

**IN THE COURT OF SH. DEVENDER KUMAR JANGALA,  
VACATION JUDGE/ASJ-05, NEW DELHI DISTRICT,  
NEW DELHI.**

**ECIR no. ECIR/20/HIU/2021  
Enforcement Directorate Vs. Om Prakash**

30.06.2023.

Present: Sh. Arun Khatri, Ld. Special Public Prosecutor for ED through Video conferencing.  
Sh. Akshay Rana and Sh. Luv Sharma, Advocates/Associates of Sh. Arun Khatri are present in person.  
Sh. Dhananjay Kumar and Sh. Sudhir Kumar, Ld. counsel for the accused Om Prakash.  
Accused Om Prakash produced from JC.  
Investigating Officer Sh. Sunil Kumar Meena, Assistant Director, Enforcement Directorate is present in person.

1. The accused Om Prakash is produced from judicial custody, however, neither any application for extension of custody, nor any application seeking his release is moved by the department. In view of this ambiguity the statement of the investigating officer Sh. Sunil Kumar Meena, Assistant Director, Directorate of Enforcement was recorded in which it is stated that the Enforcement Directorate does not want custody of the accused Om Prakash S/o Jaglal Mahto extended at this stage.

2. **Brief facts:** In the present case FIR no.141/21 was registered in PS Special Cell, Delhi Police for predicate offences and on the basis of same Directorate of Enforcement registered ECIR no. ECIR/20/HIU/2021. In the present case on 11.05.2023 during investigation an application for issuance of NBWs of the present accused Om Prakash was moved by the

ED, which was allowed. Thereafter NBWs were sent to SHO PS Kotla Mubarakpur on behalf of ED vide letter no.ECIR/20/HIU/2021 dated 16.05.2021 for execution. It appears that the date of 16.05.2021 is wrongly mentioned by the agency because the order regarding issuance of NBWs was passed on 11.05.2023. Hence, the letter could not have been written on 16.05.2021. Thereafter the applicant/accused approached the court of Ld. Additional Sessions Judge-06, New Delhi for grant of anticipatory bail under Section 438 Cr. PC which was opposed by Enforcement Directorate. Therefore, the application for anticipatory bail moved on behalf of accused Om Prakash was dismissed vide detailed order dated 09.06.2023.

3. The accused Om Prakash was arrested by the Enforcement Directorate on 12.06.2023 in pursuance of open ended NBWs and was produced before the Ld. Vacation Judge on the same day and was remanded to judicial custody for three days. Thereafter the judicial custody of the accused Om Prakash was extended for 14 days on an application before another Ld. Vacation Judge vide order dated 15.06.2023. Now after completion of 14 days judicial custody, the accused Om Prakash is produced before this court by the jail authorities.

4. A very precarious situation has arisen before this court that the agency had got issued the NBWs against the accused Om Prakash and arrested him. The accused was remanded to judicial custody for 3 days vide order dated 12.06.2023 and again for 14 days vide order dated 15.06.2023. Now after completion of 17 days in custody by the accused, it

is stated by the IO that the Enforcement Directorate does not want the custody of the accused Om Prakash extended at this stage.

5. **Article 21 of the Constitution of India** provides that no person shall be deprived of the life or personal liberty except according to the procedure established by law. The personal liberty is one of the cherished object of Indian Constitution and deprivation of the same can only be as per the procedure formulated and provisions thereof, as stipulated under article 21 of the Constitution of India. Liberty is one of the most essential requirement of modern man. It is a delicate fruit of a mature civilization. It is the duty of each and every government authority to give due respect to the right of personal liberty guaranteed under the Constitution of India.

6. The agency after the arrest of the accused was either required to get his custody extended from the court or should have moved an application for his release from the custody, as per provisions of law but the Enforcement Directorate has fails to comply with any of the mandate of law. The onus is upon the arresting officer to exercise this option because the liberty of that person has been curtailed only at the instance of the said agency. The arresting authority can not state merely that now after completion of 17 days in custody, it does want the extention of custody of accused further. There is no change of circumstances from the date of arrest till today. Had there been justified ground for arresting the accused, the same should have been in existence as on today because nothing

happened during this intervening period. Had there been no ground to arrest or to keep this person in custody, the agency should have done so on the first date of production before the court, without waiting for the incarceration of the accused behind the bars for 17 days. It appears that the accused has suffered the custody period of 17 days due to the callous approach of the agency against the fundamental right of personal liberty guaranteed under the Constitution of India and also contrary to the provisions of Code of Criminal Procedure(Cr.PC) also.

7. The power of arrest could not be allowed to exercised in arbitrary manner. A person should be arrested only when the justified circumstances exists. No person is allowed to be detained in custody without reasonable ground.

8. In view of above, it is clear that there is no justified ground to keep the accused Om Prakash in custody for any further period. **Accordingly accused Om Prakash is released from custody by this court in exercise of powers under Section 169 of Cr. PC. Jail Authorities are directed to release the accused Om Prakash, if he is not required to be detained in some other case. Copy of this order be immediately sent to the Jail Superintendent concerned for compliance.**

9. IO has placed on record the copy of order dated 09.06.2023 whereby the anticipatory bail application of the accused has been dismissed by Ld. Additional Sessions Judge-06, New Delhi. The perusal of

the said order would reveals that this court while deciding an anticipatory bail application in case FIR no. 141/21, PS Special Cell vide order dated 16.02.2023 directed the Special Commissioner of Police(Special Cell), Delhi Police to send the copy of complaint bearing no. C-704/22 alongwith its annexures to the Directorate of Enforcement for information as the circumstances of the matter were found shrouded in suspicion. **Therefore, copy of this order be sent to Director, Directorate of Enforcement with the directions 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 accused Om Prakash behind the bars for 17 days. The enquiry report be filed before this court within 15 days.**

10. **Copy of this order be also sent to the Secretary, Department of Revenue, Ministry of Finance, Government of India for information.**

**(Devender Kumar Jangala)  
Vacation Roster Judge  
ASJ-05, New Delhi District  
Patiala House Courts, New Delhi  
30.06.2023**