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Delhi High Court Denies ED's Plea For Police Remand Of Singapore-Based Businessman Accused In Embraer Aircraft Deal

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Justice Amit Sharma of the Delhi High Court on Tuesday upheld order of the Special Court refusing police remand of Dev Inder Bhalla, an accused in the money laundering case registered in connection with Indian government's aircraft deal with M/s Embraer, Brazil.

Bhalla is the Director of Singapore-based M/s Interdev Aviation Services Pvt. Ltd. Allegations against him are that he helped launder proceeds of crime generated from procurement of defense deal by M/s Embraer upon payment of bribe to Indian officials.

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Having arrived at Kolkata Airport on February 13, 2023, Bhalla was detained in pursuance of a Look-out Circular and open-ended NBWs were executed on him.

On February 15, 2023, the Special Court had sent him to judicial custody, whereafter ED filed an application seeking police custody. The Special Court dismissed ED's application and released Bhalla on interim bail.

"So, when after carrying out the investigation, complaint/ charge sheet has been filed against the accused herein; cognizance of the offences has been taken ; summons have been issued pursuant to that, the Act of the agency in apprehending/arresting the accused without permission of the Court, and/or seeking his PC remand is totally un-justified in the given facts and circumstances of the case.", the Special Court had said.

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In challenge to Special Court's order, ED's Spl. Counsel contended before the Delhi High Court that even though the complaint had been filed and cognizance taken, the application for Bhalla's police remand was justifiable as further investigation was ongoing and the NBWs were never cancelled. He relied on Section 70(2) Cr.P.C. and the decision in *State v. Dawood Ibrahim Kaskar* to buttress his arguments.

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On the other hand, counsels for Bhalla argued that ED's insistence on police remand, despite the same having been denied by the Special Court, was not justified. They placed reliance on the guidelines laid down in *Raghuvansh Dewanchand Bhasin v. State of Maharashtra & Anr.* and pointed out that pursuant to grant of interim bail, Bhalla had joined investigation.

After perusing the material on record and hearing rival arguments, Justice Sharma observed that since NBWs executed on Bhalla remained unexecuted prior to filing of ED complaint and the chargesheet was filed without showing him as an absconder, the NBWs should have been returned and not executed.

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Holding that the Special Court rightly rejected ED's remand application, the Court opined:

"If the unexecuted non-bailable warrants issued prior to filing of the complaint had been duly returned to the Court, could the department have arrested the respondent when only summons for appearance had been issued? The department, after issuance of summons, in such a case, could not have arrested the respondent unless

warrants were issued by the learned Special Court on requisite grounds. The exercise of power of arrest by the department was totally unjustifiable. The respondent was produced before the learned Special Court in terms of Section 73(3) of the CrPC and not under Section 19 of the PMLA, as per their own application.”

From the decisions in *V. Senthil Balaji v. State represented by Deputy Director and Others* and *Pankaj Bansal v. UOI and Ors.*, the Court culled out the principle that, “... when the person is arrested in exercise of powers under Section 19 of the PMLA, the provisions of Section 167 of the CrPC have to be complied with and ‘if Section 167 of the CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise”.

It further observed that it was not ED’s case that Bhalla’s arrest was made in pursuance of Section 19 PMLA.

“The exercise of power of arrest by the department was totally unjustifiable. The respondent was produced before the learned Special Court in terms of Section 73(3) of the CrPC and not under Section 19 of the PMLA, as per their own application.”, the Court said.

Notably, Bhalla’s application for regular bail is pending before the Special Court.

Mr. Zoheb Hossain, Spl. Counsel with Mr. Vivek Gurnani and Mr. Baibhav, Advocates appeared for ED

Mr. Aditya Singh Deshwal and Ms. Ridam Arora, Advocates appeared for Dev Inder Bhalla

Case Title: Directorate of Enforcement v. Sh. Dev Inder Bhalla

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