



2025:CGHC:27960-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 342 of 2025

Vijay Kumar Bhatia S/o Shri Ashok Kumar Bhatia Aged About 55 Years R/o
5/6, Nehru Nagar East, Bhilai, District- Durg, Chhattisgarh 490020

--- **Petitioner(s)**

versus

1 - State Of Chhattisgarh Through Economic Offences Wing/ Anti- Corruption
Bureau, Through The Investigating Officer, Gaurav Path, Opp. Jai Jawan
Petrol Pump, Telibandha, Raipur, Chhattisgarh- 492001

2 - Directorate Of Enforcement Raipur Zonal Office, Through The Assistant
Director, 2nd Floor, Subhash Stadium, Moti Bagh, Raipur, Chhattisgarh
492001

--- **Respondent(s)**

For Petitioner(s)	: Ms. Meenakshi Arora, Senior Advocate assisted by Mr. Harshwardhan Parganiha and Mr. Mayank, Advocates.
For Respondent No. 1	: Mr. Vivek Sharma, Additional Advocate General
For Respondent No. 2	: Dr. Sourabh Kumar Pande, Advocate

Hon'ble Mr. Ramesh Sinha, Chief Justice

Hon'ble Mr. Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

26/06/2025

1. Heard Ms. Meenakshi Arora, Senior Advocate assisted by Mr. Harshwardhan Parganiha and Mr. Mayank, Advocates for the petitioner, Mr. Vivek Sharma, learned Additional Advocate General for the State/respondent No. 1 as well as Dr. Sourabh Kumar Pande, learned counsel for the respondent No. 2/Enforcement Directorate.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following relief(s):

“a. Call for the entire records of Corruption Case No. 01 of 2024 titled "State of Chhattisgarh vs. Arun Pati Tripathi & Ors.

pending consideration before the Learned Special Court (PC Act), at Raipur (C.G.);

b. Quash and set aside the Impugned Order dated 16.05.2025 issued by the Learned XI Addl. Dist. & Sessions Judge, at Raipur (C.G.) issuing the warrant of arrest against the present Petitioner for being bad in law;

c. Declare the arrest of the Petitioner as illegal and bad in law;

d. Quash all the consequential proceedings arising out of the Impugned Order dated 16.05.2025 qua the Petitioner; and

e. Pass any orders or directions as this Hon'ble Court may deem fit and proper in the interest of justice.”

3. The petitioner is a businessman based out of the State of Chhattisgarh having permanent residence at District Durg (C.G.). While the petitioner was at Indira Gandhi International Airport at New Delhi to board his flight to Brazil for a business trip, planned on an invitation of the Company for which he has been acting as the authorized dealer/distributor from the year 2014, he was apprehended citing reference of some Look Out Circular issued by the Directorate of Enforcement.
4. Based on a complaint filed by the Income Tax Department under Section 200 of the Cr.P.C., 1973 before the learned Tis Hazari Court, New Delhi, the Directorate of Enforcement, Raipur Zonal Office (for short, the ED), treating Section 120-B of the Indian Penal Code (*for short, the IPC*) to be a scheduled offence, registered ECIR No. RPZO/11/2022 (*for short, the ECIR 11*) for offences under Section 03 punishable under Section 04 of the Prevention of Money Laundering Act, 2002 (*for short, the PMLA*). On 11.07.2023, respondent No. 2/ED addressed a letter dated 11.07.2023

disclosing the predicate offence against one Mr. Anil Tuteja and Mr. Arunpati Tripathi under Section 66(2) of the PMLA, 2002 to the Director General of Police, Economic Offence Wing and Anti-Corruption Bureau, Chhattisgarh. The said information was shared based on the material gathered during the investigation undertaken by respondent No.2 in connection with ECIR 11. Based on the sharing of information, respondent No. 01, on 17.01.2024 registered FIR No. 04/2024 for offences under Section 07 and 12 of Prevention of Corruption Act, 1988 (*for short, the PC Act*) and Section 420, 467, 468, 471 & 120-B of IPC. The petitioner herein has been arraigned as accused No. 43 in the said FIR. The FIR registered by respondent No. 1 was based on the same material which was used by P.S Greater Noida, Commissionerate Gautam Buddh Nagar, Uttar Pradesh to register FIR No. 196 of 2023 dated 30.07.2023. All these material had been available with the respondent No. 01 prior to the protective orders passed by the Hon'ble Supreme Court of India in WP.(Crl) No. 153 of 2023 and other connected matters, on a prima facie determination of lack of any schedule offence. While registering the aforesaid FIR, respondent No. 01 has completely ignored its own prior enquiry into the same set of allegations wherein no offence was found. The said prior enquiry was conducted by the same Investigating Officer from August - December 2023. Further, a Departmental Enquiry was also conducted by the Commercial Tax (Excise) Department, Government of Chhattisgarh wherein no discrepancy was found in relation to the liquor trade in the State of Chhattisgarh. Thus, ignoring its own investigation and the factum of exoneration in departmental enquiry, respondent No. 1 has registered the present FIR.

5. Ms. Meenakshi Arora, learned Senior Advocate appearing for the petitioner submits that the Hon'ble Supreme Court, vide its judgment dated 08.04.2024 passed in WP(Crl.) No. 153 of 2023 and other connected matters was pleased to quash the prosecution complaint dated 04.07.2023 filed by respondent No.2 in ECIR 11 before the learned Special Court (PMLA), at Raipur (CG) for there being no scheduled offence. The petitioner was not arraigned as an accused in the said prosecution complaint. The quashing of the prosecution complaint in ECIR 11 by the Hon'ble Apex Court immediately led to the registration of a fresh ECIR No. RPZO/04/2024 on 11.04.2024 ("ECIR 04") treating the present FIR as the predicate offence. Thus, in effect by sharing information under Section 66(2) of the PMLA, 2002, respondent No.2 has itself caused to create a scheduled offence with an oblique motive to sustain its otherwise patently illegal investigation into the alleged liquor scam.
6. Ms. Arora further submits that the respondent No. 1, from the date of registration of the FIR has filed as many as 03 charge-sheets (on 29.06.2024, 27.09.2024 and 17.11.2024) before the learned Special Court (PC Act), at Raipur arraigning a total number of 11 accused persons, citing more than 300 witnesses and relying upon 300 plus documents, yet the present petitioner as of the date of his arrest was not even served with a single summon calling upon him to join the investigation much less being arraigned as an accused in any of the charge-sheets. On 16.05.2025, respondent No.1 moved an application before the Learned XI Additional District & Sessions Judge, at Raipur seeking issuance of warrant of arrest against the petitioner alleging that the petitioner being a partner of a FL-10A licensee Company, engaged in the business of purchase and sale of liquor, has illegally been

benefited of crores of rupees. The said application was based on the premise that despite making every possible attempt to reach out to the the Petitioner, the respondent No.1 was unable to establish any connection with him and therefore, is of a firm belief that the petitioner is absconding. Notably, the said application ought to have been heard and disposed of by the learned 1 Additional Dist. & Sessions Judge, at Raipur who has been conferred with the powers of a Special Court in terms of Section 03 of the PC Act, 1988. However, owing to the absence of the learned Judge because of the ongoing summer vacation, the learned IX Additional Dist & Sessions Judge, at Raipur, allowed the application preferred by the respondent No. 1 and a warrant of arrest was issued against the present petitioner.

7. Ms. Arora further submits that the petitioner is a permanent resident of Bhilai, District Durg with deep roots in the society. Needless to mention that the petitioner as on the date of issuance of the warrant of arrest was still residing at the same residential address whereon respondent No. 2 had conducted search and seizure under Section 17 of the PMLA twice on 09.05.2025 and 23.08 2023 in connection with ECIR 11 and ECIR 10 respectively. A summon dated 10.07.2023 was also issued by respondent No. 2 under Section 50 of the PMLA, 2002 in connection with ECIR 11 calling upon the petitioner to remain present at their Raipur Zonal Office on the next day at 10.30 a.m.. The said summon was duly acknowledged and replied to by the present petitioner vide his reply dated 11.07.2023 wherein he sought information/documents as to the details of the scheduled offence, reasons to believe recorded under Section 17(1) of the PMLA leading to the search and seizure at the petitioner's residence on 09.05.2023 and a letter authorizing the said search and seizure. While the petitioner was undergoing treatment for

cirrhosis of the liver and reduced kidney function at 'Sir H.N. Reliance Foundation Hospital', Mumbai, Maharashtra having been referred from Ramkrishna Care Hospital, Raipur, the Officers of respondent No.2 visited him at the hospital and served a summons dated 14.09.2023 in connection with ECIR 10, requiring his appearance on the same day at 04:00 PM. Consequently, the petitioner's statement under Section 50 of the PMLA was recorded at the hospital. Though the summon was issued in connection with ECIR 10, the petitioner was also interrogated as regards the alleged Liquor Scam. Furthermore, the petitioner has been falsely implicated as an accused in a widely reported Criminal Case No. 5465/2018 pending trial before the learned Special Magistrate (CBI), at Raipur which is very much in public domain. As a matter of fact, the petitioner had been regularly entering his appearance in person in the said case which can be evidenced from the order-sheets. The petitioner has also recently filed a revision petition before the learned Special Court (CBI) at Raipur against the order framing charges passed in the criminal case, for which the petitioner had to swear in affidavits before the Public Notary. Since the material gathered during the course of investigation carried out by respondent No.2 in connection with ECIR 11 was supplied to respondent No.1 which formed the very basis of the registration of the present FIR, thus, one could not fathom any reason as to why the respondent No.1 was oblivious of the fact that the petitioner has extended all his cooperation in the investigation and was readily available for interrogation at all times at his residence.

8. Ms. Arora next submits that on 30.05.2025, when the petitioner along with his family was set to travel to Sau Paulo, Brazil, he was apprehended at around 09:30 p.m. at Indira Gandhi International Airport, New Delhi by the officers of the ED citing some look out circular issued

by it in relation to the alleged Mahadev Betting App Scam. Thereafter, the petitioner was not allowed to board his flight and was halted over-night at the Airport. The next morning i.e. on 31.05.2025, the officers of respondent No.2 asked the petitioner to accompany them to some undisclosed location. It was upon the protest of the petitioner to know the whereabouts of the location where he was being taken to, the petitioner was reluctantly informed by the officers of ED that he was being taken to Gurugram. Upon reaching respondent No.2's Zonal Office at Gurugram, one of the Officers of respondent No.2 issued a summon, manually filling the details right in front of the Petitioner, calling upon him to be present on the same date at 12:40 hrs. Ms. Arora submits that the said summon was issued in connection with ECIR No. RPZO/10/2022 under the letter-head of the Raipur Zonal Office. The petitioner was thereafter interrogated till 18:00 hours after which he was made to wait for some formalities. While the petitioner was still waiting as instructed by the Officers of the ED, he was handed over to some people who introduced themselves to be from respondent No.1. The petitioner was told that he was being taken to Raipur. Instead, the petitioner travelled on a flight from New Delhi to Nagpur, Maharashtra with a common PNR number which was booked by the officers accompanying him. The petitioner was neither shown any warrant of arrest nor his signature was taken thereupon as a token of acknowledgment or on any memo of arrest. On reaching Nagpur, the petitioner was asked to book a cab to Raipur at his own expenses which was booked by him from Kamakshi Tours & Travels, the receipt whereof bears the departure time of 11:18 p.m. on 31.05.2025. The petitioner was then brought to the Head Quarter of respondent No.1 on the night intervening 31.05.2025 and 01.06.2025 where he was kept over-night. Despite multiple requests, the petitioner

was neither allowed to inform his family members nor his Advocate. When the petitioner's counsel learnt from its sources that the petitioner has been allegedly detained from Delhi, came to visit him at the Head Quarters of respondent No.1 on 01.06.2025 in the morning. When the petitioner's Advocate asked about the basis of such detention, he was shown a warrant of arrest by the officer concerned which did not bear any signatures of the petitioner. Later, the petitioner was orally informed by the Officer concerned of respondent No.1 that he was being arrested in connection with the alleged Liquor Scam and was supplied the grounds of arrest at around 01:15 p.m. on 01.06.2025. The intimation of the petitioner's arrest was given to his counsel at 01:28 p.m. The petitioner thereafter, on the same date at around 03:00 p.m. was produced before the JMFC, Raipur, being the Remand Judge on Sunday, where respondent No.1 sought his custodial remand till 09.06.2025. However, the learned JMFC was pleased to send the petitioner to judicial custody for one day. On 02.06.2025, the petitioner was again produced before the learned IX Additional Dist & Sessions Judge, at Raipur wherein again his custodial remand was sought till 09.06.2025. The learned Sessions Judge partially allowed respondent No.1's application and granted custodial remand of the petitioner to the respondent No.1 till 06.06.2025. Subsequently, the petitioner was produced on 06.06.2025 before the learned XI Additional District Sessions Judge, at Raipur wherein respondent No.1 sought extension of his police remand until 16.06.2025. However, the learned Sessions Judge partially allowed the respondent's application and the custodial remand of the petitioner was extended till 09.06.2025.

9. Ms. Arora submits that the learned XI Additional Dist. & Sessions Judge, Raipur has passed the impugned order issuing warrant of arrest against

the petitioner, without caution and circumspection, in scant regard of the petitioner's fundamental rights guaranteed under Article 21 of the Constitution of India, 1950 and therefore, is bad in law. The learned Judge, while issuing the warrant of arrest against the petitioner ought to have taken a holistic view of the matter rather than solely relying upon the contention of respondent No.1. The respondents did not place any material on record to demonstrate that the petitioner was evasive, non-cooperative or absconding, which could have justified the issuance of a non-bailable warrant. In the absence of such material, the arrest of the petitioner is arbitrary, excessive, and disproportionate to the needs of investigation. The respondent No. 1, while seeking issuance of warrant of arrest against the petitioner had suppressed material fact that he was readily available as well as approachable by all means for the purposes of investigation. The petitioner has consistently remained available for interrogation, as evidenced by his full cooperation with the investigation conducted by respondent No.2 in connection with either ECIR 11 or ECIR 10, by complying with all the summons issued to him. Needless to mention had the petitioner been given an opportunity by the respondent No. 1 to join the investigation, he would have cooperated by all means.

- 10.** Ms. Arora further submits that the impugned order dated 16.05.2025 does not indicate any examination of whether the issuance of an arrest warrant was necessary or the least restrictive means available in the circumstances. The learned Sessions Judge ought to have considered whether the petitioner posed any risk of absconding, tampering with evidence, or obstructing the course of justice. In the absence of any such findings, the impugned order suffers from infirmity and therefore, is unsustainable in law. The present FIR was registered almost an year and a half ago in the month of January 2024, the petitioner though being

a named accused was never called upon to join the investigation. No notices under Section 35(3) of the BNSS, 2023/Section 41-A of the Cr.P.C. was ever issued in his name by respondent No.1. The non-bailable warrants cannot and must not be issued in a routine manner and that the liberty of an individual cannot be curtailed unless necessitated by the larger interest of public and the State which was altogether missing in the instant case. The petitioner was neither shown the warrant of arrest nor substance thereof was notified/communicated to him when he was apprehended at Gurugram by the Officers of respondent No.1. Such a failure on the part of respondent No.1 is in the teeth of the mandate of Section 77 of the BNSS, 2023/Section 75 of the Cr.P.C., 1973. Hence, the petition deserves to be allowed.

11. On the other hand, Mr. Vivek Sharma, learned counsel for the respondent No. 1/State as well as Dr. Saurabh Kumar Pande, learned counsel for the respondent/ED submit that the order passed by the learned Additional Sessions Judge is just and proper warranting no interference. The petitioner is a named accused in the FIR bearing No. 4/2024. The respondent No. 1 has filed as many as 03 charge-sheets (on 29.06.2024, 27.09.2024 and 17.11.2024) before the learned Special Court (PC Act), at Raipur and the investigation is still going on and as such, the arrest of the petitioner was very much required.
12. We have heard learned counsel for the parties, perused the pleadings and documents appended thereto.
13. It would be apposite to quote the order passed by the learned trial Court, which is sought to be challenged herein. The same reads as under:

“16/05/2025

पीठासीन न्यायाधीश के ग्रीष्मकालीन अवकास पर होने से कार्यविभाजन आदेशानुसार प्रकरण मेरे समक्ष प्रस्तुत किया गया।

उपसंचालय अभियोजन श्री मिथलेश वर्मा ने आवेदन वास्ते त्वरित सुनवाई प्रस्तुत किया गया। आवेदन में वर्णित कारण के दृष्टिगत प्रकरण आज कार्यवाही में लिया गया।

इसी स्तर पर श्री सुरेश कुमार ध्रुव, उप पुलिस अधीक्षक, ई.ओ. डबलू एवं ए.सी.बी रायपुर छ0ग0 की ओर से आवेदन वास्ते प्रकरण के फरार आरोपीगण बी.आर.लोहिया, विजय भाटिया एवं राजीव द्विवेदी के विरुद्ध गिरफ्तारी वारंट जारी किये जाने बाबत प्रस्तुत किया गया।

उक्त आवेदन में यह उल्लेख किया गया है कि अपराध क्रमांक 04/2024 की विवेचना के दौरान यह पाया गया है कि आरोपीगण बी.आर.लोहिया एवं राजीव द्विवेदी क्रमशः ईगल हंटर साल्यूशन एवं प्राईमवन वर्कफोर्स प्रा,लि, एजेंसी जो मेन पावर एजेंसीस हैं, के संचालय है, जिनके अधीन कार्य करने वाले व्यक्तियों के द्वारा बी-पार्ट की शराब दुकान के प्रीमियरों के निर्देश के आधार पर तयशुदा व्यक्ति या स्थान पर पहुंचाते थे। आरोपी विजय भाटिया एफ.एल 10ए लायसेंसधारी कंपनी (शराब क्रय-विक्रय करने वाली कंपनी) का हिस्सेदार है, जिसके द्वारा उक्त शराब क्रय-विक्रय के एवज में अवैया रूप से करोड़ों रुपये का लाभ अर्जित किया गया है। उक्त आरोपीगण से संपर्क करने का हर संभव प्रयास किया गया है, किंतु वे उपस्थित नहीं हो रहे हैं। आवेदन में उक्त आरोपीगण की उपस्थिति हेतु निरंतर प्रयास के पश्चात भी उनके फरार होने का उल्लेख किया जाकर उनके विरुद्ध गिरफ्तारी वारंट जारी किये जाने का निवेदन किया गया है।

उक्त आवेदन के परिप्रेक्ष्य में संबंधित विवेचक को सुना जाकर, केस डायरी का अवलोकन किया गया। जिन आरोपीगण के विरुद्ध वारंट जारी किये जाने का निवेदन किया गया है, उनकी प्रथम दृष्टया गिरफ्तारी से बचने का प्रयास कर, फरार होने दर्शित है। माननीय सर्वोच्च न्यायलय द्वारा न्यायदृष्टांत "राज्य द्वारा सी.बी.आई विरुद्ध दाउद इब्राहिम कास्कर एवं अन्य" (2000) 10 एस.सी.सी 438 की कंडिका में प्रतिपादित मद अग्रलिखित होकर हस्तगत प्रकरण के परिप्रेक्ष्य में महत्वपूर्ण होकर अवलोकनीय है:-

Subject : (1) Whether power under Section 73 Cr.P.C. can be invoked at investigation stage?

“Yes” Section 73 Cr.P.C. is of general application. Even in course of investigation, Court can issue warrant under this provision to apprehend a person accused of non-bailable offence.

प्रकरण की परिस्थिति एवं उपरोक्त समादरणीय न्यायदृष्टांत में प्रतिपादित मत के आलोक में आवेदन में उल्लेखित आरोपीगण बी.आर. लोहिया, विजय भाटिया एवं राजीव द्विवेदी के विरुद्ध बगैर तिथि का गिरफ्तारी वारंट जारी किये जाने को स्वीकार किया जाता है। उक्त आरोपीगण के विरुद्ध बेमियादी / बगैर तिथि का गिरफ्तारी वारंट जारी किया जावे।

प्रकरण पूर्ववत् उप पुलिस अधीक्षक, ई.ओ.डब्ल्यू एवं ए.सी.बी रायपुर की ओर से आवेदन वास्ते आरोपी बंसल उर्फ पप्पू बंसल के विरुद्ध गिरफ्तारी वारंट जारी करने हेतु दिनांक 19/05/2025 तथा अभियुक्तगण की ओर से प्रस्तुत लंबित आवेदनों के जवाब / तर्क एवं अभियुक्त कवासी लखमा के परिप्रेक्ष्य में अभियोग पत्र प्रस्तुति हेतु दिनांक 23/05/2025.

हस्ताक्षर

(अजय कुमार खाखा)

एकादश अपर सत्र न्यायाधीश,

रायपुर

वास्ते /— विशेष न्यायाधीश (भ्र.नि.अधि.)

सह प्रथम अपर सत्र न्यायाधीश

रायपुर (छ.ग.)

14. From perusal of the document appended with the petition, it transpires that the petitioner is one of the named accused and also the prime accused. One of the main contention of the learned counsel for the petitioner is that since despite filing three charge sheets, the petitioner has not been named in the charge sheets, thus, he is not an accused in this case and all the consequential proceedings are bad in law. This submission cannot be accepted as admittedly, the petitioner is named in the FIR and his name finds place at serial No. 43 of the list of the

accused and as per the learned counsel for the respondents, the investigation is still going on.

15. It is the further argument of the learned counsel for the petitioner that the learned Additional Sessions Judge has committed an error by issuing a non-bailable warrant of arrest. On a specific query by this Court as to on what basis it is being contended that it was a non-bailable warrant of arrest, Ms. Arora admits that it was a wrong submission on her part and she stood corrected stating that the learned Additional Sessions Judge has merely issued a warrant of arrest for securing the presence of the petitioner.
16. It is not in dispute that the petitioner is a named accused in the FIR which relates to a big liquor scam of the State of Chhattisgarh and along with the petitioner, there are as many as 70 other named accused. The proceeds of crime in this case is estimated to be Rs. 2161 crores. According to the respondent No. 1, the State has filed three charge sheets and the investigation is still going on. The learned Additional Sessions Judge has observed in its order that as per the application filed by the State, the accused persons were tried to be contacted for their appearance and they seem to have absconded. The case diary states that the petitioner is an absconder.
17. Section 73 of the Cr.P.C is in relation to issuance of warrant of arrest by the Court. The same reads as under:

“73. Warrant may be directed to any person. (1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

xxxx”

18. In ***State through CBI v. Dawood Ibrahim Kaskar & Others*** {(2000) 10 SCC 438}, the Hon'ble Apex Court has observed as under:

"21. That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this Section a police officer can investigate into a non cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his power under Section 73, for the person to be apprehended is 'accused of a non-bailable offence and is evading arrest.'

22. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C' of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the

provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where inspite of its best effects the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI. [Section 8 (3) in case the person is accused of an offence under TADA].

23. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summon and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.

24. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on

bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167 (3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Court solely for the production of the accused before the police in aid of investigation.”

19. The petitioner herein is an accused of offences under Sections 420, 467, 468, 471 and 120B of the IPC and Section 7 and 12 of the PC Act which are non-bailable offences. According to the learned counsel for the ED, a lookout notice was already issued against the petitioner by the ED in relation to Mahadev Betting App scam.
20. When a query was made to the learned counsel for the petitioner as to whether the petitioner had earlier filed any application seeking anticipatory bail or otherwise after he was named in the FIR and before he was arrested, Ms. Arora submits that since the petitioner was never summoned in the entire 1 ½ years after registration of the FIR, there was no occasion for the petitioner to seek for any protective order. However, it is an admitted position that after being arrested on 01.06.2025, the petitioner had applied for grant of regular bail which stood rejected by the learned trial Court vide order dated 20.06.2025 and since then, he is in judicial custody.

- 21.** On a pointed query being made to the learned counsel for the petitioner as to why a bail application has not been filed by the petitioner before the High Court seeking grant of regular bail and instead the present petition under Article 226 of the Constitution of India has been filed, seeking relief(s) as aforesaid, it is submitted that not only the order dated 16.05.2025 passed by the learned trial Court is bad in law, but the consequential proceedings are also illegal and as such, the petitioner has prayed for quashing of the consequential proceedings also by way of this petition.
- 22.** In the present case, the conduct of the petitioner is of much importance. The learned trial Court had directed for issuance of warrant of arrest against the petitioner on 16.05.2025 and the petitioner planned to go abroad i.e. Brazil on 30.05.2025 which prima facie shows that the petitioner was aware that he could be arrested at any point of time and by leaving the country, he was trying to evade his arrest and had no intentions to cooperate with the investigation and he is named in the FIR.
- 23.** When the petitioner is named in the FIR, it was for the petitioner to seek appropriate relief before the competent jurisdictional Court at an appropriate stage, and when the respondent authorities were seeking his appearance for investigation, the petitioner was not turning up and in such circumstances, there was no other option for the Investigating Officer but to pray before the learned trial Court for issuance of a warrant of arrest. Further, even if the Investigating Officer did not summon the petitioner for a long time, it would not automatically absolve him from the liability of cooperating with the investigation. The petitioner himself could have approached the Investigating Officer concerned and explained his stand/situation which has not been done, neither the petitioner has taken recourse to any competent jurisdictional Court

seeking any protective order in his favour. It transpires that as the investigation proceeded, the involvement of the petitioner was found and he was being searched but the petitioner could not be traced.

- 24.** Even as per the own averments of the petitioner, he alongwith his family were trying to go abroad i.e. Brazil and when a case of such nature is pending investigation, the authorities could not have let him go and as such, his arrest cannot be said to be illegal. It is the case of the respondent/State that the investigation is still going on and more than 300 witnesses have been examined and after filing of the first charge sheet, two more supplementary charge sheets have been filed.
- 25.** The reasons assigned by the learned Additional Sessions Judge while passing the impugned order is just and proper and reasons are well merited. We do not find any good ground to interfere with the same and no relief as prayed for in this petition can be granted to the petitioner.
- 26.** Resultantly, this petition stands **dismissed**. However, the petitioner is at liberty to seek remedy for regular bail, if so advised, as his bail in the present case has been rejected by the trial Court on 20.06.2025, if aggrieved by the same.

Sd/-
(Bibhu Datta Guru)
JUDGE

Sd/-
(Ramesh Sinha)
CHIEF JUSTICE

HEAD NOTE

Section 73 of the Cr.P.C. (now Section 75 B.N.S.S) empowers a Magistrate to issue a warrant of arrest against an accused who is alleged to have committed an offence that is non-bailable and is evading his arrest, even during the course of investigation.