

23.0.2022

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Ct.No.42

as/akb

CRR No. 3943 of 2022

In Re : An application under Section 482 read with Section 397 of the Code of Criminal Procedure.

In Re: Enforcement Directorate.

....Petitioner.

Mr. Arijit Chakrabarti,

Mr. Deepak Sharma.

....for the Petitioner.

The Enforcement Directorate through its Assistant Director has filed the instant criminal revision challenging the legality, validity and propriety of the order dated 21st October, 2022 on the following grounds:-

- 1) The learned Chief Metropolitan Magistrate acted illegally and with material irregularity in allowing the learned Advocate for the opposite party/accused to all along remain present at the time of investigation, rendering the process of investigation absolutely baseless and irrelevant;
- 2) The learned Magistrate while issuing a direction upon the investigating officer to arrange for medical examination of the opposite party/accused during his custody with the Enforcement Directorate every 24 hours did not follow the guidelines in **D. K. Basu's** case.

The learned Advocate for the petitioner has placed a copy of the Advocate's letter showing service of notice upon the wife of the opposite party/accused which was duly received by the mother-in-law of the opposite party/accused. It is submitted by the learned Advocate for the petitioner that as today is Sunday, it is not possible for him to prepare and affirm affidavit of service in this regard.

However, the petitioner has filed a copy of the said Advocate's letter showing service of notice upon the wife and/or mother-in-law of the opposite party/accused. Let the copy of the said Advocate's letter be kept with the record.

The learned Advocate-on-record of the petitioner is directed to file affidavit of service positively on the next date of Vacation Bench, i.e. on 28th October, 2022.

At this stage, it is pertinent to mention that the competent authority of the Federal Bank, Park Street Branch lodged a FIR on 15th February, 2021 against one Aamir Khan under Sections 420/406/409/468/479/471/34 of the Indian Penal Code alleging commission of cheating, criminal misappropriation of money and forgery against the said Aamir Khan. On the basis of the said complaint, police registered Park Street P.S. Case No.30 of 2021 dated 15.02.2021. Similar complaint was lodged against the abovenamed accused by two private complainants at Hare Street Police Station. Specific case was also registered against the said Aamir Khan.

During investigation of the said two cases, it was ascertained that the said Aamir Khan and his associates committed criminal misappropriation of huge amount of money

by introducing false and forged online gaming Apps and insisting upon the users of the said App to spread the said online gaming Apps to others alluring and enticing high monetary return. In this way, the said Aamir Khan and his associates managed to accumulate huge amount of money. Number of bank accounts was created for keeping the said money. Money was earned, was also used in cryptocurrency and bitcoins purchased through various accounts.

Since the facts revealed during investigation of the abovenamed two cases, *prima facie* suggest violation of penal provisions under the Prevention of Money Laundering Act, 2002 (PMLA), Enforcement Directorate initiated ECIR No.KLZO-II/01/2022 dated 6th January, 2022. Enforcement Directorate conducted investigation of the aforesaid case. During investigation complicity of the present opposite party/accused transpired. The investigating team of the Enforcement Directorate conducted search in the house of the opposite party/accused and recovered a sum of Rs.1.6 crore in cash from his house on 20th October, 2022. The Enforcement Directorate got hold of the account through which the opposite party/accused purchased bitcoins. Statement of the opposite party/accused was recorded under Section 50 of the PMLA where he admitted his involvement in fake online gaming process and accumulation of money by way of criminal misappropriation and cheating from the user of the Apps. The opposite party/accused was arrested under Section 19 of the PMLA and he was produced before the learned Chief Metropolitan Magistrate, Calcutta on 21st October, 2022. The

Enforcement Directorate prayed for physical custody of the opposite party and such prayer was allowed by the learned Chief Metropolitan Magistrate, Calcutta directing the accused to remain under the custody of Enforcement Directorate till 28th October, 2022.

What has troubled the Enforcement Directorate is that by passing the impugned order, the learned Magistrate permitted the learned Advocate for the opposite party to remain present at the time of investigation by the investigating officer of the said case.

It is submitted by the learned Advocate for the Enforcement Directorate/petitioner that Section 41D of the Code of Criminal Procedure states –

“41D. Right of arrested person to meet an advocate of his choice during interrogation.- When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.”

It is submitted by the learned Advocate for the petitioner that the learned Magistrate failed to appreciate the difference between the accused person’s entitlement to meet an advocate of his choice during interrogation and giving unfettered authority to the learned Advocate for the accused/opposite party to remain present in course of investigation and interrogation of the accused/opposite party. If the learned advocate for the accused/opposite party is allowed to remain present throughout the interrogation of the accused, the interrogation would be not only fruitless but also rendering

such process into a baseless, formal compliance. Presence of the learned advocate for the accused/opposite party during interrogation will also reveal the course and direction of investigation to others. Therefore, in view of the said direction, the investigating officer of the Enforcement Directorate has not been able to interrogate the accused till date.

It is pointed out by the learned Advocate for the petitioner that previously the same learned Magistrate had passed the similar order in connection with another case against which the Enforcement Directorate was compelled to file a revision being **CRR 2665 of 2022 (Enforcement Directorate Vs. Partha Chatterjee)** and this Court vide order dated 24th July, 2022 held that such direction permitting presence of the learned advocate for the accused during investigation of the accused suffers from patent illegality and the same was set aside. The learned Advocate for the petitioner invites this Court to pass similar order in the instant revision.

It is further submitted by the learned Advocate for the petitioner that in **D. K. Basu's** case, the Hon'ble Supreme Court was pleased to pass a direction upon the investigating authority to get an accused under the police custody medically examined once in every 48 hours. The learned Magistrate without considering the fact that the accused is a young man aged about 37 years and having no ailment directed the investigating officer to arrange for his medical examination every 24 hours of his detention in police custody. It causes hardship to the investigating agency and the investigating agency is always duty bound to scrupulously follow the

directions of the Hon'ble Supreme Court as per the guidelines in **D. K. Basu's** case.

The instant criminal revision be admitted.

Petitioner is directed to serve further notice upon the opposite party/accused under registered speed post with acknowledgement due within next working day and file affidavit of service within seven days from the date of this order.

It is needless to say that Section 41D of the Code of Criminal Procedure was inserted in the statute by Amending Act 5 of 2009 with effect from 1st November, 2010. The purpose and object of introduction of Section 41D of the Cr. P. C. is to ensure fundamental right of a citizen enshrined in Article 21 of the Constitution of India. Such liberty of individuals cannot be curtailed likely. At the same time, it is the duty of the Court to strike a balance between the right of a citizen for being represented by an advocate during investigation and trial and the power of the investigating agency to carry on proper investigation to unearth the truth and collect evidence against the perpetrator of a crime punishable under any penal provision of the statute.

Therefore, Section 41D of the Code of Criminal Procedure protects an accused during interrogation entitling him to meet an advocate of his choice. It does not mean that the advocate of the choice will be permitted to be present in course of his entire interrogation.

Therefore, the relevant part of the impugned order is modified in the following manner:-

The Enforcement Directorate is entitled to interrogate the accused/opposite party during his detention with the Enforcement Directorate. Entire process of interrogation shall be videographed. The accused/opposite party shall be permitted to meet an advocate of his choice once for a day for half an hour during the course of his detention in the custody of the Enforcement Directorate.

The relevant portion of the impugned order is also modified directing the Enforcement Directorate to check up the opposite party/accused medically after a gap of each 48 hours during his detention in the custody of the Enforcement Directorate.

The above order is made only for an interim order for the purpose of the instant revision and will not act as a precedence.

The instant revision will be listed for hearing one week after Vacation.

Parties are at liberty to act on the server copy of the order.

(Bibek Chaudhuri, J.)