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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 4492/2023

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr.S.V.Raju, learned ASG with
Mr.Ravi Prakash, CGSC, Mr.Arun
Khatri, SPP, Mr.Gaurav Saini
(Advisor/Asssistant Legal), Mr.Ashu
Kandelwal, Mr.Yasharth Shukla and
Mr.Aman Ruvarya, Advocates

versus

OM PRAKASH

..... Respondent

Through: Mr.Deepak Prakash, Mr.Subhash
Chaudhary, Mr.Ravindra Singh,
Mr.Sanjay Pal and Mr.Ajay Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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05.07.2023

CRL.M.A. 17181/2023 (for exemption)

Exemption allowed subject to just exceptions.

The application stands disposed of.

CRL.M.C. 4492/2023, CRL.M.A. 17182/2023 (stay)

Present petition has been filed by the Directorate of Enforcement (ED) challenging the order dated 30.06.2023 whereby the learned Vacation Roster Judge directed the ED to conduct an inquiry with regard to the working of Investigating officer and administrative failure of his superior officers, which led to the unjustified incarceration of the respondent Om

Prakash behind the bars for 17 days.

Mr.S.V.Raju, learned ASG along with Mr.Ravi Prakash, learned counsel submits that in fact in this case, as the respondent was avoiding to appear before the investigation officer, the ED moved the learned sessions court under Section 63 of PMLA r/w Sections 65/70 of Cr.P.C. for issuance of NBWs.

In view of the request made, the NBWs were issued. ED in execution of the NBWs apprehended the accused and produced him before the Vacation Judge on 12.06.2023 and specifically stated that respondent Om Prakash is not required at this stage for custodial interrogation and request was made to the court for issuing directions to the respondent for joining the investigation.

Learned ASG submits that after hearing these submissions, the court remanded the accused to custody for three days and was directed to be produced on 15.06.2023. Learned ASG has submitted that again on 15.06.2023, without any request on behalf of the ED, the learned Vacation Judge suo motu remanded the accused Om Prakash to custody till 29.06.2023. Learned ASG has submitted that therefore the directions issued by the learned Sessions Judge are totally uncalled for.

Mr.Deepak Prakash, learned counsel has appeared for the respondent and submits that ED is responsible for the illegal incarceration of the respondent for 17 days. Learned counsel submits that it was the duty of the officer appearing before the learned Sessions Judge to make a prayer to release Om Prakash immediately and since he failed to do so, the respondent Om Prakash was remanded to custody and was wrongly incarcerated for 17 days. Learned

counsel submits that it is a very sensitive issue wherein a person has been kept in custody for 17 days without any legal sanctity.

Learned ASG has stated at bar that no application for remand was moved by the ED before learned Vacation Judge and custody of respondent was never asked for by ED.

Mr. Deepak Prakash, learned counsel for the respondent has accepted the notice.

Let reply be filed.

List the matter on 04.09.2023.

In the meantime, the impugned order pertaining to direction to the ED to conduct an inquiry with regard to the working of Investigating officer and administrative failure of his superior officers, which led to the unjustified incarceration of the respondent Om Prakash behind the bar for 17 days is stayed.

DINESH KUMAR SHARMA, J

JULY 5, 2023

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