contrary to the statement made on behalf of the respondent recorded before the learned Special Court, Greater Bombay. It is further submitted that learned Special Court in the impugned order erred in giving a finding that the application of the respondent was never rejected; however, they were given an option to move the application for the issuance of Non-Bailable Warrants before the learned Special Court PMLA, Delhi. It is further submitted that learned Special Court, Greater Bombay, had clearly observed that statement made by the respondent/ED was that the petitioner was being sought to be summoned as a ‘witness’, and thus, Non-Bailable Warrants cannot be issued for such a person. It is further submitted that the learned Special Court in paragraph 35 of the impugned



order has recorded that the petitioner was aware of the summons and, he ought to have appeared in pursuance of the summons issued to him, and, despite not being served in accordance with law, he should have appeared before the respondent and on account of such non-appearance, the Non-Bailable Warrants had been issued. It is submitted by the learned Senior Counsel that such an observation is against the settled principle of law that the summons has to be served in the manner as provided under law and mere knowledge of such a summons would not be considered a proper service in accordance with law.

8. Learned Senior Counsel draws the attention of this Court to the letter dated 17.02.2022 issued on behalf of the respondent regarding service of summons through Mutual Legal Assistance Treaty (hereinafter, referred to as ‘MLAT’), wherein, the status of the petitioner has been shown as a ‘witness’. The following columns have been highlighted: -

10.	Status of the persons to be served abroad (Witness/accused)	Witness
13.	Any specific manner in which a service has to be made	Service should be coupled with a receiving confirmation.

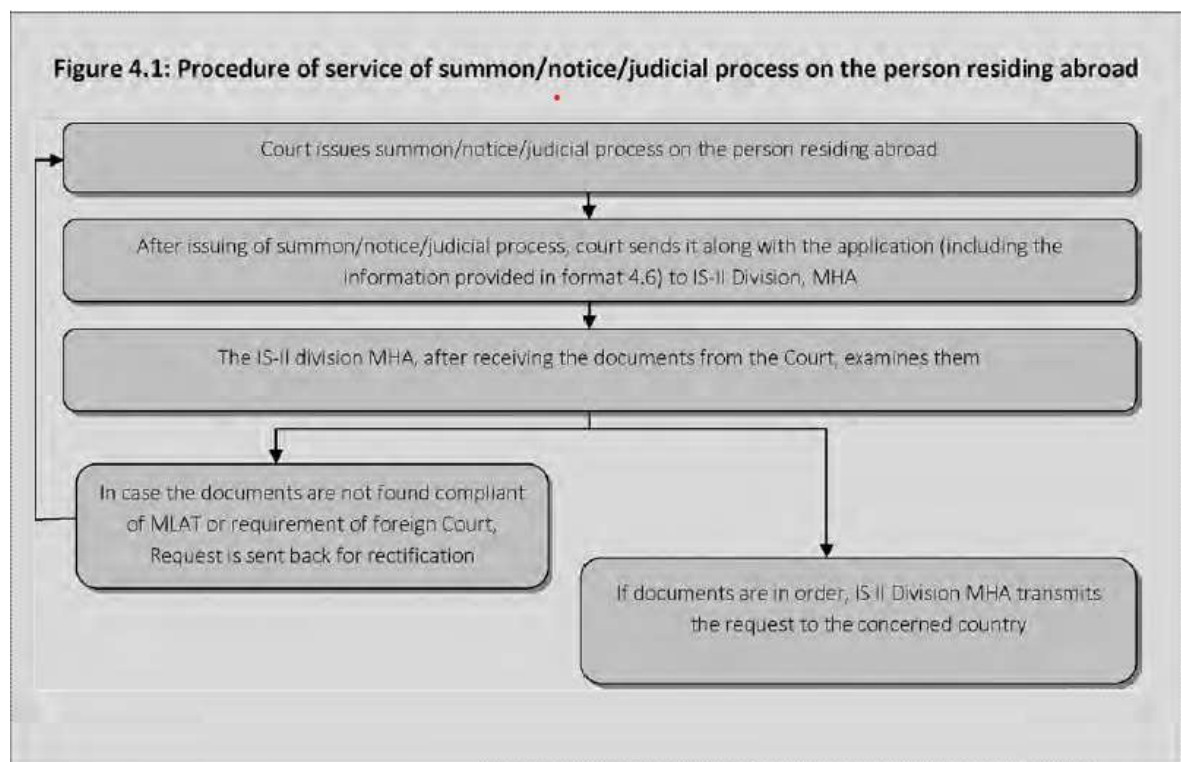
9. Learned Senior Counsel submitted that Section 61 of the Prevention of Money Laundering Act, 2002 (for short, ‘PMLA’) provides as under: -

“61. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government



from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.”

10. Learned Senior Counsel further draws the attention of this Court to the Comprehensive Guidelines formulated by the Government of India, Ministry of Home Affairs, dated 04.12.2019 with regard to the investigation abroad and issue of Letter Rogatory (LRs)/ Mutual Legal Assistance (MLA) Request and Service of Summons/Notices/Judicial documents in respect of Criminal Matters, and in particular, to the following procedure prescribed in the said guidelines which is as under:-





“B. Important Points to be noted for making a Request for Service of Summons/Notices/Judicial Processes

1) It is to be noted that foreign Courts or authorities require at least a period of 10 weeks for transmission of request and service of summons/notices/judicial processes upon the person concerned. The next date of hearing/appearance for the case may be decided accordingly.

2) In the case of countries referred to in Figure 4.4 and other non-English speaking countries, the summons/notices/judicial documents should be accompanied with the certified/authenticated translation (in duplicate) in the official language of the country where such document is proposed to be served.

3) The documents are served by the Requested Country as per their domestic laws and procedure.

4) For the purpose of Figure 4.6 the issuing Authority shall be the Authority issuing summon/notice/judicial processes.

5) The execution of non-bailable warrants of arrest amounts to extradition. Hence, they do not come under the ambit of service of judicial documents. However, only the service and not the execution of Non-Bailable warrants can be done by IS-II Division, MHA.

6) The IS-II Division, MHA shall make endeavours to transmit summons/notices/judicial processes in cases relating to serious crimes against women and children to the Requested Country preferably within a period of ten working days. It is however clarified that the MHA cannot quantify the time period taken by the Requested Country to serve such summons/notices/judicial processes on the witness.”

(emphasis supplied)

11. It is, thus, submitted on behalf of the petitioner by learned Senior Counsel that the summons were never served on the petitioner, who is citizen of England, United Kingdom, in the procedure prescribed, as noted hereinbefore, and in absence of the said procedure being followed, Non-Bailable Warrants could not have been issued. It is also pointed out that subsequently, a fresh MLAT request has been sent on 17.02.2025, which



demonstrates that even the respondent admits that the summons were never served in accordance with law.

12. Reliance has been placed on the following judgements by learned Senior Counsel for the petitioner: -

- (i) **Parambot Thayunni Balakrishna Menon v. Govind Krishnan (Minor) & Anr.**¹
- (ii) **Rakesh Kumar v. Vijyanta Arya (DCP) & Ors.**² (paragraph 12)
- (iii) **Satender Kunar Antil v. Central Bureau of Investigation & Anr.**³
- (iv) **Court on its own Motion vs. State in CRL. REF. 2/2019**⁴ (paragraph 3)

**SUBMISSIONS ON BEHALF OF THE RESPONDENT/
DIRECTORATE OF ENFORCEMENT**

13. Learned Special Counsel appearing on behalf of the respondent/ED draws the attention of this Court to the impugned order dated 09.06.2023 and highlighted the following paragraphs with regard to the role of the petitioner in the ongoing investigation carried on by the respondent: -

¹ 1958 SCC OnLine Mad 229

² 2021 SCC OnLine Del 5629

³ *Vide* order dated 21.01.2025 in SLP (CrI) No. 5191/2021

⁴ 2020:DHC:1431-DB.



“16. Qua the applicant/accused namely Mr. Sachin Dev Duggal further allegation is that Videocon Group has made payment to M/S Nivio Technology India Pvt. Ltd (Nivio India) amounting to INR 18,44,77,000/- during the period from 15.12.2008 to 2.1.2011. However, a loan agreement has been signed between Nivio India and VIL on 24.5.2011, whereby VIL had lend an amount of INR 17,31,98,430/-. It is alleged that said agreement was signed by applicant/accused Sachin Dev Duggal and P.N Dhoot on behalf of Nivio India and VIL respectively. This agreement appears to be afterthought and it needs further investigation.

17. Further allegation against the applicant/accused is that during the period from October 2011 to January 2012, Rs 17,10,32,473/- were returned by Nivio India to VIL and no interest has been charged by VIL on the said loan given to Nivio India, which further raises suspicion. Not only that, on 23.10.2011, a loan agreement of USD 2.5 million was signed between the applicant/accused Sachin Dev Duggal and Jupiter Corporation, wherein Sachin Dev Duggal was lender and Jupiter Corporation was borrower. According to investigating agencies, this all is clearly indicating that VIL has transfered funds to applicant/accused Sachin Dev Duggal group of companies in India and correspondingly, they have transfered the fund to Videocon Group overseas companies.

18. It is the case of the ED that there are certain transactions between Videocon Group overseas companies and applicant/accused Sachin Dev Duggal Group of companies indicating transfer and siphoning of funds and it is alleged that applicant/accused Sachin Dev Duggal is involved in both the transaction that took place in India and abroad as well. According to ED, there are so many unexplained transactions related to applicant/accused Sachin Dev Duggal, for which his presence before the ED during enquiry is required.”

14. It was submitted on behalf of respondent/ED by learned Special Counsel that in the application moved before the learned Special Court, it had been clearly stated that the petitioner was a ‘suspect’. It is submitted that the reading of the application filed before learned Special Court would clearly



demonstrate that the petitioner was shown as a ‘suspect’ in the ongoing investigation. It is submitted that it is clearly stated in the application that investigation by the respondent has come to a stand-still on account of non-cooperation of the present petitioner. It is further submitted that in the MLAT request, the petitioner has been shown as a ‘witness’ and as, at this stage, he is not an accused in the complaint case, and remains a suspect, therefore, the word ‘witness’ was used in the MLAT, and the same would not change the nature of investigation pending *qua* the present petitioner.

15. Learned Special Counsel submitted that the first summons was sent on 05.01.2022 to the present petitioner for appearance before the respondent on 27.01.2022. It is submitted that the summons was sent to the registered address of M/s Engineers.AI at 77B, Ground Floor, Sector 18, IFFCO Road, Gurugram, Haryana, by hand. Thereafter, an email was sent on 19.01.2022 from the respondent forwarding the scan copy of the summons for his personal appearance, and in response thereto, the petitioner sent an email dated 27.01.2022 seeking two weeks to respond on the pretext of being unwell. Subsequently, a request for MLAT through the Competent Authority was sent on 17.02.2022 and 19.10.2022, and the petitioner again sent a mail to the Assistant Director, Directorate of Enforcement, stating that, although he had not received the summon officially through the Court process in terms of the guidelines between India and the United Kingdom, and made a request to appear through Video Conferencing.

16. It is pointed out that in paragraph 35 of the impugned order, the learned Special Court has observed that the petitioner never denied that he



had visited India or the fact that he had information of issuance of process through emails to which he responded and in particular, the aforesaid email dated 27.01.2022, wherein, he sought time on the ground of illness. Similarly, it is pointed out that in his email dated 01.11.2022, the petitioner had written on behalf of M/s Engineers.AI India Pvt Ltd. ('EIPL'), and in the said email, he wants to assist the investigation; however, he gives an option to appear through Video Conferencing. It is submitted that the mode and manner seeking appearance for investigation has been stated in the summons, and that the person who has been summoned cannot dictate as to how and when he would appear before the Court.

17. Learned Special Counsel appearing on behalf of the respondent/ED further drew the attention of this Court to an email dated 08.12.2022 sent on behalf of petitioner showing again that he is ready to comply with summons; however, he did not appear in pursuance of the same. It is further submitted that the service through the MLAT is on the correct address which would be deemed service, and the same has been duly noted by learned Special Court in paragraph 25 of the impugned order dated 10.02.2023 while issuing Non-Bailable Warrants against the petitioner.

18. Learned Special Counsel appearing on behalf of the ED/respondent submits that the petitioner had filed an application, **CRL.M.A. 6462/2025**, before this Court seeking interim stay of summons dated 28.01.2025 issued by the respondent which was served on the petitioner *vide* an email dated 26.02.2025. It is submitted that the petitioner filed the aforesaid application along with an accompanying affidavit which was signed by him on



14.02.2025, *i.e.*, much prior to the summons which were emailed to him. It is further pointed out that respondent had served summons to the petitioner through the Ministry of Home Affairs ('MHA') through MLAT to the United Kingdom Authorities which were forwarded to the said authorities by the High Commission of India in UK on 18.02.2025. The said summons was forwarded by the respondent to the petitioner through email on 17.02.2025. Similarly, it is stated that the aforesaid application also has the copy of the prosecution complaint dated 18.12.2024 as an Annexure. It is pointed out that the copy of the Prosecution Complaint dated 18.12.2024 has not been served on the petitioner or any other person as the cognizance of the same is under consideration before the learned Special Court PMLA. In these circumstances, it is pointed out that the petitioner has unlawfully obtained the copy of the summons and the Prosecution Complaint to keep track of the investigation carried on by the investigating agency rather than appear before the Investigating Officer in response to the summons issued to him.

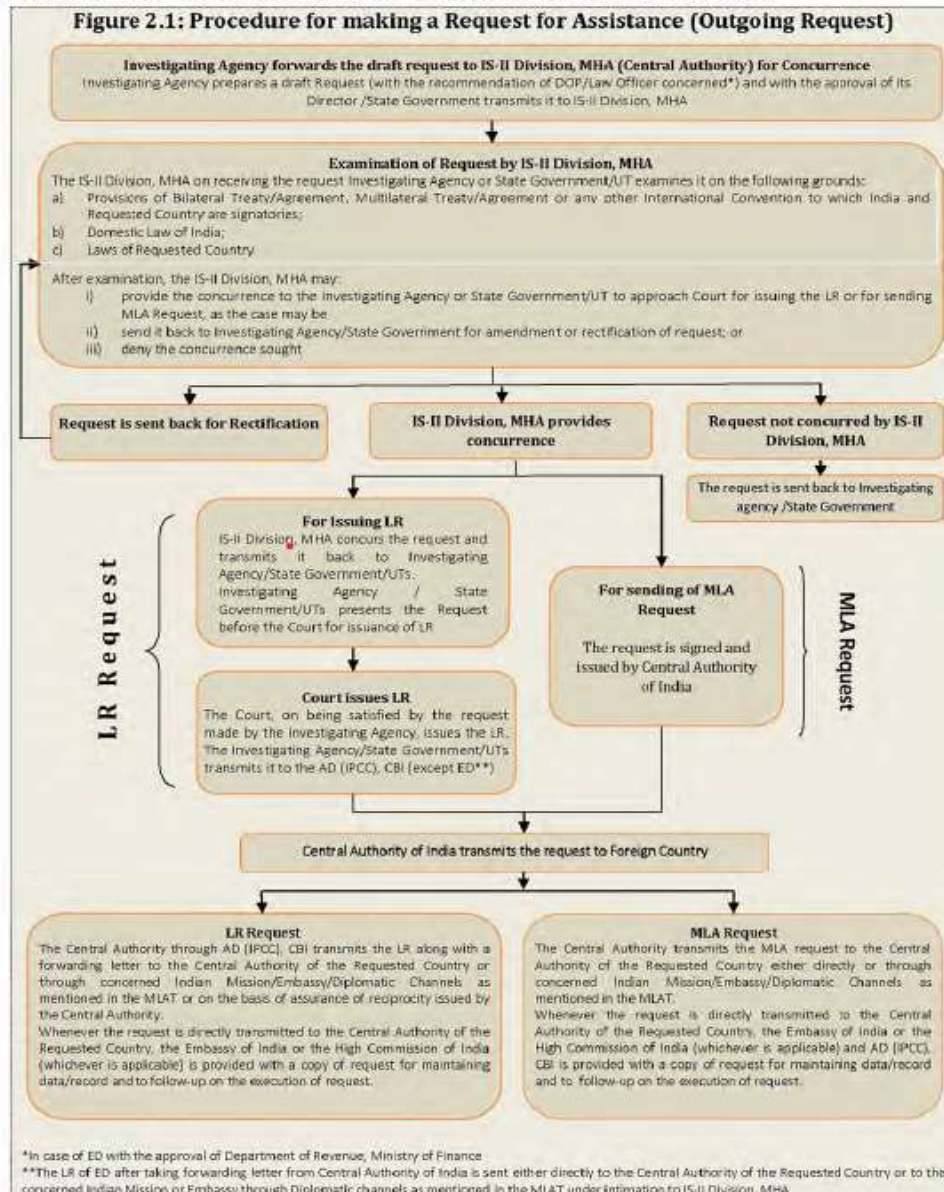
19. Learned Special Counsel drew attention of this Court towards the Procedure for Sending and Executing Request for Mutual Legal Assistant Treaty in terms of the aforesaid guidelines, and, in particular, towards the following: -



Part II: Procedure for Sending and Executing Request for Mutual Legal Assistance

A. Procedure for Sending Request for Assistance (Outgoing Requests)

Figure 2.1: Procedure for making a Request for Assistance (Outgoing Request)



20. It is submitted that figure 4.1 relied upon by learned Senior Counsel for the petitioner relates to process issued by the Court and not the summons



issued by the respondent, procedure for which has been described in the picture reproduced hereinabove.

21. Learned Special Counsel appearing on behalf of the ED/respondent draws attention of this Court to Sections 56 and 57 of the PMLA which read as under: -

“56. Agreements with foreign countries- (1) The Central Government may enter into an agreement with the Government of any country outside India for—

(a) enforcing the provisions of this Act;

(b) exchange of information for the prevention of any offence under this Act or under the corresponding law in force in that country or investigation of cases relating to any offence under this Act, and may, by notification in the Official Gazette, make such provisions as may be necessary for implementing the agreement.

(2) The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.

57. Letter of request to a contracting State in certain cases.- (1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-

(i) examine facts and circumstances of the case,



- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.
- (2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.
- (3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation.”

22. Learned Special Counsel appearing on behalf of the ED/respondent also submits that preliminary objections had been raised with regard to the maintainability of present petition on the following grounds: -

A. Petition filed through Power of Attorney holder is not maintainable.

Reliance is placed upon the following judgments –

- (i) **Amrinder Singh v. State (NCT of Delhi)**⁵;
- (ii) **T.C. Mathai v. District & Sessions Judge, Thiruvananthapuram**⁶;
- (iii) **Amit Ahuja v. Gian Prakash Bhambri**⁷

B. Warrants cannot be cancelled in absentia

Reliance is placed upon the following judgment –

- (i) **Ashok Malik v. M/S Soga Impex Pvt. Ltd. & Anr.**⁸

C. Issuance of Non-Bailable Warrants in aid of investigation

Reliance is placed upon the following judgment –

- (i) **Ottavio Quattrocchi v. CBI**⁹ (Paragraphs 40-41 & 43.)

⁵ 2022 SCC Online Del 24

⁶ (1999) 3 SCC 614.

⁷ 2010(3) R.C.R. (Criminal) 586.

⁸ 2012 SCC Online Del 3464.

⁹ (1998) SCC Online Del 519,



(ii) Sukhmeet Singh Anand v. State of NCT Delhi,¹⁰

D. Summons were issued in compliance with procedure and guidelines laid down by the Hon'ble Ministry of Home Affairs.

REJOINDER ON BEHALF OF THE PETITIONER

23. Learned counsel appearing on behalf of the petitioner submits that MLAT request sent in 2022 has never been served in accordance with law. It is submitted that even in written submissions filed on behalf of the respondent, it is not stated anywhere that the summons sent through MLAT were ever served upon the petitioner. It is submitted that the procedure relied upon by the Special Counsel for the respondent during the course of hearing is contradictory to their own stand taken in the written submissions in which they have shown Figure 4.1, which has been relied upon by the petitioners to be the correct procedure for service of MLAT. It is further submitted that in the email dated 19.01.2022 sent on behalf of respondent, it is clearly admitted that summons sent through post at the registered address of M/s Engineers.AI were returned undelivered. It is further submitted that the petitioner has been cooperating with investigating agency and supplying them every document. It is further submitted that Figure 4.6 in the guidelines which is a format for request of service of summons/notice of judicial process for purpose of MLAT is not the same as the one which was sent by respondent/ED and the said guidelines have not been followed by the respondent/ED. It is further

¹⁰ 2018 SCC Online Del 10674



submitted that no concept of '*deemed service*' exists, and every service has to be carried out in accordance with procedure established by law.

ANALYSIS AND FINDINGS

24. Heard learned counsels for the parties and perused the records.

25. After hearing the arguments, the judgment was reserved for pronouncement on 13.05.2025; however, a legal issue with respect to interpretation of Section 73 of the CrPC was noted and since the arguments were not addressed by either of the parties on the same, the petition was re-listed for clarification on 27.05.2025 and thereafter, for further arguments.

26. Title of the application under Section 70 of the CrPC read with Section 65 of PMLA filed by the respondent/ED before learned Special Court PMLA, New Delhi, reads as under: -

“APPLICATION UNDER SECTION 70 OF CODE OF CRIMINAL PROCEDURE, 1973 READ WITH SECTION 65 OF PREVENTION OF MONEY LAUNDERING ACT, 2002 (PMLA) FOR ISSUANCE OF NON-BAILABLE WARRANT AGAINST RESPONDENT”

27. At this stage, it is apposite to refer to relevant averments made along with the prayers sought by the respondent/ED in the aforesaid application filed before learned Special Court PMLA, New Delhi, which read thus: -

“9. It is submitted that as the Respondent's presence is required for collecting crucial evidence and also all the other necessary information in the personal and exclusive knowledge of Sh. Sachin Dev Duggal, **the**



non-compliance of summons by the Respondent and his noncooperative attitude justify the issuance of a Non-Bailable Warrant against the Respondent to ensure that the Respondent submits to the process of law in India.

10. That Sh. Duggal has deliberately, intentionally and knowingly avoided his presence before the investigating officer in compliance to summons issued under section 50(2) & (3) of PMLA, which under the law are termed as judicial proceedings. It is submitted that this matter relates to cheating of Public Sector Banks involving huge funds and subsequent laundering of the same. The respondent has deliberately been disobeying the summons issued to him under 50(2) & (3) of PMLA, 2002.

11. That from the above, it is evident that the conduct of the respondent is non-cooperative towards the investigation and he will not appear before the investigating authority in the present investigation unless he is compelled by law to do so.

12. An application for issuance of open ended NBW was moved before the Hon'ble Special Court, Bombay PMLA MISC. APPLICATION NO. 170/2023. The PMLA Special Court, Bombay has vide order dated 03.02.2023 in PMLA MISC. APPLICATION NO. 170/2023 held that this Hon'ble court is the appropriate forum having jurisdiction for issuing Non-bailable warrant in the present case. (Annexure-I)

13. It is humbly submitted that during the course of investigation under PMLA, 2002 person summoned for the purpose of investigation is neither considered to be witness nor as an accused the persons so summoned is considered to be only suspect. To consider any person so summoned either witness or accused, it depends on the conclusion of the investigation. If during the course of the investigation and material in possession of the authority and also there is reasonable belief that such person is guilty of offence of Money Laundering then the investigating officer can arrest by invoking the section 19 of PMLA, 2002 after complying with necessary requirements. Since, Sh. Sachin Dev Duggal not attending before the competent authority though he has visited India. Since the suspect is not cooperating in the investigation the crucial evidences



could not be gathered hence this petition is being filed for issuance of NBW to proceed with the investigation and to secure his presence.

PRAYER

That in view of the foregoing facts and circumstances of the case which reflects non-compliance of summons by Sh. Sachin Dev Duggal, it is humbly prayed that:

i. An open-ended **Non-Bailable Warrant** may please be issued against the **aforementioned respondent under Section 65 of PMLA, 2002 r/w Section 70 of Code of Criminal Procedure, 1973.**

ii. The Non-Bailable Warrant so issued may please be directed to be executed through the officers of the Enforcement Directorate in accordance with the law.

iii. Any other order may please be passed as deemed fit by this Hon'ble Court.”

(emphasis supplied)

28. Power to issue warrant has been provided for in the Code of Criminal Procedure, 1973 (CrPC) in Chapter VI Part B of the CrPC, 1973. The relevant provisions read as under: -

“70. Form of warrant of arrest and duration. —(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.
(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

71. Power to direct security to be taken.—(1) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified



time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state—

- (a) the number of sureties;
- (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;
- (c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrants to whom directed.—(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

73. Warrant may be directed to any person.—(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.”

29. It is admitted case that no prosecution complaint was filed before the learned Special Court against the present petitioner. It is also not the case of the respondent that the learned Special Court had issued summons to the petitioner for his appearance which had not been complied with. The application moved on behalf of the respondent under Section 70 of the CrPC,



essentially was to ensure that the petitioner cooperates in the investigation, however, it is nowhere stated in the said application that the petitioner at any stage was being summoned as an “accused”. It is the case of the respondent that the petitioner is a suspect; however, nowhere in the application it is stated that he is an accused at this stage. This distinction is material inasmuch as the Section 73 of the CrPC authorises the Chief Judicial Magistrate or a Magistrate of the First Class to issue non-bailable warrants against any person within his local jurisdiction for (a) the arrest of any escaped convict (b) proclaimed offender or (c) **of any person who is accused of a non-bailable offence and is evading arrest.**

30. It was submitted by learned Special Counsel for the respondent/ED that the application in the present case was filed under Section 70 of the CrPC which provides for “**Form of warrant of arrest and duration**” and falls in Chapter-VI Part B of the CrPC. It was further submitted that the said application clearly spelt out the purpose for which it was filed as the relief sought therein was issuance of non-bailable warrants. It was, thus, submitted that although the power for issuing non-bailable warrants has been provided under Section 73 of the CrPC; however, there is no specific provision which provides for filing an application. Therefore, the application under Section 70 of the CrPC was maintainable. Reliance has been placed on **State of Karnataka v. Muniyalla**¹¹, particularly on paragraph 4 thereof; **N. Mani v.**

¹¹ AIR 1985 SC 470: (1985) 1 SCC 196



Sangeet Theatre¹², on paragraph 9 thereof; **Abhishek Boinpally v. Directorate of Enforcement**¹³, in support of this contention.

31. Respondent has relied upon the judgment of Hon'ble Supreme Court in **State through CBI v. Dawood Ibrahim Kaskar and Ors.**¹⁴, to submit that Section 73 of the CrPC gives power to the Magistrate to issue warrants of arrest during investigation. The relevant portion of the judgment reads thus: -

“**13.** Chapter VI of the Code which is captioned as “processes to compel appearance” consists of four parts: Part A relates to summons; Part B to warrant of arrest; Part C to proclamation and attachment and Part D to other rules regarding processes. Part B, with which we are primarily concerned in these appeals, has in its fold Sections 70 to 81. Section 70 speaks of the form in which the warrant to arrest a person is to be issued by the Court and of its durational validity. Section 71 empowers the Court issuing the warrant to direct the officer who is to execute the warrant, to release that person on terms and conditions as provided therein. Section 72 provides that a warrant shall ordinarily be directed to one or more police officers but if its immediate execution is necessary and no police officer is immediately available it may be directed to any other person for execution. Section 73, which is required to be interpreted in these appeals, reads as under:

“73. (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.”

¹² (2004) 12 SCC 278

¹³ 2023: DHC: 4371

¹⁴ (2000) 10 SCC 438



14. Section 76 requires the police officer or other person, who executes the warrant to bring the person arrested before the Court (unless he is released in terms of Section 71), within twenty-four hours.

19. At this stage it is pertinent to mention that under the old Code the corresponding provision was Section 78; and while recommending its amendment the Law Commission in its 41st Report stated, inter alia:

“6.8 Section 78 at present confers a power on the District Magistrate or Sub-Divisional Magistrate to issue a special type of ‘warrant to a landholder, farmer or manager of land within the district or sub-division for the arrest of an escaped convict, proclaimed offender or person who has been accused of a non-bailable offence and who has eluded pursuit’. Although the power is infrequently exercised, there appears to be no objection to conferring it on all Magistrates of the first class and all”

(emphasis supplied)

20. Apart from the above observations of the Law Commission, from a bare perusal of the section (quoted earlier) it is manifest that it confers a power upon the class of Magistrates mentioned therein to issue warrant for arrest of three classes of persons, namely, (i) escaped convict, (ii) a proclaimed offender and (iii) a person who is accused of a non-bailable offence and is evading arrest. If the contention of Mr Sibal that Section 204 of the Code is the sole repository of the Magistrate's power to issue warrant and the various sections of Part B of Chapter VI including Section 73 only lay down the mode and manner of execution of such warrant a Magistrate referred to under Section 73 could not — and would not — have been empowered to issue warrant of arrest for apprehension of an escaped convict, for such a person cannot come within the purview of Section 204 as it relates to the initiation of the proceeding and not to a stage after a person has been convicted on conclusion thereof.

21. That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this section a police officer can investigate into a



non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, [like Sections 466 or 467 (Part I) of the Penal Code, 1860] and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evades the arrest, the only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is “accused of a non-bailable offence and is evading arrest”.

22. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of Part C of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person “against whom a warrant has been issued by it”. In other words, unless the Court issues a warrant the provisions of Section 82, and the other sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of Part C of Chapter VI. [Section 8(3) in case the person is accused of an offence under TADA.]

23. Lastly, we may refer to Section 90, which appears in Part D of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.



24. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise *judicial* discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. **Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the courts solely for the production of the accused before the police in aid of investigation.”**

(emphasis supplied)

It is pertinent to point out that in the aforesaid case, CBI after apprehending one of the absconders recorded his confessional statement and an application was moved by CBI stating that following the disclosure of the involvements of the respondents therein in the offences, raids were conducted at their hideout to arrest but none of them were apprehended in spite of best



efforts as they were deliberately evading their arrest to escape the clutches of law and thus, prayer for issuance of non-bailable warrants of arrest against the said respondents for initiation of further proceedings in the matter to apprehend them and to take further action to declare them as proclaimed offenders. Moreover, it was also held that such warrant would be issued for appearing before the Court, and therefore, it would be left to the judicial discretion of the concerned Court to authorise further detention in police custody. Thus, it would be incumbent upon the prosecuting agency to satisfy the Court that a person against whom NBWs are sought is an accused and is evading arrest during the course of investigation.

32. Reliance has been placed by learned Special Counsel for the respondent/ED on the following judgments to show that the power under Section 73 of the CrPC for issuance of Non-Bailable Warrants can be exercised during investigation by an investigating agency: -

i. In **Ottavio Quattrocchi v. CBI**¹⁵, learned Coordinate Bench of this Court had observed and held as under: -

"44. The Supreme Court considered the question that whether a Court can issue a warrant to apprehend a person during investigation for his production before police in aid of Investigating Agency. This question was answered by the Supreme Court holding that Section 73 of the Code confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also. It was further held that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend. inter alia, a person who is accused of a non-bailable offence and is evading arrest. On the question whether such issuance of warrant

¹⁵ 1998 SCC OnLine Del 519



can be for his production before the police in aid of investigation, it was observed by the Supreme Court that a Magistrate plays, not frequently a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness or takes or witnesses the taking of specimen handwritings etc.”

ii. In **Anil Kumar Madaan & Anr. v. CBI**¹⁶, in paragraph 7 thereof, learned Coordinate Bench of this Court had observed and held as under: -

“7. I have heard learned counsel for the parties. In the present case a perusal of the e-mail dated 19th April, 2011 from the treating Doctor in Switzerland shows that the second surgery was not urgent and could be planned according to professional agenda. Further with regard to non-appearance on 27th April, 2011 it is evident that the Petitioners were very much in Delhi in view of the affidavits sworn by them at Delhi. However they failed to appear before the Investigating Officer. The power of the Court under Section 73 CrPC to issue non-bailable warrants against the persons who are accused of non-bailable offence and are evading arrest is clearly defined. Despite notices by the CBI the Petitioners refrained to appear before them. The Petitioners are accused persons in this case and because of their absence the Court was justified in issuing of warrants. The Learned Trial Court examined the reasons given by the Petitioners for their non-appearance before the Investigating Officer after the 21st February, 2011 and came to the conclusion that the same were not justified and there was no sufficient explanation. Though the Petitioners had sent a fax message on 2nd April, 2011 stating that they would appear before the Investigating Officer on 11th April, 2011, however they did not appear on the 11th April, 2011. On their own they changed the date of appearance after 14th April, 2011. CBI asked for their appearance on 22nd April, 2011 which was also changed to 26th April, 2011 and later to 27th April, 2011. On 27th April, 2011 a fax message was sent to CBI by the office of the Petitioners stating that both of them were out of stations. The said fax message was totally false and misleading as the Petitioners have sworn affidavits before the Oath Commissioner on the 27th April, 2011 in W.P. (CrI.) No. 596/2011

¹⁶ 2011 SCC OnLine Del 3174



showing that they were in Delhi on that date. Non-bailable warrants were issued on the 25th May, 2011. The Learned Trial Court also took into consideration that prima facie there was material on record against the Petitioners to be involved in the conspiracy. The learned Trial Court was conscious of the fact that the notices were given to the Petitioner to join the investigation however he did not join. The learned Trial Court was further cautious that the investigation involved unearthing of conspiracy in awarding the tender and the money trail thereafter.”

iii. In **Sikander Singh v. Directorate of Enforcement & Anr.**¹⁷, it was observed and held as under: -

“14(i). The 3rd argument that non-bailable warrants could not have been issued in aid of investigation is also devoid of merit. Firstly, it has come on record that the petitioners had not been cooperating with the respondents and that while they initially appeared in pursuance to the notices issued, they gave evasive answers and now they have not been appearing in pursuance to the summons/notices issued by the respondents. If this argument was to be accepted, an Investigating Agency, be it the jurisdictional police, the Enforcement Directorate, CBI or any other agency would have no remedy if an accused chose not to cooperate with the investigation. It cannot be accepted that an Investigating Agency would be rendered without, any remedy. **Even otherwise, it is now well settled that an accused can very well be summoned or his presence can be compelled by way of non-bailable warrants by the Court at the instance of the Investigating Agency. The only safeguard which has been laid down is that after the non-bailable warrants are executed, the accused cannot be produced before the Investigating Agency but he has to be produced before the Court which shall, thereafter, proceed in accordance with law.**

14(ii). The judgments relied upon by learned counsel for the petitioners as also by learned counsel representing the respondents precisely lay down this very proposition.

¹⁷ 2024: PHHC:025740-DB



14(iii). In the case of **State Through CBI Vs. Dawood Ibrahim Kaskar and Others** (supra), the CBI had moved an application before the designated Court praying for issuance of non-bailable warrants of arrest against the accused to initiate further proceedings in the matter to apprehend them and/or to take further action to declare them as proclaimed offenders. These applications came to be rejected by the designated Court. **It was held by the designated Court that there was no provision which entitled the Investigating Agency to seek for and obtain aid from the Court for the same. It was held that presence could be compelled only to face the trial but no process could be issued in aid of investigation under Section 73 CrPC. The matter reached the Hon'ble Apex Court. After examining the matter, the Hon'ble Apex Court held that Section 73 Cr. P.C. gave the power to a Magistrate to issue warrants of arrest and that too during investigation.** Reference was made to Section 73 CrPC and Section 155 CrPC. The Hon'ble Apex Court then examined as to whether such issuance of warrants could be for production of such a person before the police in aid of investigation. This, the Hon'ble Apex Court held could not be done and it was held that the warrants could be issued for appearance before the Court only and that thereafter it was for the Court to decide as to whether detention is to be given or not.....

14(iv). This view was reiterated by the Delhi High Court in **'Ottavio Ouattrocchi Vs. CBI** (supra). Relying upon the judgment of the Hon'ble Apex Court in **State Through CBI Vs. Dawood Ibrahim Kaskar and Others** (supra), it was held by the Delhi High Court that the Special Judge was justified and within his jurisdiction in having issued non-bailable warrants of arrest during the course of investigation. In the present case also, no fault can be found with the order dated 29.09.2023 (Annexure P-23) which has been impugned by the petitioners and by way of which non-bailable warrants were ordered to be issued. The order is a well reasoned and speaking order and it nowhere directs the production of the petitioners before the Investigating Agency. It goes without saying that once the warrants are executed, the respondent-ED would be bound by the provisions of law be that the PMLA or the CrPC. The



other judgments relied upon by the petitioners, therefore, would be of no aid to them."

(emphasis supplied)

iv. The Hon'ble Supreme Court in **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.**¹⁸, has specifically held that under the *sui generis* scheme of the PMLA, at the stage of issuance of summons and investigation, a person does not formally stand in the capacity of an accused. The relevant extract of **Vijay Madanlal Choudhary (supra)** in this regard, reads as under:

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"**338.** In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. **At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself.**

¹⁸ 2022 SCC OnLine SC 929



339. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials....."

(emphasis supplied)

v. In **A. Krishna Reddy v. CBI**¹⁹, learned Coordinate Bench of this Court, in paragraph 6 thereof, has observed and held as under: -

“6. I have heard learned counsel for the parties. With regard to non-appearance pursuant to various notices, it is evident that the Petitioner though was very much in a position to attend the investigation but deliberately tried to evade the process of law on one ground or the other. The power of the Court under Section 73 CrPC to issue non-bailable warrants against the persons who are accused of non-bailable offence and are evading arrest is clearly defined. Despite notices by the CBI the Petitioner refrained to appear before Investigating Officer. The Petitioner is an accused in this case and because of his absence the Court was justified in issuing warrants. The Learned Trial Court examined the reasons given by the Petitioner for his non-appearance before the Investigating Officer after the 12th February, 2011 and came to the conclusion that the same were not justified and there was no sufficient explanation for the Petitioner to leave the station. Though the Petitioner had sent a fax message on 10th March, 2011 stating that he would appear before the Investigating Officer on 25th March, 2011, however he did not appear and when the CBI team searched the residential office of the Petitioner, he was not available and was purportedly in Madhya Pradesh on work. No address or whereabouts of place in Madhya Pradesh were furnished. The said fax message was false and misleading. Non-bailable warrants and search warrants were issued on 29th March, 2011. The Learned Trial Court also took into consideration that there was prima facie material on record against the Petitioner showing his involvement in the conspiracy.”

¹⁹ 2011 SCC OnLine Del 3175



33. On the other hand, learned Senior Counsel for the petitioner has placed reliance on **M.S. Gill v. Chief Election Commission and Ors.**²⁰, wherein in paragraph 8, it has been observed and held as under: -

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji]*, 1951 SCC 1088 : AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

34. Learned Senior Counsel while relying upon the aforesaid judgment reiterates his submission that the contradictory stand cannot be taken by the respondent as in the applications filed on their behalf, the petitioner has not been shown as an accused. He submits that the judgments relied upon by the learned counsel for the respondent are not applicable in the facts of the

²⁰ (1978) 1 SCC 405



present case as in those judgements, there is a categorical stand taken by the prosecuting agency that the concerned person was an accused and issuance of NBWs was justified. Further, it has been pointed out that the issue of Section 73 of the CrPC has been taken by the petitioner in his written arguments placed on record.

35. This Court has gone through the judgments relied upon by learned counsel for the respondent. In the judgments relied upon by learned Special Counsel for the respondent/ED, it is clearly borne out from the records that in all those cases where the warrants were sought to be issued, the concerned person had been shown as an accused during investigation in said cases. Power to issue non-bailable warrants in aid of investigation is not in dispute. However, the clear pre-requisites of issuance of non-bailable warrants as per Section 73 of the CrPC is sacrosanct and *sine qua non* which cannot be given a go by.

36. Thus, in the considered opinion of this Court, powers of the Court to issue Non-Bailable Warrants on request of the Investigating Agency is under Section 73 of the CrPC for which the three pre-requisites are that the person against whom the warrants are to be issued, should be either a convict, a proclaimed offender, or a person who is accused of a non-bailable offence and is evading arrest. In the present case, as stated hereinabove, it is not the case of the respondent that the petitioner at any point of time was an accused in the investigation or he was evading arrest. In summons issued to the petitioner for his appearance and in the MLAT request sent on behalf of the respondent, status of the present petitioner has been shown as a 'witness'.



Even if, the contention of learned Special Counsel on behalf of the respondent is accepted to the extent that the petitioner is a suspect and his appearance is must for the complete investigation in order to explain incriminating material *qua* him the same will not change the status of the present petitioner to be an accused. In fact, during the course of hearing, on the application moved by the respondent before learned Special Court PMLA there was a statement before the said Court that the status of the present petitioner in the investigation is of 'Witness'. It is noted that on such a statement being made, the learned Special Court had observed that in the circumstances, if a person is not appearing in pursuance to the summons then, a complaint under Section 174 of the IPC should have been filed by the ED, and thus, there was no occasion for issuance of Non-Bailable Warrants.

37. This Court has gone through the material placed on record on behalf of the petitioner as well as respondent and it is noted that in pursuance of summons dated 05.01.2022, which as per the case of the respondent was sent on e-mail as well as served by hand at the office address of the company *i.e.*, 77B, Ground Floor, Sector 18, IFFCO Road, Gurugram, Haryana, the petitioner admittedly sent an e-mail on 27.01.2022 seeking an adjournment for two weeks on account of health concerns, and after considering the same, the respondent had fixed the date for his appearance on 10.02.2022. It is also the case of the respondent that the petitioner was at that relevant time in India and, therefore, did not appear deliberately and, thereafter, took a legal stand that he has not been served officially in accordance with law. Even subsequent e-mails written by the petitioner shows that he was replying to the



aforesaid summons, however, was taking a clear stand that unless served through proper channels, he will not appear before the respondent physically.

38. Learned Special Court while issuing the Non-Bailable Warrants *vide* order dated 10.02.2023 had observed and held as under: -

“27. Now, the question arises what is the option left with the Investigating agency when a person who has been summoned fails to appear before them without sufficient cause. It is not denied that liberty of a person is one of the most essential requirements of the modern man. It is said to be the delicate fruit of a mature civilization and such liberty cannot be taken away in a routine manner but at the same time, if a person is summoned by a public servant to appear in person in connection with investigation of a case and that is too under the provisions of PMLA, it becomes the solemn duty of that person to appear and to cooperate in investigation without any hitch and fear.

28. In the present case the summons issued to Mr. Sachin Dev Duggal clearly indicates that his attendance is necessary in connection with the investigation under the provisions of the PMLA. The term investigation has been defined under section 2 (na) of PMLA which says, “investigation” includes all the proceedings under this Act conducted by the Director or by an Authority authorised by the Central Government under this Act for the collection of evidence. This section narrates that Director or an authority may carry all the proceedings which is necessary for collection of evidence. Section 48 of PMLA has given the details of authorities under the Act which includes (a) Director or Additional Director or Joint Director, (b) Deputy Director, (c) Assistant Director · and (d) such other class of officers as may be appointed for the purpose of this Act. The Central Government has been authorised u/s 49 of the Act to authorise such persons.

29. In the present case Deputy Director and Assistant Director is seized with the matter under the supervision of their superior officers. The ED had issued summons to Mr. Sachin Dev Duggal, as the matter is under investigation in the suspected money laundering case and the same appears to be at a nascent stage. The investigation or enquiry in the present matter is for gathering material evidence before arriving at a conclusion whether or not the offence as defined under section 3 of the



PMLA is made out or not. Only when such an offence is made out and the allegations of money laundering are supported by material and evidence on record, then only ED would file prosecution complaint against any person.

30. Further, in a case where investigation is at a crucial stage, specially as regard the role played by Mr. Sachin Dev Duggal, as narrated in the application under consideration coupled with the evidence collected so far by the ED and considering the serious nature of allegations as alleged, this court is of the considered opinion that the personal presence of Mr. Sachin Dev Duggal is required in connection with the investigation of the present case. As stated herein above, despite the service of summon Mr. Sachin Dev Duggal has not appeared. The conduct of Mr. Sachin Dev Duggal becomes more doubtful when it is alleged that recently he has visited India from 14.10.2022 to 20.10.2022, but he opted not to appear before the ED.

31. One may argue that the offences under investigation are cognizable and non-bailable, therefore, ED is already empowered to arrest the accused person even without warrant. Further, summons in the present case have been issued u/s 50 (2) of the PMLA. The authority mentioned in sub-section 2 of 50 of the Act becomes the civil court and the proceedings before it is a judicial proceedings. Therefore, assistant of this court is not required for issuance of warrant against the accused. There is no doubt about the aforesaid provisions of law, but even in such cases, there is no bar or prohibition that in case a person fails to appear in response to summons served upon him, further process of issuing warrant cannot be adopted.”

(emphasis supplied)

It is noted that learned Special Court while issuing Non-Bailable Warrants has not specified the provision under which the same were to be issued nor the fact the petitioner was an accused and was evading arrest in terms of Section 73 of the CrPC. In fact, the learned Special Court while acknowledging that the offences under investigation were cognizable and non-bailable and thus, the respondent/ED was already in power to arrest the



accused persons even without warrants, proceeded to issue warrants against the petitioner for non-compliance of the summons issued under Section 50 of the Act. Learned Special Court noted that the authority mentioned in Section 50(2) of the PMLA becomes Civil Court and therefore, proceedings before it are judicial proceedings and thus, the assistance of the Court would not be required for issuance of warrants against the accused. It is further noted by learned Special Court, based on the allegations made by the respondent in the application and upon consideration of the evidence collected so far, that the personal presence of petitioner is required in connection with the investigation of the present case. In the considered opinion of this Court, same cannot be a ground to issue non-bailable warrants in absence of the fulfilment of pre-requisites as mentioned in Section 73 of the CrPC. Admittedly, there is no other provision of law under which, learned Special Court could have issued non-bailable warrants against the petitioner. Thus, the consideration of learned Special Court for issuance of non-bailable warrants was beyond the requirements of Section 73 of the CrPC. Learned Special Counsel appearing on behalf of the respondent/ED while relying upon the judgment of Hon'ble Supreme Court in **Vijay Madanlal Choudhary (supra)** had contended that summons issued by the respondent/ED under Section 50 of the PMLA is for recording of statement, purpose of which is to inquire into relevant facts in connection with the property emanating from proceeds of crime and the same, in that sense, would not be investigation as such and "in any case there will be no formal accusation against the noticee". There is no dispute with regard to the aforesaid proposition as the respondent is well within its power to issue summons under Section 50 of the Act to the petitioner. Non-compliance of



such summons would make the petitioner liable for prosecution under Section 174 of the IPC, which reads as under: -

“Section 174. Non-attendance in obedience to an order from public servant.

Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same,

intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart,

shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, order or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

It is no doubt true that Non-Bailable Warrants can be issued against the person who is evading investigation and who may not be formally arrayed as accused in the prosecution complaint, however, such persons must be projected as a person accused of committing non-bailable offence and evading arrest for the purpose of Section 73 of the CrPC. In the peculiar facts of the present case, the respondent, as noted hereinbefore, has shown the petitioner as a ‘witness’.

39. It was also argued on behalf of learned Special Counsel for the respondent/ED that if a restrictive meaning is given to the words of Section



73 of the CrPC, a piquant situation will arise wherein, there would be no power for issuance of non-bailable warrants with any Court against the person who is evading investigation under PMLA at a stage prior to he/she being “formally” arrayed as an accused. The contention on behalf of respondent/ED that under scheme of PMLA, a person be summoned for investigation, even if, there is no formal accusation *qua* him cannot override the essential requisites of Section 73 of the CrPC. At this stage, it is apposite to refer to the judgment in **Nazir Ahmad v. King Emperor**²¹, wherein, the Privy Council was dealing with a case where the appellant was convicted on the strength of a confession said to have been made by him to a Magistrate under the provisions of Section 164 of the CrPC. Oral evidence of the said alleged confession was given by the learned Magistrate but the same was not recorded by him, as required under Section 164 of the CrPC. While dealing with the aforesaid situation, the Privy Council observed and held as under: -

“The rule which applies is a different and not less well recognised rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.”

40. Learned Special Counsel for respondent/ED has also raised an objection with regard to the maintainability of the present petition as the same has been filed through Power of Attorney holder on behalf of the petitioner. Reliance was placed on the judgement in **T.C. Mathai and Another v. District & Sessions Judge, Thiruvananthapuram, Kerala**²².

²¹ 1936 SCC OnLine PC 41

²² AIR 1999 SC 1385



41. Reliance was also placed upon a judgement passed by the learned Division Bench of Punjab and Haryana High Court in **Mangal Dass Gautam v. State of Haryana**²³, wherein, it has been observed and held as under: -

“39. In the light of the above observations, it is held that a petition under section 482 of Cr. P.C. 1973 can be filed by a Power of Attorney holder. As regards the maintainability thereof, it would depend upon the facts and circumstances of each case as also with regard to the validity of the said Power of Attorney and the powers conferred therein. It requires to be mentioned here that there is no statutory bar provided by the legislature in the Cr. P.C. relating to filing or continuing of a criminal matter through a Power of Attorney holder. The Court would generally insist that the petition under section 482 of Cr. P.C., 1973 for quashing of the FIR or a criminal complaint as also the consequential proceedings arising there from be filed through the accused person himself but this cannot be and should not be laid down as a hard and fast rule keeping in view the statutory mandate which by nomenclature, description and discretionary nature of powers conferred on the High Court requires it to be kept flexible. This is better left to be considered and decided by the Court dealing with the particular case in the facts and circumstances of each case as it would be impossible to envisage and think of all the circumstances in which the Court may require and like to exercise its extraordinary jurisdiction and powers as conferred under section 482 of Cr. P.C. 1973

40. We would also like to point out that filing of petition under section 482 of Cr. P.C. 1973 is an exception to general rule of criminal law that in criminal proceedings, either the accused should be available before the Court in custody or on bail, unless granted exemption. We hold that any petition under section 482 of Cr. P.C. 1973 through Power of Attorney should contain special reason for non-filing of petition by accused himself or herself to enable the High Court to consider and allow the same. But if, at any stage, the High Court finds that the petition has been filed by accused through Power of Attorney with some oblique motive or the same is violative of any statute or law or is an act of abuse of process of the Court, the Court would have wide discretion to dismiss the petition filed through Power of Attorney. The High Court will have inherent power to give an opportunity to the accused to personally file the petition.”

²³ 2020 (2) R.C.R. (Criminal) 382



42. Learned Special Counsel on behalf of the Enforcement Directorate relied upon the aforesaid judgment to submit that no exceptional circumstances have been shown in the present petition and, therefore, the same is not maintainable.

43. This Court is unable to agree with the aforesaid contention of the learned Special Counsel inasmuch as the fact that the petitioner is a resident of United Kingdom, and, in view of Non-Bailable Warrants issued against him, he cannot come to file a petition in India and has, therefore, filed the same through his Power of Attorney. Thus, on this ground, this Court cannot reject the present petition as being non maintainable.

44. In view of the aforesaid discussion and the law with respect to the issuance of Non-Bailable Warrants under Section 73 of the CrPC, this Court is not entering into the issue of whether the summons were served through proper channel or not or whether the summons were deliberately being avoided by the petitioner, despite his being aware of the same. For the limited purpose of this petition, this Court is satisfied that the power exercised by the learned Special Court for issuance of Non-Bailable Warrants was not as per the provisions provided for in the Code.

45. In view of the aforesaid discussion and in the facts and circumstances of the case, the present petition is allowed and the impugned order dated 09.06.2023 in MISC/DJ/ASJ/98/2023 is set-aside. Non-bailable warrants issued *vide* order dated 10.02.2023 against the petitioner stand cancelled.



46. The present petition is allowed and disposed of.
47. Pending applications, if any, also stand disposed of accordingly.
48. Needless to state that, nothing mentioned hereinabove, is an opinion on the merits of the case or any future proceedings/steps to be undertaken by the respondent/Directorate of Enforcement and observations made herein are only for the purposes of the present petition.
49. Copy of this judgment be communicated to the concerned learned Special Court/Judge, PMLA, Rouse Avenue District Courts, New Delhi, for necessary information and compliance.
50. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
JUDGE

DECEMBER 19, 2025/nk/kr/sn/bsr/sc/ns