

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

+ **Crl. REV.P. No. 290/2011 & Crl.M.A. 7545/2011 (stay)**

% Reserved on: 27<sup>th</sup> July, 2011

Decided on: 2<sup>nd</sup> August, 2011

A. KRISHNA REDDY ..... Petitioner  
Through: Mr. G. Tushar Rao, Mr. P.S. Reddy,  
Mr. Atanu Mukherjee, Advs.

versus

C.B.I. .... Respondents  
Through: Mr. Dayan Krishnan, Mr. Gautam  
Narayan, Advs.

**Coram:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

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|--|---------------|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not Necessary |
| 2. To be referred to Reporter or not?  | Yes           |
| 3. Whether the judgment should be reported in the Digest?                    | Yes           |

**MUKTA GUPTA, J.**

1. By this petition the Petitioner seek setting aside of the order dated 15<sup>th</sup> June, 2011 as also the order dated 23<sup>rd</sup> May, 2011 and quashing of initiation of proceedings under Section 82 Cr.P.C in R.C. No. DAI-2010-A-0044 under

Section 420/467/468/471 IPC read with 120-B IPC and 13 (1) (d) read with 13 (2) of Prevention of Corruption Act (in short 'PC Act').

2. The contention of the learned counsel for the Petitioner is that the Petitioner was sub-contractor of M/s. Gem International which was itself a sub-contractor of M/s. Swiss Timing Ltd. (in short 'SLT'). The Petitioner entered into an agreement with M/s. Gem International on the 29<sup>th</sup> June, 2010 for laying of cables and related civil works for the TSR contract for the 17 stadiums. The Petitioner was never into picture when the Organizing Committee entered into agreement with the STL. The Petitioner entered belatedly because the work had to be completed in time as it was lagging behind and due to torrential rains extra work force, materials etc. were required. Despite the Petitioner neither being named in FIR nor having any connection with either M/s. STL or M/s. Gem International the premises of the Petitioner at Hyderabad were raided on 7<sup>th</sup> February, 2011 and documents were sought under Section 91 Cr.P.C. which were immediately handed over to the CBI. The Respondent's officers intensively interrogated the Petitioner at Hyderabad and their queries were satisfactorily answered. On 10<sup>th</sup> February, 2011 CBI sent a fax message to the office of the Petitioner directing him to furnish certain more documents and to bring some more witnesses to Delhi. As per the oral instructions, on 11<sup>th</sup> February, 2011 the Petitioner appeared

before the CBI officers and was subjected to a gruelling interrogation till late hours. He was again asked to appear on the 12<sup>th</sup> February, 2011. When he again appeared on the 12<sup>th</sup> February, 2011 at about 8.00 PM, he was asked to sign a notice purportedly issued under Section 160 Cr.P.C. directing him to appear on 13<sup>th</sup> February, 2011. The Petitioner had to leave for Hyderabad in early hours of 13<sup>th</sup> February, 2011 as his wife was seriously ill. This information was given by the Petitioner to the Investigating Officer on fax on 13<sup>th</sup> February, 2011.

3. Aggrieved by the action of the CBI, the Petitioner filed a writ petition being W.P. (Crl.) No.241/2011 before this Court seeking quashing of the abovementioned FIR which is pending adjudication before this Court. On 17<sup>th</sup> February, 2011 the Investigating Officer sent another letter by fax asking for some more documents on 21<sup>st</sup> February, 2011. Petitioner was unable to furnish the said documents. He informed the CBI about his inability. On 25<sup>th</sup> February, 2011 the Investigating Officer sent notices to Petitioner by fax to appear before the Investigating Officer on 2<sup>nd</sup> March, 2011. However, as the condition of the Petitioner's wife was still very bad, the Petitioner sent a letter to the Investigating Officer to defer the enquiry dates. On 8<sup>th</sup> March, 2011 CBI sent another notice under Section 91 Cr.P.C. to produce some more documents and to appear personally on the 11<sup>th</sup> March, 2011. Since there was

great disturbances at that time due to violent agitation regarding separate Telengana State and also due to ill-health of the wife of the Petitioner, Petitioner sent a fax message dated 10<sup>th</sup> March, 2011 requesting the postponement of investigation to 25<sup>th</sup> March, 2011. On 29<sup>th</sup> March, 2011 the learned Trial Court issued non-bailable and search warrants against the Petitioner. On 31<sup>st</sup> March, 2011 a search was conducted at the residential as well as office premises of the Petitioner, however, the Petitioner was not available at that time as he was in Madhya Pradesh.

4. According to the Petitioner, the Petitioner had sufficiently joined the investigation and submitted all documents. The learned Trial Court erred in not considering the fact that the Petitioner was not named in FIR and for the first time he was named as an accused in the charge-sheet filed by the CBI on 20<sup>th</sup> May, 2011 and, thus, there was no deliberate intention to hide or abscond from the process of law. Even on 31<sup>st</sup> March, 2011 the CBI conducted search at the residential as well as office premises of the Petitioner and it was clearly disclosed that the Petitioner was at work site at Madhya Pradesh. Reliance is placed on *Jayant Vishnu Thakur Vs. State of Maharashtra (2009) 7 SCC 104* to contend that learned Trial Court failed to appreciate what “abscondence” meant. It is, thus, prayed that the impugned order be set aside.

5. Learned counsel for the CBI on the other hand contends that the Petitioner appeared before the CBI only on 11<sup>th</sup> February, 2011 and 12<sup>th</sup> February, 2011. Thereafter, despite notices admittedly received he did not appear on 13<sup>th</sup> February, 2011 and left for Hyderabad without informing the CBI. It is contended that the falsity of the excuses made by the Petitioner was evident from the fact that on the one hand Petitioner claimed that he was unable to appear before the Investigating agency on account of Wife's illness, however admittedly on 31<sup>st</sup> March, 2011 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 Madhya Pradesh were furnished. The anticipatory bail application of the Petitioner was dismissed by the Hon'ble High Court of Andhra Pradesh on the 28<sup>th</sup> March, 2011. The stand of the CBI was clearly spelt out and is recorded in the order. Thereafter application for issuance of non-bailable warrants was filed on 29<sup>th</sup> March, 2011 which was allowed. The report with regard to non-bailable warrants being unexecuted was filed on 23<sup>rd</sup> May, 2011 and a proclamation was issued requiring the presence of the Petitioner on 14<sup>th</sup> July, 2011. The Petitioner after 12<sup>th</sup> February, 2011 evaded the process of investigation and, thus, there is no infirmity in the order. During investigation clear allegations have emerged against the Petitioner and the learned Trial Court conscious of

those allegations issued non-bailable warrants. Thus, there is no merit in the petition and the same be dismissed.

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 Cr.P.C. 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 12<sup>th</sup> 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 10<sup>th</sup> March, 2011 stating that he would appear before the Investigating Officer on 25<sup>th</sup> 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 29<sup>th</sup> 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.

7. Reliance of the Petitioner on *Jayant Vishnu Thakur (supra)* is misconceived. The Hon'ble Supreme Court was dealing with a case where the accused was being proceeded under Section 299 Cr.P.C. The Hon'ble Supreme Court laid down the conditions precedent for recording of the evidence in absence of an absconding accused. In the said case, the accused was absconding after he was arrested. In the present case, it is at the stage where the Petitioner is avoiding investigation/arrest and even non-bailable warrants are also not being executed against him, thus, the process of the Court has been issued. The Court is within its right to declare him as a proclaimed offender. Section 73 Cr.P.C. permits the Magistrate to issue a warrant even against a person, who is accused of a non-bailable offence and is avoiding arrest. After issuance of this process if Petitioner still does not submit to the Court, the Court would be within its jurisdiction to proclaim him as an absconder under Section 82 Cr.P.C.

8. In *Siddharam Satlingappa Mhetre v. State of Maharashtra, 2011 (1) SCC 694*, their lordships have brought forth the plight of large number of

under-trials who are languishing in jail for a long time even for allegedly committing very minor offences and held that Section 438 Cr.P.C has not been allowed in its full play. There is no denial to the fact that the liberty of an individual is precious and so is the society's interest in maintaining peace, law & order. It was thus held that arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of the case. The Court must carefully examine the entire available record and the allegations directly attributed to the accused and that these allegations should be corroborated by other material and circumstances on record. Applying the law laid down by their lordships, it may be noted that 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 Special Judge was further cautious that the investigation involved unearthing of conspiracy in awarding the tender and the money trail thereafter.

9. In *Inder Mohan Goswami & Anr.v. State of Uttaranchal, 2007 (12) SCC 1*, it has been held as under:-

“The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance

of warrants but as a general rule, unless an accused is charged with the commission of any offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.”

10. From the aforesaid facts it is clear that the investigating agency have sufficient prima facie evidence against the Petitioner to take further action against him. Therefore, I am of the opinion that the production of Petitioner in the present case before the Court is essential and thus, I find no illegality in the order passed by the learned Special Judge. The petition and application are dismissed being devoid of merit.

**(MUKTA GUPTA)**  
**JUDGE**

**AUGUST 02, 2011**  
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