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WP-30532-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 19th OF NOVEMBER, 2024WRIT PETITION No. 30532 of 2024

*M/S. PRARAM INFRA THROUGH ITS PARTNER SHRI PRAYANK
JAIN*

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Shri Rahul Maheshwari, learned counsel for the petitioner.

Shri Anirudh Malpani, learned Govt. Advocate appearing on behalf of
Advocate General.

Shri Satish Manshinde appeared for respondent.
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ORDER

1. Heard the learned counsel for the parties and perused the record.
2. This petition has been filed by the petitioner/Company seeking the following reliefs:-

“a. Pass an appropriate Writ or order or direction, transferring the investigation from the Respondent No. 4 to any other Independent Investigating Agency, such as Crime Branch, or CID or CBI to conduct a fair and unbiased Investigation and take appropriate actions for fair and expeditious investigation, without being influenced by any external pressure, in a time bound manner;

b. In alternative pass an appropriate Writ or order or direction, directing the Respondents to conduct a fair and unbiased Investigation and take the further actions for a fair, unbiased and expeditious investigation, without being influenced by any extraneous pressure;

c. Pass an appropriate Writ or order or direction for conducting a court monitored enquiry, as the Respondents have failed to conduct a fair and unbiased Investigation, despite the order dated



08.02.2024, passed by this Hon'ble Court in M.Cr.C.No. 51194 of 2023 and order dated 08.07.2024, passed by the Hon'ble Supreme Court in SLP (Crl.) No. 4698 of 2024;

d. Pass an appropriate Writ or order or direction against the Respondents for not conducting a proper, fair and unbiased investigation, in collusion with the Accused Persons;

e. Pass an appropriate Writ or order or direction against the Respondents for not harassing the petitioner in the course of investigation,

f. Pass such other orders as this Hon'ble Court may deem fit in the interest of justice, equity and good conscience."

3. The grievance of the petitioner is that despite rejection of the anticipatory bail of the accused Diven Dembla S/o Ghanshyam Dembla passed by this Court in M.Cr.C.No.51194/2023 dated 8th of February 2024, and rejection of his Special Leave to Appeal(Crl.) No.4698/2024 on 08th of July, 2024, the respondents have not performed their duties and have not even tried to arrest the accused-Diven Dembla, which clearly shows their biased approach. Thus, it is submitted that the investigation be directed to be handed over to some special agency.

4. On the last date of hearing *i.e.*, on 22.10.2024, this Court had also directed the S.H.O. of the concerned Police Station Banganga, District Indore to appear before this Court and apprise regarding the status of the case, because, on earlier two occasions *i.e.*, on 04.10.2024 and 14.10.2024, counsel for the respondent/State was not able to apprise this Court regarding status of the investigation.

5. In compliance of the said order, Shri Siaram Singh Gurjar, Station House Officer, Police Station-Banganga, District-Indore is present before this Court along with the case diary, and it is submitted that the matter is being re-investigated and notice under Section 41-A of the Cr.P.C. has also been issued to the accused-Diven Dembla and the other accused persons, and it is admitted that the accused Diven Dembla has not been arrested.

6. Shri Satish Manshinde, learned counsel appearing for the accused-Diven Dembla has submitted that the Hon'ble Supreme Court has not rejected the Special Leave to Appeal of the accused in *toto*, and in fact a liberty has been



extended to the petitioner-Diven to settle the dues with the HDFC Bank and procure the original sale deed, and it is also observed that it will be open to the petitioner-Diven to file a fresh application for grant of anticipatory bail, and has also directed to the court that if any such application is filed, the same shall be considered and decided, in accordance with law. Thus, it is submitted that the accused-Diven has already filed his application for anticipatory bail before the concerned court after settling the dues of the HDFC Bank, and in such circumstances, his arrest is not necessary.

7. Having considered the rival submissions, and on perusal of the record, it is found that the anticipatory bail application M.Cr.C.no.51194/2023 of the accused was rejected by this Court way back on 08.2.2024; whereas, the Special Leave to Appeal (Crl.) no. 4698/2024 arising out of the said order has also been rejected by the Supreme Court vide its order dated 08.07.2024, with the liberty as aforesaid.

8. From the perusal of the case diary, it is found that the notice under Section 41-A of the Cr.P.C. has been issued to the accused only on 24.7.2024, *i.e.*, only after his Special Leave to Appeal was rejected by the Supreme Court. It clearly demonstrates that the police were soft-pedaling the accused, by waiting for the order of the Supreme Court, and deliberately did not act upon the rejection of his anticipatory bail, soon after the order in M.Cr.C.no.51194/2023 dated 08.02.2024 was passed.

9. This Court is also at loss to understand as to how a notice under Section 41-A can be issued to an accused after his application for anticipatory bail is rejected, specially when this Court had also stated that his custodial interrogation is necessary, and which order has also been affirmed by the Supreme Court, and it appears that the police officers are running their own court, parallel to this Court as well as the Supreme Court, which cannot be countenanced any more.

10. In such circumstances, the Commissioner of Police, Indore is directed to hand over the investigation of the case to an Officer not below the rank of D.C.P., and also to initiate disciplinary proceeding against the erring police officers who are responsible for issuance of notice u/s.41A of Cr.P.C. to the accused Diven Dembla after rejection of his anticipatory bail by this court



and the Supreme Court, which appears to be an act of willful defiance of the orders passed by this court and the supreme Court, and amounts to a major misconduct.

11. With the aforesaid direction, the petition is hereby disposed of. It is made clear that this Court has not reflected upon the merits of the case, and the accused's application for anticipatory bail which he has filed pursuant to the order passed by the Supreme Court, shall be decided by the trial court on its own merits without being influenced by this order.

12. Accordingly, the writ petition stands *disposed of*.

(SUBODH ABHYANKAR)
JUDGE