



2024:DHC:8707



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****RESERVED ON -20.09.2024**

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PRONOUNCED ON -08.11.2024

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CRL.M.C. 1002/2020, CRL.M.A. 4037/2020

SANJAY BHANDARI

.....Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv. with
Mr. Avneesh A. Mr. Abhishek
Nassing, Mr. Shantanu Parokar, Mr.
Shaurya Chourasiya, Mr. Shreedhar
Kale, Advs.

versus

DIRECTORATE OF ENFORCEMENT

.....Respondent

Through: Mr. Zoheb Hossain, Special Counsel
(through VC), Mr. Anupam Sharma,
Mr. Vivek Gurani, Mr. Kartik
Sabharwal, Mr Vivek Gaurav, Ms.
Abhipriya Rai, Mr. Sanwir Singh,
Advs.

CORAM:**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T****DINESH KUMAR SHARMA, J :**

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BRIEF FACTS

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the Miscellaneous Application No. 249/2019 dated 13.12.2019 filed under Section 4, 10 and 12 of the Fugitive Economic Offenders Act before the Court of Ld. Special Judge, Rouse Avenue Court Complex, Delhi, the summoning order dated 24.12.2019 and all proceedings emanating therefrom.
2. The petitioner submitted that the material on record does not meet the essential ingredients for declaring the petitioner herein as a Fugitive Economic Offender, and thus the proceedings are not maintainable. The petitioner has argued that the Fugitive Economic Offenders Act, 2018, can apply only in cases where a Non-Bailable Warrant is issued against the accused person, and where the value involved in such Scheduled Offence is one hundred crores rupees or more. The petitioner contends that the impugned Miscellaneous Application merely makes a bold averment that “the accused is covered under the definition of Fugitive Economic Offender as defined under Section 2(f) of the Act.” It further states that “the proceeds of crime in the Scheduled Offence are in excess of Rs. 100 crores,” which has been confirmed by the Income Tax Authorities via their communication dated 09.07.2019 (Annexure A-6).
3. The petitioner has asserted that there is not a shred of evidence to show that the proceeds of crime allegedly generated by the petitioner from the Scheduled Offence are Rs. 100 crores or more. Furthermore, it has been submitted that the Directorate of Enforcement has relied on the



communication dated 09.07.2019 from the Income Tax Department to claim that the alleged proceeds of crime are in excess of Rs. 100 crores. However, the said communication itself states that the assessment under the Black Money Act against the petitioner has not been finalized. In the absence of any conclusive assessment against the petitioner under the Black Money Act, there is no finding of tax evasion; therefore, there is no basis to assert that the alleged proceeds of crime are in excess of Rs. 100 crores.

4. The petitioner has argued that a mere communication from the Income Tax Department to the Directorate of Enforcement cannot form the basis for proving that the petitioner has committed a Scheduled Offence where the proceeds of crime are in excess of Rs. 100 crores. It has been submitted that the requirements under Section 2(1)(m) and the evidentiary burden under Section 16 of the Fugitive Economic Offenders Act are not satisfied, and thus the Complaint ought to be quashed.
5. The petitioner has highlighted that the consequences of being declared a Fugitive Economic Offender are severe, including the confiscation of his property and barring him from defending any civil claims, effectively amounting to an economic death penalty. The petitioner has argued that it is essential for the assessing officer under the Black Money Act to first establish the tax liability upon the assessee; only then can the officer proceed to allege that such assessee willfully attempted to evade tax. The petitioner contends that tax liability can only arise after the completion of assessment, and therefore, no prosecution for tax evasion can be initiated without completion of the



assessment. Furthermore, the petitioner asserts that there is not even an iota of evidence in the entire impugned Miscellaneous Application indicating that the petitioner owns any of the assets referred to therein, nor is there any document showing the ownership of any of the assets attributed to the petitioner.

6. The petitioner has alleged that there is blatant arbitrariness and a lack of application of mind behind instituting the present impugned application. The petitioner has asserted that the agency has failed to consider that the alleged proceeds of crime (i.e., the alleged foreign assets of the petitioner) mentioned in the impugned Miscellaneous Application existed prior to the commencement of the Black Money Act. It has been submitted that the “proceeds of crime” must be generated from the commission of the Scheduled Offence and cannot predate it in any event. The petitioner claims to be facing consistent harassment from the agency, as the properties of the petitioner were seized under the PMLA via the First Provisional Attachment Order No. 3/2017 dated 01.06.2017. While adjudicating on this order, the Adjudicating Authority categorically held that there are no cross-border implications in the present case and that the Scheduled Offence under the PMLA is not made out.
7. The petitioner further submitted that the agency had also attached the assets of certain companies via an order dated 26.12.2017 under the Foreign Exchange Management Act, in which the petitioner is a shareholder. The assets of these companies were previously attached under the First Provisional Attachment Order No. 03/2017 dated 01.06.2017 and later rejected by the judgment dated 17.11.2017 of the



Learned Adjudicating Authority. The petitioner has challenged the attachment made by the Respondent under the FEMA in WP(C) No. 4000/2018, and this Court, via order dated 12.07.2018, permitted the said companies to operate their bank accounts, subject to maintaining the balance as of that date. The petitioner claims that immediately thereafter, on the very next day, the respondent issued Provisional Attachment Order No. 5/2018 dated 13.07.2018 with biased and mala fide intent solely to harass and intimidate the petitioner. This Provisional Attachment Order dated 13.07.2018 was also challenged in WP(C) No. 10106/2018, and this Court stayed the proceedings before the Adjudicating Authority via order dated 04.10.2018.

8. The petitioner has submitted that the respondent has been continuously harassing the petitioner with mala fide intent. It is submitted that the impugned order dated 24.12.2019, summoning the petitioner, does not disclose how the Learned Special Judge concluded that an offence under the Fugitive Economic Offenders Act, 2018, is prima facie made out, or how the petitioner is the owner of the alleged foreign assets in question. The petitioner contends that the impugned order lacks reasoning and is therefore liable to be set aside. It is also submitted that at the summoning stage, the Magistrate is required to apply judicial mind to take cognizance of the offence and determine whether a prima facie case exists for summoning the accused.
9. The respondent has filed a counter affidavit denying all allegations made in the petition. The respondent raised a preliminary objection that the petitioner has not provided his residential address of United Kingdom in the affidavit filed with the petition, suggesting that the



petitioner has not approached the Court with clean hands and has suppressed material facts. It is further submitted that a Look Out Circular (LOC) was issued at the behest of the Income Tax Department on 27.06.2016 and by the Directorate of Enforcement on 14.02.2017 against the petitioner. Despite this, the petitioner allegedly managed to escape the country and is currently residing in the United Kingdom to avoid actions initiated by various investigating authorities. The respondent also submitted that the petitioner is residing in the UK illegally, as his passport was impounded by the competent authorities in India under the Passports Act, 1967, on 21.03.2018.

10. The respondent contended that the petitioner has shown utter contempt for the law and has not cooperated with the investigation. It is further submitted that the petitioner has been declared a “proclaimed person” and a Red Notice has also reportedly been issued against the petitioner by Interpol, and FIR No. 173 of 2016 has been registered under Sections 3/5 of the Official Secrets Act and Sections 409, 379, and 120B of the Indian Penal Code against the petitioner. In light of this background, the respondent submitted that the petitioner is not entitled to the discretionary remedy under Section 482 Cr.P.C. Reliance has been placed upon *Wave Hospitality Private Limited vs. Union of India & Ors.* [WP C 5511/2019 dated 30.05.2019] and *Parbatbhai Bhimsinhbhai Karmur & Ors. vs. State of Gujarat & Anr.* [(2017) 9 SCC 641].
11. The respondent further submitted that the petitioner is an Indian resident as defined in Section 6 of the Income Tax Act, 1961, and is thus legally obligated to declare all global income and assets to the



Indian Tax Authorities. Consequently, the petitioner is liable to pay taxes, interest, and penalties on global income under Sections 5 and 4 of the Income Tax Act, 1961. The respondent submitted that the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (referred to as the “Black Money Act”) was enacted to address the issue of undisclosed foreign income and assets by residents, as well as willful tax evasion, and provides prosecution and penalties on such undisclosed foreign income and assets.

12. The legislature also provided a one-time compliance window to allow residents to declare undisclosed foreign income and assets in Section 59 of the Black Money Act, 2015. Furthermore, it has been submitted that Section 72(c) of the Black Money Act, 2015, provides that where any asset has been acquired or made prior to the commencement of this Act, and no declaration regarding such asset is made under this chapter (i.e., Chapter VI “Tax Compliance for Undisclosed Foreign Income and Assets,” Sections 59 to 72), such asset shall be deemed to have been acquired or made in the year in which a notice under Section 10 of the Black Money Act, 2015, is issued by the Assessing Officer (A.O.). In the present case, a notice under Section 10 of the Black Money Act was issued on September 22, 2016.
13. It has further been submitted that the Income Tax Authorities conducted a search and seizure operation on April 27, 2016, during which the petitioner, in his statement on oath under Section 132(4) of the Income Tax Act, admitted that he had not declared the foreign assets and income in his income tax return. The petitioner also admitted that he had not paid any tax, interest, or penalty on such undisclosed



foreign income and assets. The respondent further submitted that a complaint under Section 51(1) of the Black Money Act, 2015, bearing No. 2121, has already been filed, in which Non-Bailable Warrants (NBW) were issued dated October 31, 2019. It has also been submitted that Section 51 of the Black Money Act, 2015, falls under the schedule of the Fugitive Economic Offenders Act, 2018.

14. The respondent has further submitted that the Directorate of Enforcement is the nodal agency for the enforcement of the Fugitive Economic Offenders Act. The Income Tax Department requested the answering respondent to have the petitioner declared a Fugitive Economic Offender. The respondent submitted that under Section 11 of the Fugitive Economic Offenders Act, if the individual to whom notice has been issued under Sub-Section 1 of Section 10 appears in person at the place and time specified in the notice, the Court may terminate the proceedings under this Act. The respondent has further denied all the averments made by the petitioner.
15. This Court, by order dated February 24, 2020, directed the petitioner to file a response before the Learned Trial Court within a period of seven days. However, it was directed that no coercive action be taken until the next date of hearing. It was expressly made clear that the pendency of the present proceedings would not be an embargo on the proceedings being conducted by the Learned Trial Court.

SUBMISSIONS OF THE PETITIONER

16. Sh. Dayan Krishnan, learned senior counsel for the petitioner, submitted that the complaint filed and the impugned Miscellaneous Application under Section 4 of the Fugitive Economic Offenders Act



do not meet the requisite essentials as provided under Section 2(1)(f) and Section 2(1)(m) of the Fugitive Economic Offenders Act. Learned senior counsel submitted that Section 4 of the Fugitive Economic Offenders Act lays down the procedure to be followed by the Directorate of Enforcement. It has further been submitted that Sections 4(2)(a) and (c) require that the officer must be satisfied that a person fulfills the criteria as laid down in Section 2(1)(f) read with Section 2(1)(m) in every aspect. The learned senior counsel further submitted that bare reading of Section 4 of the Fugitive Economic Offenders Act makes it clear that the officer concerned must form his reasons to believe based on material that was in his possession on that day.

17. Learned senior counsel argued that Section 10 of the Fugitive Economic Offenders Act mandates that upon receiving a duly filed application under Section 4 of the Act, the Learned Special Court shall issue notice to the person named in the application. It was submitted that the Special Court is obligated to assess whether the application before it fulfills the requirements under Section 4 of the Act. Furthermore, it was argued that Section 12 of the Act requires that each party be given an opportunity to be heard before a declaration of "Fugitive Economic Offender" can be made. Learned senior counsel emphasized that since there are serious consequences that follow if an individual is declared a fugitive offender, the Court has to be very careful before issuing notice under Section 10 of the FEO Act, 2018.
18. Learned senior counsel contended that the reasons recorded by the Directorate of Enforcement in the application do not justify declaring the petitioner as a fugitive offender, as the basis of such satisfaction



relies solely on a letter from the Income Tax Department dated 09.07.2019. Learned senior counsel submitted that this letter shows that no finalized assessment has established that the amount involved exceeds Rs. 100 crores. Learned senior counsel argued that without a completed assessment, the alleged tax evasion amount cannot be conclusively determined. Learned senior counsel further submitted that the threshold amount of Rs. 100 crores constitutes a jurisdictional fact essential for the Court to assume jurisdiction in the matter. Reliance was placed on *Arun Kumar and Others vs. Union of India and Others* (2007) 1 SCC 732 and *Carona Ltd. vs. Parvathy Swaminathan & Sons* (2007) 8 SCC 559.

19. In *Arun Kumar* (Supra), the Apex Court held that tax laws could not be applied retrospectively unless expressly stated emphasizing that ambiguities in tax statutes should favor the taxpayer. The Apex Court underlined that legislative intent must be clear when imposing new tax liabilities to avoid unexpected burdens on taxpayers. In *Parvathy Swaminathan & Sons* (Supra), the Court addressed the principle of lifting the corporate veil, ruling that it should only occur in cases of fraud or misuse of corporate structure. In case of absence of evidence of improper conduct, the corporate entity's structure would be respected, reinforcing the boundaries of corporate identity protection.
20. Learned senior counsel also submitted that the Directorate of Enforcement's satisfaction was entirely and exclusively based on the letter dated 09.07.2019. Learned senior counsel argued that independent reasons to believe must be established based on the Enforcement Directorate's own application of mind, rather than a



"borrowed satisfaction." Reliance was placed on *King Emperor v. Sibnath Banerji* (1946) 48 BOMLR1. Furthermore, learned senior counsel argued that the impugned summoning order dated 24.12.2019 is entirely unreasoned, lacking any application of judicial mind. It was submitted that to meet the criteria under Section 4 of the Fugitive Economic Offenders Act, the Enforcement Directorate officer must independently form reasons to believe based on materials in their possession to confirm that the stipulated requirements under the Act are met.

21. Learned senior counsel argued that before the assessment order was issued on 23.03.2020, the satisfaction recorded in the impugned miscellaneous application dated 13.12.2019 and the summoning order dated 24.12.2019 were both issued without sufficient reasons. Learned senior counsel further submitted that "reasons to believe" as determined by an authority cannot be justified by events that occur afterward. Reliance has been placed upon *Principal Commissioner of Income Tax-6 vs. Meenakshi Overseas Pvt. Ltd.* 2017 SCC OnLine Del 8691 : (2017) 395 ITR 677, *Best Cybercity (India) Pvt. Ltd. vs. Income Tax Officer, Ward 4(3) and Another* 2019 SCC OnLine Del 8670 : (2019) 414 ITR 385, *Godrej Industries Ltd. vs. B.S. Singh, Deputy Commissioner of Income-Tax and Others* 2015 SCC OnLine Bom 8420 : (2015) 377 ITR 1 and *Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Others* (1978) 1 SCC 405.
22. Learned senior counsel further submitted that several properties have been incorrectly included in the calculation of the value of the



scheduled offence against the petitioner, as these properties were not owned by him at the time of the enactment of the Black Money Act. Learned senior counsel argued that the Black Money Act, being a criminal and taxation statute, cannot be applied retrospectively. Additionally, the validity and interpretation of Section 51 read with Section 72(c) of the Black Money Act, 2015, are pending adjudication before the Division Bench in W.P.(C) 5294/2021.

23. Learned senior counsel emphasized that it is crucial for the Enforcement Directorate officer to independently from their reasons to believe based on the material in their possession. He further submitted that the procedure prescribed under Section 11 of the Fugitive Economic Offenders Act is summary in nature, without requiring both parties to lead evidence, and therefore, the Court must exercise caution before passing a summoning order.

SUBMISSIONS OF THE RESPONDENT

24. Sh. Zoheb Hossain, learned special counsel for the ED submits that at the outset, the petition filed is defective as the petitioner has not disclosed his present address of London in the memo of parties or in the affidavit or in the vakalatnama. It has further been submitted that even in the affidavit filed with the support of the present petition is contrary to the Delhi High Court Rules, 2018 in Volume-4 Chapter-12 titled as "Oaths and Affirmations and Affidavits" as there is no identification of the deposing the petitioner. It has been submitted that in terms of Rule 11, the deponent has not been identified. It has further been submitted that in term of Rule 9 of Volume 4 Chapter-12, Delhi



High Court Rules, 2018, the petitioner has not provided the place of his residence. Learned counsel further submitted that therefore the petitioner has approached this Court with unclean hands. It has further been submitted that LOC dated 27.06.2016 has already been issued by the Immigration authorities in the behest of Income Tax authorities and another LOC dated 14.02.2017 was issued against the petitioner by the respondent. It has also been submitted that the petitioner is in accused in FIR No.173/2016 under Section 3 and 5 of the Official Secret Act, 1923 and Section 409/ 379/ 120 B of the Indian Penal Code, PS Crime Branch, New Delhi. It has further been submitted that trade notice has also been issued against the petitioner by the Interpol for declaring the petitioner as a fugitive.

25. Sh. Zoheb Hossain, learned special counsel further submitted that the passport of the petitioner has also been impounded and the petitioner is residing in U.K. to in order to avoid/evade/avail prosecution in India. It has further been submitted that the petitioner in criminal revision petition number 223/2018 has already been declared as Proclaimed Person. It has further been issued to the Non Bailable Offence issued against the petitioner on 30.10.2019 in criminal complaint bearing No.2121/2019 filed by the Income Tax Authority for the offence punishable under 51(1) of Black Money Act.
26. Sh. Zoheb Hossain, learned special counsel submitted that all the requirements required under Section 2 (f) and (n) of Fugitive Economic Offenders Act, 2018 has been met. It has been submitted that the application under Section 4 read with Section 10 and 12 of FEO Act has duly been filed before the learned Special Judge and a notice has



rightly been issued.

27. Sh. Zoheb Hossain, learned special counsel submitted that pursuant to the search conducted on the premises of the petitioner by the Income Tax Authorities on 27.04.2016 various incriminating materials with respect to movable and immovable property owned by the petitioner was recovered and seized and the ownership of the same was admitted by the petitioner in his statement recorded by the Income Tax Authorities. Learned special counsel submitted that the perusal of the undisclosed bank accounts statement of the petitioner reveals that credits in the companies in the UAE is way beyond of Rs.100 crores. It has been submitted that the petitioner is involved in “scheduled offence” within the definition of Section 2(1) (m). Sh. Zoheb Hossain, learned special counsel submitted that all the pre-requisites for declaration of fugitive economic offender are met and the procedure has duly been followed.
28. Sh. Zoheb Hossain, learned special counsel submitted that the object and purpose of the Black Money Act is to deal with the problem of undisclosed foreign income and assets in possession of tax on the said income and assets. The attention has also been invited to Section 2 (c) of the Black Money Act which provides that where any asset has been acquired or made prior to commencement of this Act and no declaration in respect of such asset is made under Chapter-6 (section 59 to Section 72) such Acts shall be deemed to have been acquired on the made in the year in which the notice under Section 10 of the Black Money Act which is issued by the Assessing Officer.
29. In rejoinder, learned senior counsel argued that the judgments cited by



the respondent are irrelevant and inapplicable to the present case. It was further submitted that this Court's decision in the instant petition would primarily concern two issues: (1) Whether the respondent independently formed reasons to believe, under Section 4 of the Fugitive Economic Offenders Act, 2018, based on material in their possession, and that the petitioner met the requirements under Section 2(1)(f) read with Section 2(1)(m) of the Act; and (2) whether the Learned Special Court correctly assessed if the application under Section 4 was "duly filed."

30. The petitioner has filed the present petition challenging the impugned the Miscellaneous Application No.249/2019 dated 13.12.2019 before the Court of learned Special Judge and all proceedings emanating therefrom filed.
31. Mr. Dayan Krishnan, learned senior counsel for the petitioner has predominantly argued that the letter dated 07.02.2019 on which the respondent based its case as nowhere states that the amount involved in the contravention under Section 51 BMA will be at least Rs.100 Crores. The challenge has also been made that the assessment was yet to be finalized and there were no independent reasons to believe under Section of the FEO Act. The basis of the case of the petitioner is that there has to be own reasons of the complainant to believe on the basis of material in his possession. It has further been case of the petitioner that the summoning order is required to show at least prima facie satisfaction that the application under Section 4 (a) of FEO was duly filed. It has further been submitted that complaint filed does not fulfill the jurisdictional fact under Section 2 (1) (f) read with 2 (1) (m) of the



FEO Act.

FINDING AND ANALYSIS

32. The Fugitive Economic Offenders Act, 2018 was enacted to provide for measures to determine the economic offender from evading the process of law in India by staying outside the jurisdiction of India, to preserve the sanctity of the Rule of law in India and for matters connected there whom or in severity there. The perusal of the statement of object and reasons indicates that the legislature was conscious of the fact that in several instances economic offenders have flee the jurisdiction of the Indian courts anticipating the commencement of criminal proceedings or some times during the pendency such proceedings. The statement of object and reasons notes that the absence of such offenders from Indian Courts has several deleterious consequences such as it obstructs investigation in criminal cases and waste precious time of the Courts and undermines the rule of law and India. The fugitive economic offender Act, 2018 was enacted as it was felt that the existing provisions of civil and criminal law are not adequate to deal with the severity of a problem.

33. Section 2 (1) (f) defines fugitive economic offender which reads as under;

(f) "fugitive economic offender" means any individual against whom a warrant for arrest in relation to a Scheduled Offence has been issued by any Court in India, who
(i) has left India so as to avoid criminal prosecution; or
(ii) being abroad, refuses to return to India to face criminal prosecution



34. Section 2 (1) (m) defined the “Scheduled Offence” which reads as under;

(m) "Scheduled Offence" means an offence specified in the Schedule, if the total value involved in such offence or offences is one hundred crore rupees or more;

35. It is pertinent to mention here that Entry 30 of the Schedule provides Section 15 of Black Money Act as “Scheduled Offence”.

36. Chapter -2 of Fugitive Economic Offender Act, 2018 deals with the declaration of the fugitive economic offenders and confiscation of Properties. Section 4 reads as under;

4. Application for declaration of fugitive economic offender and procedure therefore

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that any individual is a fugitive economic offender, he may file an application in such form and manner as may be prescribed in the Special Court that such individual may be declared as a fugitive economic offender.

(2) The application referred to in sub-section (1) shall contain—

(a) reasons for the belief that an individual is a fugitive economic offender;

(b) any information available as to the whereabouts of the fugitive economic offender;

(c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;

(d) a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought; and

(e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d).

(3) The Authorities appointed for the purposes of the Prevention



of Money-laundering Act, 2002 (15 of 2003) shall be the Authorities for the purposes of this Act

37. Perusal of Section 4 has certain important words which includes “reasons to believe”. “Such reasons to believe” have to be recorded in the writing. It also provides that the officer concern must have reasons to believe on the basis of material in his possession and if all these pre-requisites are fulfilled then an application may be filed to declare such person as a fugitive offender. The central government published “The declaration of fugitive economic offender (forms and manner of filing of application)” Rules, 2018. Rule 3 provides the form and manner of the application for declaring any individual as fugitive economic offender which reads as under;

“3. Form and manner of application for declaring an individual as a fugitive economic offender. (1) The Director or the authorised officer, as the case may be, shall prepare an index containing the following materials, namely:-

- (i) a copy of a warrant of arrest in relation to prosecution of a Scheduled Offence against the individual believed to be a fugitive economic offender issued by any Court in India;*
- (ii) a statement of reasons to believe that an individual is a fugitive economic offender;*
- (iii) a statement on any information available as to the whereabouts of the individual believed to be a fugitive economic offender;*
- (iv) any proof of effort undertaken to bring the individual believed to be a fugitive economic offender back to India;*
- (v) a list of properties or value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;*
- (vi) a list of properties or benami property owned by the individual believed to be a fugitive economic offender in India or abroad for which confiscation is sought;*



- (vii) a copy of a confiscation order issued by the Adjudicating Authority under the Prohibition of Benami Property Transactions Act, 1988, if any;*
- (viii) a list of persons who may have an interest in any of the properties listed under clauses (v) and (vi).*
- (2) The index and material prepared under sub-rule (1) shall be signed on each page and forwarded to the Special Court in a sealed envelope, indicating a reference number and date of despatch.*
- (3) The Director or the authorised officer, as the case may be, shall maintain registers and other records such as acknowledgement slip register and dak register and shall ensure that necessary entries are made in the register immediately as soon as a copy of the application along with the materials are forwarded to the Special Court.”*
38. Section -4 sub Section (2) provides that the application filed in Section 4 (1) shall contain followings;
- (2) The application referred to in sub-section (1) shall contain—*
- (a) reasons for the belief that an individual is a fugitive economic offender;*
- (b) any information available as to the whereabouts of the fugitive economic offender;*
- (c) a list of properties or the value of such properties believed to be the proceeds of crime, including any such property outside India for which confiscation is sought;*
- (d) a list of properties or benami properties owned by the individual in India or abroad for which confiscation is sought; and*
- (e) a list of persons who may have an interest in any of the properties listed under clauses (c) and (d).*
39. Section 10 of FEO provides that after an application under Section 4 has duly been filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender.



40. Learned senior counsel for the petitioner has argued in detail and emphasize that the learned Special Court has fallen into a grave error while issuing the notice mechanically without even being “ascertaining the application under Section 4 has been duly filed”. The complainant has duly stated the statement of reasons to believe which is as under;

8. STATEMENT OF REASONS TO BELIEVE THAT THE ACCUSED IS A FUGITIVE ECONOMIC OFFENDER

a. The Income Tax Authorities have filed a Prosecution Complaint dated 22.12.2018 in CC no 2121/2019 against the said Accused under S. 51 of the Black Money Act.

b. An open ended NBW was issued against the Accused person on 31.10.2019 in CC No. 2121/2019, on the reasonable belief that the Accused deliberately evaded the process of law. A copy of the said NBW is annexed herewith as Annexure A-5.

c. The proceeds of crime in the Scheduled Offence are in excess of Rs. 100 crores. The same has been confirmed by the Income Authorities vide their communication dated 09.07.2019. A copy of the said communication is annexed herewith as Annexure A-6. The undisclosed bank account and properties held by Sh. Sanjay Bhandari outside India are tabulated in the Para 2, (Page no.283) in the Prosecution Complaint filed by the Income Tax Authorities under Section 51 of the Black Money Act, 2015 against Shri Sanjay Bhandari.

d. The material on record and reasons to believe to show the complicity of the Accused regarding the commission of the Scheduled Offence have been duly provided in the Prosecution Complaint dated 22.12.2018 filed by the Income Tax Department. The contents of the same may be end as a part and parcel of the instant Application and the

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e. That the said Accused has left the country under suspicious circumstances and evading the process of law in India by staying outside the jurisdiction of Indian Court so as not to face criminal prosecution. A Look Out Circular



was issued at the instance of the Directorate of Enforcement on 14.02.2017 against the said Accused. Further, a Red Corner Notice (RGN) dated 16.10.2017 had been issued against the said Accused in another case FIR No. 173/2016 being investigated by Crime Branch, New Delhi and he has been declared a Proclaimed Person. A copy of the Order dated 31.07.2018 of the Hon'ble High Court of Delhi in Criminal Revision Petition 223/2018 is annexed as Annexure A-7. Also, the Passport of the said Accused was impounded by the Regional Passport Office, vide its order dated 21.03.2018. The said Order is annexed as Annexure A-8.

The Accused however evaded the process of law and despite the instant developments being well in his knowledge, has chosen to deliberately not return to the country and submit to the jurisdiction of the Hon'ble Court.

41. It is also pertinent to mention here that the complainant has also given the statement of information available on the whereabouts of the accused. The complainant has filed list of properties connected to the proceed of crime as Annexure-2 In the complaint, the complainant has given a list of properties and benami properties owned by the accused and the list of such properties has duly been filed as Annexure A-3. It was stated that some of these properties are held by the petitioner through his companies in which petitioner has substantial control or through benami holders. The name of such companies/benami holders have duly been given which is as follows;

- a. OIS Aerospace Pvt. Ltd.*
- b. Santech Petro Global Pvt. Ltd.*
- c. Santech Energy System and Services P Ltd*
- d. Santech IT Services Pvt. Ltd.*
- e. OIS Advanced Technology Pvt. Ltd.*
- f. Offset India Solutions Pvt. Ltd*
- g. Santech Investment Pvt. Ltd.*



- h. OIS Transport technology Pvt. ltd.*
i. Avaana Software and Services Pvt. Ltd.
j. Niho Realtors (India) Pvt. Ltd.

42. The complainant has also stated that some of the properties are held through companies whose shares were held by shell companies on behest of the petitioner. The complainant has duly given the detail of such companies and Shell companies holding which are as follows;

S.No.	company	Shell companies holding shares
1	Micromet ATI India Pvt. Ltd.	1. SB Hospitality 85 Services Pvt. Ltd. (Majority shareholder- 46.67%) 2. Amajit Motor Finance Pvt. Ltd. 3. Century Buildpro Pvt. Ltd. 4. Kaksh Impex Pvt. Ltd. 5. Madhur Buildcon Pvt. Ltd. 6. Saraswati Buildhome Pvt. Ltd. 7. Sunshine Infraprojects Pvt. Ltd.
2	S.B. Hospitality Pvt. Ltd.	1.Amarjit Motors Finance Pvt. Ltd. (Majority Shareholder -23.7%) 2. Surabhi Infraprojects Pvt. Ltd. 3. Eace Exim Pvt. Ltd. 4. Jasihine Soft Solutions Pvt. Ltd. 5. Mystic Fashions Pvt. Ltd. 6. Paksh Marketing Pvt. Ltd. 7. Toor Finance Company. 8. Bholamotor Finance Pvt. Ltd.



		9, Vimuri Finance Pvt. Ltd. 10. Cygnet Relator Pvt. Ltd.
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43. The petitioner in the present case has challenged the summoning order and has sought the quashing of the miscellaneous application. Before proceeding any further, it is crucial to examine the scope of the jurisdiction exercised by the learned Special Judge at the time of issuing the summons. This examination involves a detailed analysis of the legal framework and principles guiding the judge's discretion, the procedural aspects involved in issuing summons, and the relevant precedents that outline the limits and boundaries of such jurisdiction. It is essential to ensure that the summoning order complies with the established legal standards and does not infringe upon the rights of the petitioner.
44. The complainant has specifically and categorically stated that the accused is the owner of the properties listed in Annexure A to Annexure A3, which were acquired by him and are involved in the commission of the scheduled offence. The complainant has further asserted that, based on the available material, it is abundantly clear that the proceeds of crime in the present case exceed Rs. 100 crores as of date, and that Non-Bailable Warrants have been issued against the accused. Therefore, the petitioner falls within the scope of Section 2(1)(f) of the Act.
45. A combined reading of Section 4 and Section 10 leads to the conclusion that, if an application under Section 4 has been filed in



accordance with “The Declaration of Fugitive Economic Offenders (Forms and Manner of Filing the Application) Rules, 2018,” the Special Court is required to issue a notice to any individual alleged to be a fugitive economic offender. The jurisdiction exercised under this Act is distinct from the summoning of an accused for other criminal offences. The Fugitive Economic Offenders Act, 2018 is a special statute enacted for a specific purpose, and the legislature, in its wisdom, has provided that upon filing a complaint application in accordance with the aforementioned Rules, the Special Court shall issue a notice. The argument regarding “duly filed” is liable to be rejected, as the concept of “duly filed” must be understood in accordance with the above-said Rules.

46. Furthermore, the petitioner’s argument that the complaint has been filed solely on the basis of the Income Tax authorities’ letter dated 09.07.2019 is also liable to be rejected. The complainant, in its complaint, has provided detailed information regarding the properties and has submitted supporting documents in its possession. The “reason to believe” has also been recorded in writing. In these circumstances, none of the petitioner’s arguments can be accepted.
47. Furthermore, the present petition is liable to be outrightly rejected, as the respondent/agency has pointed out that the petitioner has not disclosed his address in the United Kingdom. A person who invokes the jurisdiction of the Court must come with clean hands, as stated by the respondent in the affidavit; the petitioner is also required to disclose his current address. The exercise of jurisdiction under Section 482 of the Cr.P.C. is intended to prevent the abuse of the process of law and to



secure the ends of justice. These are extraordinary reliefs, which can only be granted to individuals who approach the Court with clean hands. In the present case, the petitioner is absconding and seeks to invoke the Court's discretionary power without disclosing his current whereabouts.

48. The petitioner could have appeared before the learned Special Judge as provided under Section 11 of the FOE Act and could have filed the reply. However, instead of that the petitioner has invoked the jurisdiction of this Court by filing the petition under Section 482 Cr. PC. It may again be repeated event at the cost of brevity that discretionary jurisdiction can be invoked only in the sparing circumstances. It has also kept in mind that the petitioner seems to be fighting a proxy war as he has chosen not to give his address and complete particulars in the petition.
49. The present petition involves peculiar facts and circumstances, and this Court is of the considered view that it is inappropriate to interfere in the matter and exercise extraordinary jurisdiction. It is also relevant to note that Section 11 of the Act provides that, if a notice has been issued under Section 10 (1), the individual may appear in person, and the Special Court may terminate the proceedings.
50. Under these circumstances, the present petition along with all pending applications stands dismissed.

DINESH KUMAR SHARMA, J

NOVEMBER 8, 2024

Pallavi/Ankit/NA