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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.M.C. 4916/2022, CRL.M.A.19725/2022

SATYENDRA KUMAR JAIN Petitioner

Through: Mr.Kapil Sibbal, Mr.Rahul Mehra, Senior Advocates with Mr.Vivek Jain, Mr.Bhawook Chauhan, Mr.Vaibhav Yadav, Mr.Rishikesh Kumar, Mr.Gautam Dhamija, Mr.Rajat Gautam, Ms.Aditi, Ms.Manisha, Mr.Devansh Gupta, Ms.S.Vali, Advocates.

versus

DIRECTORATE OF ENFORCEMENT THROUGH ITS
ASSISTANT DIRECTOR AND ORS Respondents

Through: Mr.S.V.Raju, ASG with Mr.Zoheb Hossain, SPP and Mr.Vivek Gurnani, Mr.Anshuman Singh, Mr.Ankit Bhatia, Mr.Harsh Paul Singh, Mr.Kshitiz Aggarwal, Mr.Vinayak Sharma, Mr.Sidharth, Advocates Mr.Gaurav Saini, ALA, Investigating Officer Pawan Kumar for ED/Respondent

Dr.Sushil Kumar Gupta, Ms.Sunita Gupta, Mr.Sushil Kumar and Mr.Ikshvaaku Marwah, Advocates for remaining respondents.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

01.10.2022

1. This petition is filed against an impugned order dated 22.09.2022 passed by learned Principal District and Session's Judge, Rouse Avenue Courts, Central District, New Delhi titled as *Directorate of Enforcement vs. Satyendar Jain and Ors.* in MISC DJ ADJ No. 181/2022, Complaint Case

No.23/2022, ECIR/HQ/14/2017, whereby the learned Principal District and Session Judge had allowed an application under Section 408/409 Cr.P.C. filed by the respondent-1, thereby transferring the aforesaid case from the Court of learned Special Judge (PC Act), Rouse Avenue Courts, New Delhi, to some other Court.

2. Though an objection qua maintainability was raised at an initial stage but since this Court has revisional power too, hence I proceed.

3. It is an argument of the learned senior counsel for the petitioner the impugned order is bad in law and it need to be set aside as till date not even a single order has been passed in favour of the petitioner herein; be it remand of *14* days or dismissal of his first bail application on 13.06.2022, yet the learned Principal District and Session Judge had transferred the case on an application moved by respondent No.1/Directorate of Enforcement to some other Court. It is argued it could not have been done at the mere asking of an investigating agency since it was incumbent upon the Court to examine the apprehension expressed qua *conduct of trial* is reasonable and such powers need to be exercised in *exceptional* circumstances. It was argued, even otherwise, such apprehension was never expressed at an initial stage of the hearing *viz* either during pendency of the interim bail application or at the time filing reply by the respondent to regular bail application and it is not known what transpired within *two* days thereafter that the respondent moved an application for transfer of case. It was argued since the respondent had failed to take plea of *bias* at an earlier stage of proceedings, it stood waived. Reference was made to *Nahar Singh Yadav and Another vs. Union of India and Others* (2011) 1 SCC 307; *Usmangani*

Adamhai Vahora vs. State of Gujarat and Another (2016) 3 SCC 370; *Lalu Prasad alias Laly Prasad Yadav vs. State of Jharkhand* (2013) 8 SCC 593; and *State of Punjab vs. Davinder Pal Singh Bhullar and Others* (2011) 14 SC 770. The decisions were cited to highlight the contentions raised above. It is submitted once the learned Principal District and Session Judge recorded the learned Special Judge is an *upright officer*, the case ought not to have been transferred from the said Court.

4. On the other hand, learned Additional Solicitor General of India while refuting the contentions above, referred to various decisions *viz Gurcharan Dass Chadha vs. State of Rajasthan* (1966) 2 SCR 678; and *Ashok Kumar Todi vs. Kishwar Jahan and Others* (2011) 3 SCC 758; *Amit Kapoor vs. Ramesh Chander and Another* (2012) 9 SCC 460 wherein it is held the person seeking transfer is not required to demonstrate *the justice will inevitably fail* and he needs to only explain the circumstances from which it can be inferred that he *entertains an apprehension* and it is *reasonable in the circumstances* alleged. It is one of the cardinal principle of administration of justice - *justice should not only be done, but it should be seen to be done*.

5. Admittedly, the petitioner was a Minister of Health and Prisons, Government of NCT of Delhi. It was an argument of the department his photograph existed on the webpage of the LNJP Hospital – where he got admitted and his name was being prominently displayed on the plaque at the entrance of the Hospital. Further though in the MLC dated 13.06.2022 prepared at RML Hospital, the petitioner was found to be fit and he did not complain of any disease yet on 14.07.2022, the report of the Jail Doctor

showed him having fever on 13.06.2022 and he being a patient of various ailments *including*, fluctuating oxygen etc. This caused an apprehension to respondent the petitioner may be misusing his position by feigning illness. Then the petitioner got admitted at LNJP hospital which hospital was once *under his jurisdiction*. It is alleged even despite requests by the respondent that the petitioner be produced in Court, he allegedly obtained medical certificate(s) and thus was directed to appear through video conferencing. It is argued the request of respondent No.1 was based on Investigating Officer's report stating *inter alia* when he visited, he found the petitioner lying on bed without any canula on his hands; multi para meter monitor being switched off and petitioner was without any oxygen mask. It was urged only on entry of Investigating Officer, the petitioner immediately put his oxygen mask; BP Monitoring Belt; and switched on the monitor and even the wife of the petitioner was allowed to stay with him.

6. It was argued time and again requests were being made to the Court to get the petitioner examined/evaluated through an *independent* hospital or from AIIMS–New Delhi/RML Hospital, but the Court preferred to wait for the report of the LNJP hospital, *already objected* to by the department. It is alleged all this led the respondent to approach this Court by way of filing Crl.M.C. No.3401/2022 wherein vide order dated 28.07.2022 the Coordinate Bench of this Court rather directed the learned Special Judge not to consider the medical report from LNJP Hospital till the next date of hearing. The said petition is still pending. It was an argument of learned Additional Solicitor General of India after passing of order dated 28.07.2022, the petitioner withdrew his interim bail application and got discharge from the hospital on

06.08.2022.

7. The facts argued by the investigating agency and as submitted are to be seen in the backdrop of *stature* of the petitioner. The circumstances highlighted are *viz a)* the manner in which the application for medical bail was first filed; *b)* the objections by the ED not to consider the medical report of hospital once under his jurisdiction; *c)* medical reports from the very same hospital being called for, whose independence was under question; *d)* the moment this Court interfered with the learned Trial Court's interim orders, the interim bail application immediately was sought to be withdrawn; *e)* his ability to *allegedly* overreach the authorities once under his control; *f)* the contradictions in MLC dated 13.06.2022 and medical report dated 14.07.2022; *g)* denial of an independent evaluation; coupled with the fact the learned Special Judge expressed her agreement with the submission of the learned counsel for petitioner herein regarding *non controverting* of their submissions made by the respondent herein *though controverted* during the oral submissions; it was argued all this triggered an apprehension in the mind of the respondent that justice may not be done.

8. The question is not of an integrity or uprightness of the Judge; or of the authorities over which the petitioner once had jurisdiction, as is noted by the learned Principal District and Session Judge in para No.45 and 46 of the impugned order, but is of an *apprehension in the mind of a party*. In *Ranjit Thakur vs Union of India* 1987 4 SCC 611 it was held *as to the tests of likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party*. The proper approach for the Judge is **not to look at his own mind** and ask himself, however, honesty, “Am I

*biased?; but to look at the **mind** of the party before him.*

9. Thus, such an apprehension is to be seen from the *angle of a party and not of a Judge*, per *Ranjit Thakur* (*supra*). The argument to the contrary is rather not relevant. The facts show the department did not merely *harbour* such apprehension but rather had *acted upon it* by rushing to this Court in Crl.MC.No.3401/2022, hence it cannot be said to be flimsy or not reasonable. The question is not *if* there was any alleged violation of Delhi Jail Manual and Rules, but allegedly of his stature/influence to allegedly seek benefit *under such rules*. The apprehension raised were not at a belated stage, as the request for an *independent evaluation* were consistently made and rather the respondent rushed to this Court in Crl.MC. No.3401/2022 (*supra*), hence, all these facts were duly considered by the learned Principal District and Session's Judge, hence in view of above, it cannot be said the impugned order suffers from any illegality or need any interference.

10. The petition is therefore, dismissed. Pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

OCTOBER 01, 2022

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