IN THE COURT OF THE METROPOLITAN SESSIONS JUDGE :: HYDERABAD

DATED THIS THE 2nd DAY OF DECEMBER, 2021

Present: Smt. E. Tirumala Devi,
Metropolitan Sessions Judge,
Hyderabad.

CRIMINAL MISCELLANEOUS PETITION NO. 720/2021
IN
ECIR/HYZO/22/2021

BETWEEN:

Directorate of Enforcement, Represented by Deputy Director, Hyderabad Zonal Office, 3rd Floor, Shakar Bhavan, 5-10-174, Basheerbagh, Hyderabad – 500 004.

.....Petitioner/Complainant

AND

Shri Ravi Kumar, S/o. Babulal, Aged: 33 years, R/o. RZ26P/17A Street No.4, Indira Park 2nd Palam Colony, New Delhi – 110 025.

.....Respondent/Accused

This petition is filed by the petitioner praying that for the reasons stated therein to grant police custody of the Respondent/Accused for a period of 15 days, to the petitioner in the above said case.

This petition is coming before me for hearing upon perusing the petition and upon hearing Sri Dominic Fernandes, Special Public Prosecutor for Directorate of Enforcement, this Court made the following:-

:: **ORDER** ::

1. This petition is filed by the prosecution seeking fifteen days custody of the respondent/accused.

2. The crux of the petitioner's case is that the petitioner department is an investigating agency functioning under the Government of India, Ministry of Finance. The Department is empowered to investigate into matters of Prevention of Money Laundering Act,2002 (herein after referred to as PMLA) and the Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA). The Directorate of Enforcement is the sole competent authority to investigate into matters under the PMLA and FEMA. The investigating officer is authorised to investigate cases under section 48 and 49 of Prevention of Money Laundering Act,2002 read with Government of India Notification vide No.441 (E) dated 1.7.2005 and authorised to carry out the investigation by virtue of section 2(1)(na) of the PML Act.

2.2 That huge amounts were allegedly transferred by M/sLinkyun Technology Private Limited and Dokypay Technology Private Limited to several entities like M/s.Great Trans International, M/s.Asia Pacific Cargo Company, M/s.Radiant Spark Technology, M/s,Achiever Biz International, M/s.Connecting Worldwide, M/s.Genex Shipping Private Limited and that the modus operandi of money laundering was by using fake AWB and Cloud CCTV charges. That all the addresses provided by these firms to the banks are bogus and that these entities are nothing but flight by night operatives. The key managerial persons of these entities are absconding and not responding to multiple ED summons. That the above companies are shell companies operating from the same addresses with common directors/partners and that they are absconding and none of the entities are working at their registered addresses at present. That these companies have also made foreign outward remitances to Hong Kong companies.

2.3 That one of the entities mentioned above namely Genex Shipping Private Limited is audited by the accused herein and he is found to be also signing the balance sheet of Genex Shipping Private limited and that the foreign outward remittances made by Achiever Biz International and Radiant Spark Technology are made by the SBM Bank staff based on the Form 15 CB certificates issued by the accused. That his statement has been recorded at Delhi Zonal office on 26.11.2021 wherein he stated that the said business was given by Mr.Deepak Nayyar, who gives them professional work of the above mentioned companies. That he has admitted to have issued the Form 15 CB certificates. That in this massive scam, the accused persons with the connivance of the bank staff and active support and connivance of the accused herein has managed to send huge amounts of precious foreign exchange of around 1100 crores to Hong Kong in a short period of an year using foreign and fabricated Air Way bills and Cloud CCTV rental invoices.

2.4 The Enforcement Directorate has filed the present petition seeking custody a) to ascertain the real source of the amount of Rs.1100 crores which has been sent abroad.

b) to ascertain the whereabouts of the accused I.e, Mr.Deepak Nayyar and the other accused.

c) to ascertain the role played by the SBM staff in facilitating these remittances.

d) to ascertain the role of the common director's partners to further investigate into the inter-party banking transactions.

e) to ascertain any other crucial information pertaining to the said offences.

f) to identify more accused who were involved in such a massive fraud.

3. The counsel for the accused has filed counter denying the petition averments and stated that no cogent reasons are made out seeking the custody of the accused and that custody cannot be sought, except for the purpose of further investigation. That the Form 15 CB is one of the many documents required by the company to make any foreign outward remittances and that the income tax laws do not cast any obligation on the Chartered Accountant to question the economic rationale of the transaction or to step into the shoes of the petitioner to see whether the said transaction amounts to money laundering. That the respondent/accused is innocent and that he has only issued few 15 CB certificates and it does not amount to involvement in money laundering exercise. He further submitted that the respondent has already been questioned by the petitioners and that his custody is not required further by the petitioner.

4. Heard both the counsel.

5. The learned petitioner counsel has submitted that the custody of the petitioner is very much essential to extract the truth as all the accused including Deepak Nayyar who gave business to the accused herein are absconding.

6. The learned respondent counsel has submitted that the petitioner is just issued Form 15 CB certificate and that it is not the only document required to foreign outward remittances. He further submitted that the respondent is innocent and that he is already questioned by the ED authorities and his custody is not required for further investigation.

7. The point for determination is

"whether there are sufficient grounds to permit the custody of the accused?"

POINT:-

8. A perusal of the record reveals that the custody is required by the Enforcement Directorate to ascertain the real source of 1100 crores which has been sent abroad, to ascertain whereabouts of the accused I.e, Mr.Deepak Nayyar and others and also to ascertain the role played by the SBM Staff and other crucial information in relation to the alleged offences. The issuance of 15 CB certificates is admitted by the respondent in his counter. It is clear that the custody of the accused is required by the petitioner to facilitate further investigation in this matter. Therefore, it is opined that custody of 5 days would be sufficient to facilitate further investigation, but on certain conditions.

9. **In the result**, the petition is partly allowed.

Ravi Kumar/accused shall be given to the custody to the Deputy Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad, from 4.12.2021 to 8.12.2021.

The Enforcement authorities shall not use any threat, coercion or use any third degree methods against the accused during the course of interrogation.

The Enforcement authorities are directed to interrogate the accused in the presence of his counsel, if requested.

After completion of the interrogation, the accused shall be medically examined and produced before this court by 10.30 AM on 9.12.2021 without fail.

The Superintendent, Central Prison, Hyderabad, is directed to handover the accused to the Deputy Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad, by 10.00 AM on 4.12.2021.

Dictated by me, transcribed by the Stenographer Grade-I, Corrected and pronounced by me, on this the 2nd day of December, 2021.

Sd/-
METROPOLITAN SESSIONS JUDGE,
HYDERABAD.

DIS. NO. 3961 /MSJ/JW/HYD/2021 DATED: 2 -12-2021

Copy to
1) The Superintendent, Central Prison, Chanchalguda, Hyderabad.
2) The Directorate of Enforcement, Hyderabad.
3) The accused.

//TRUE COPY//

Superintendent
Metropolitan Sessions Judge's Court
Hyderabad.