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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 09th May, 2025*

+ **W.P.(CRL) 1855/2018, CRL.M.A. 11467/2018 (stay)**

NARINDER SINGH BOGARH @ NARINDER SINGH,

Age 54 years, son of S. Jagir Singh,

Resident of V.P.O. Malsian, Patti Saleh Nagar,

Nakodar, District Jalandhar

.....Petitioner

Through: Mr. Chandra Datta, Mr. Amit Sharma,
Mr. Yogesh Dass, Mr. Bhairav Dass,
Ms. Shivani Sharma, Ms. Kshma
Sharma, Ms. Anjali and Ms. Latika
Vashisht, Advocates.

versus

1. **UNION OF INDIA**

Through under Secretary (Extradition),

CPV Division, Ministry of External Affairs,

Patiala House Annexe, Tilak Marg, New Delhi-110001

...Respondent No.1

2. **NATIONAL CENTRAL BUREAU (INTERPOL) NEW DELHI**

Through its Assistant Director,

Central Bureau of Investigation,

Plot No.5-B, 6th Floor, A-Wing, CGO Complex,

Lodhi Road, New Delhi-110003.

...Respondent No.2

Through: Mr. Amol Sinha, ASC for the State.
Ms. Rekha Pandey, SPP (MEA) with
Mr. Raghav Pandey, Advocate for
UOI.

Mr. Rajesh Kumar, SPP with Ms.
Mishika, Mr. Yash Navian and Mr.
Changez Khan, Advocates for
CBI/R2.

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+ **W.P.(CRL) 1856/2018, CRL.M.A. 11469/2018 (stay)**

NARINDER SINGH BOGARH @ NARINDER SINGH

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CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The aforesaid two Writ Petitions have been filed on behalf of the



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Petitioner/Narinder Singh Bogarh @ Narinder Singh, under Articles 226/227 of the Constitution of India, 1950 read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) against the Order of Ld. ACMM dated 23.02.2018 issuing Non-Bailable Warrants (NBWs) of Arrest; and Order of Ld. ASJ dated 19.05.2018 *vide* which Ld. ASJ has ***rejected his Anticipatory Bail Application under Section 438 Cr.P.C.*** as being barred under Section 25 of The Extradition Act, 1962 (*hereinafter referred to as "Act, 1962"*) and for issuing directions for grant of Anticipatory Bail in case of arrest. *Further Prayer is made for grant of Bail apprehending arrest pursuant to NBWs dated 23.02.2018.*

Background of the Present Case:-

2. **Brief facts** are that the Petitioner is a permanent resident of Punjab and is an agriculturist by profession, migrated to Vernon, British Columbia, Canada in 1985 where he started living with his brother, Paramjit Singh who was residing there along with his wife and one year old son. The wife of his brother was not happy with the sharing of the house with the Petitioner and she used to fight on this account with her husband. In order to reduce further domestic troubles of the brother, the Petitioner moved to Toronto, Ontario after few months and started living with his other relatives.

3. In the month of December 1986, the wife of Paramjit Singh was murdered and was found lying in a pool of blood at her own house in Vernon, British Columbia, Canada. Paramjit Singh informed the Police about the murder. Surprisingly, the Police arrested him as a suspect and conducted thorough investigations. Paramjit Singh was sent to jail and was also produced in the Court. Since no incriminatory material connecting



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Paramjit Singh with the murder of his wife was found, he was duly discharged from the case.

4. After a passage of time, in the year 1987, the Petitioner came back to India on account of acute illness of his eldest brother who was bed ridden due to kidneys failure. He thereafter, started looking after his ancestral property and agriculture land since after his eldest brother, no one in the family was capable of handling the affairs. On the other hand, Paramjit Singh left Canada due to the humiliation he suffered at the hands of the Police and also being upset on account of brutal death of his wife, and shifted to Los Angeles, USA where he set up his own business. Later, he was also elected as President of Riverside Sikh Temple because of his continuous religious devotion and selfless service to the community. He became famous among his community members, but his rivals spread rumours about his past and also made representations to the Authorities.

5. It is submitted that based on some personal issues of the brother of the Petitioner and his brother-in-law and political considerations, officers of Royal Canadian Mounted Police (RCMP) came to Punjab and started harassing him under the garb of investigation. He was tortured and blood Samples and his forcible confessional statements, were taken of the Petitioner. *He approached Punjab & Haryana High Court vide Cr.W.P. No.9854-M-1998 to seek protection of his life and liberty from RCMP.*

6. On 16.02.2010, a request was received by the Respondent No.2/ National Central Bureau (INTERPOL) New Delhi from the Department of Justice, Canada requesting for obtaining blood samples of the Petitioner.



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The Respondent No.2 moved an Application dated 28.04.2000 before the Special Magistrate, CBI at Patiala, Punjab under Section 166-B Cr.P.C. for issuance of directions to the Petitioner to give his statement and blood samples. However, the Ld. Court *vide* Order dated 21.10.2000 directed the Petitioner to be present in Court on the fixed date for giving his blood samples.

7. Aggrieved by the said Order dated 21.10.2000, the Petitioner petitioned before the Court of Sessions and then Punjab & Haryana High Court but the Order dated 21.10.2000, was upheld.

8. Thereafter, the Petitioner preferred *SLP (Criminal) No.1907/2003* wherein initially the Order was stayed, but later allowed the Appeal of the Petitioner and set aside the Order dated 21.10.2000. The Apex Court observed that the request made by the Canadian Government was specific that the *statement as well as the blood samples* of the Petitioner should be obtained *voluntarily*, which would indicate that if the Petitioner is not willing to make any statement or give his blood samples, the Respondent No.2 cannot take recourse of Section 166-B Cr.P.C.

9. After setting aside of the Order by the Apex Court, no Authorities either in India or Canada, ever held any correspondence or contacted the Petitioner for 14 years in connection with the murder case. Neither any further request for any Review nor any clarification was sought from the Department of Justice, Canada nor any efforts were made by the Respondent No.2 in this regard.

10. After passage of almost 14 years, in first week of March, 2018, the



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Petitioner got the information that on account of pendency of a matter, NBWs have been issued under *Section 34-B of the Extradition Act, 1962*, against him. He came to know that an Application dated 22.02.2018 along with the set of documents, had been filed on behalf of the Respondent No.2, based on an e-mail dated 15.02.2018 by the Department of Justice, Canada requesting the Indian Government for *Provisional Arrest* of the Petitioner on the allegations of his involvement in the murder of Suminder Kaur Bogarh in connivance with his brother Paramjit Singh, on 31.12.1986.

11. **The Ld. ACMM, New Delhi vide Order dated 23.02.2018 issued NBWs against the Petitioner.** It is claimed that the Ld. ACMM without referring to the law and discussion on the documents, has passed the impugned Order of 23.02.2018 issuing the NBWs.

12. Apprehending his arrest the Petitioner moved an Application under Section 438 Cr.P.C. for grant of Anticipatory Bail. **The Ld. ASJ dismissed the Application by observing that it was not maintainable in view of Section 25 of the Act, 1962.** Since powers under Section 34-B of the Act, 1962 is relating to Bail only *for fugitive criminals*, Anticipatory Bail Application was held to be specifically barred under the Extradition Act.

13. *The Order dated 23.02.2018 issuing NBWs and Order dated 19.05.2018 dismissing the Anticipatory Bail Application has been challenged by the two aforesaid respective Writ Petitions.*

Writ Petition No. 1855/2015: Grounds for Challenging the Order of Ld. ASJ dated 19.05.2018, dismissing the Petitioner's Application for Anticipatory Bail:-



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14. The Order dated 19.05.2018, dismissing the Anticipatory Bail Application has been contested on the ground that there is no bar to the applicability of the provisions of Cr.P.C. including those of Bail, to the proceedings under the Extradition Act.

15. It is claimed that the Ld. ASJ has travelled beyond the scope of Section 25 of the Act, 1962 which has no connection with the powers of the Court of Sessions and High Court under 438 Cr.P.C. Moreover, it has not dealt with the contingency where the accused i.e. *the fugitive criminal* is apprehending arrest.

16. It has not been considered that while an ordinary Bail is granted after arrest, Anticipatory Bail is granted in anticipation of arrest and becomes operative from the very moment of the apprehension. In the present case, the Petitioner has been apprehending his arrest on account of issuance of NBWs by the Court and therefore, the remedy for the Petitioner was to seek Anticipatory Bail under Section 438 Cr.P.C.

17. The Anticipatory Bail may be granted in exceptional cases when it appears to the Court that the person might be falsely implicated or the frivolous case might be launched/instituted against him or that there are reasonable grounds for holding that the person accused is not likely to abscond or otherwise misuse his liberty while on Bail. The relevant facts have not been appreciated while rejecting the Anticipatory Bail.

18. It has not been considered that the Petitioner has been residing in India for last 32 years. The matter had been agitated earlier before the Supreme Court of India wherein similar attempt was made by the Canadian



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Authorities to apprehend the Petitioner for taking his Blood Samples and Statement for more than 14 years. No further attempt was made against the Petitioner. These relevant facts should have been considered while considering the Bail Application.

19. The Petitioner has referred to Articles 8, 9 & 10 of *the Extradition Treaty dated 06.02.1987* between India and the Canadian Government and has submitted that a harmonious and conjoint reading of these provisions makes it clear that the requisition for surrender of a *fugitive criminal* of a foreign State, may be made to the Central Government. If the Central Government thinks fit, inquiry can be entrusted to the Magistrate having jurisdiction to inquire into the offence as if it had been an offence committed within the local limit of his jurisdiction.

20. The main thrust of the procedure is that evidence based on which extradition of a *fugitive criminal*, has been specifically mentioned or referred to so as to enable the Magistrate/Competent Authority to formulate an opinion for extradition of such a criminal. An inquiry is required to be conducted by the Magistrate to evaluate the evidence on the basis of which extradition is sought. The evaluation and inquiry by the Magistrate is not a paper formality, but is the subjective satisfaction of the Magistrate whether the evidence produced against the Petitioner is sufficient to hold him guilty for the offence for which he is to be sent for extradition.

21. It is further submitted that *Section 34-B of the Act, 1962 and Article 11 of the Extradition Treaty* deals with the *provisional arrest* of the fugitive criminal. The word '*Urgency*' is used in Article 11(1) and has similar



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impression has been used by referring to words '*An Urgent Request*'. Such an expression is used in order to substantiate that the fugitive criminal found in the requested Country, has the chances to abscond and flee and that his immediate custody is warranted. However, in the present case, there is neither any urgent need for arrest of the Petitioner that too for an alleged crime of murder 32 years back, especially when the Petitioner has been residing openly in India and has adequate means of living and has permanent residential status.

22. The Petitioner had actively participated in the judicial proceedings initiated in the year 2000 for obtaining his *Statement and Blood Samples*, on the request of the Canadian Government. He has clean antecedents and there are no chances of his being involved directly or indirectly in any case.

23. The registration of the case in Canada based on which provisional arrest of the Petitioner is sought, has no passing reference of the evidence in the Application filed by the Respondent which is collected by the Canadian Government connecting the Petitioner with the alleged crime.

24. *It is, therefore, submitted that the Order dated 19.05.2018 of the Ld. ASJ rejecting his Anticipatory Bail Application be set aside and the Ld. ASJ be directed to consider the Application and grant Anticipatory Bail.*

Writ Petition No. 1856/2018: Grounds for Challenging the Order of Ld. ACMM dated 23.02.2018, issuing NBWs against the Petitioner, to be executed through CBI, Interpol:-

25. The *grounds to challenge the Order dated 23.02.2018 vide* which NBWs have been issued against the Petitioner, is that the procedure for



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taking the *Statement and Blood Samples* of the Petitioner was commenced in the year 2000 and ultimately culminated in 2004 after the matter was adjudicated by the Apex Court. The request made by the Department of Justice, Canada was virtually turned down by the Apex Court and the Blood Samples of the Petitioner were not taken by the Canadian Agency.

26. After 14 years, without verifying the facts at its own level from the Respondent No.2/National Central Bureau (Interpol) New Delhi and Respondent No.1/Union of India (CPV Division, Ministry of External Affairs) present Application under Section 34-B of the Act, 1962 has been preferred before the Ld. ACMM. This exercise is vague and evasive and is liable to be set aside.

27. Furthermore, the Respondent No.1 has not attached any letter or Order of the Competent Authority expressing its satisfaction on the matter after perusal of the documents sent by the Department of Justice, Canada. In the absence of any sanction from the Competent Authority to proceed with the Application under Section 34-B of the Act, 1962, the NBW is not sustainable.

28. As per Section 34-B of the Act, 1962 it is not mandatory for the Respondent No.1 to make an Application since the word used is 'may' which denotes that the Respondent No.1 is required to formulate an opinion on the matter after perusing the documents and arrive at a subjective satisfaction. Based on the e-mail dated 15.02.2018, the Respondent No.1 within a week has moved its Application on 22.02.2018 narrating or justifying no urgency for arrest of a person in a 32 years old case. Moving of



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the Application without any sanction or subjective satisfaction is illegal, irrelevant, arbitrary and violative of Section 34-B(1) of the Act, 1962.

29. It is further contended that the mandatory requirement of Article 11 of Extradition Act has not been complied while moving the impugned Application as no information or reference to any document/evidence justifying the issuance of urgent arrest warrants of the Petitioner, are mentioned therein.

30. The impugned Order dated 23.02.2018 is absolutely bereft of any reason and does not reveal any application of mind. It is a non-speaking Order, which is unsustainable in the eyes of law being violative of principles of natural justice.

31. Issuance of NBWs involves interference in the personal liberty inasmuch as it deprives the precious rights of the individual. NBWs should not be issued lightly but only in appropriate circumstances after considering whether the presence of an accused can be secured by a bailable or non-bailable warrants in order to strike a balance between the need of the law enforcement on the one side and protection of the said citizens from the high handedness of the enforcement agencies.

32. It is further contended that manner and the contents of the Application reflect that it is a case of trivial nature and has not been pursued in good faith but for some political considerations and reasons inasmuch as the Petitioner was illegally detained by the Respondent No.2 in the year 1997, when the blood samples were taken forcibly and those samples were rejected as inadmissible.



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33. There is no reasonable ground for issuance of NBWs have been disclosed in the Application. Reference is made to *Inder Mohan Goswami vs. State of Uttranchal*, 2007 (12) SCC 1 wherein the Apex Court had observed that the Courts must be extremely careful before issuing NBWs as the same involves the liberty of an individual.

34. The Petitioner in the end, submits that considering the residential status of the Petitioner, there is no likelihood of his fleeing from justice or tampering with the evidence. He is willing to appear before the Ld. ACMM but irreparable loss, damage to the Petitioner would be caused if he is sent behind bars especially in the light of the peculiar facts of the case.

35. Hence, the Prayer is made that the NBWs issued vide order dated 23.02.2018, be set aside.

Contentions of Respondent No.1, Union of India through Secretary (Extradition), CPV Division, Ministry of External Affairs:-

36. The Respondent No.1, Union of India, CPV Division, Ministry of External Affairs has filed a detailed Reply wherein a preliminary objection has been taken that the Petitions seek interdiction of the proceedings under Section 34-B of the Act, 1962 against the Petitioner pursuant to an extradition request received from the Government of Canada on the allegations of involvement of the Petitioner in the murder of Saminder Kaur Bogarh on 31.12.1986. It is incorrect for the Petitioner to allege that the offence involved is of 'trivial' nature.

37. An Extradition Treaty had been entered between India and Canada which contains the provisions for *provisional arrest of the fugitive criminals*.



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The request for provisional arrest has been received from the Government of Canada in respect of heinous crime of murder. In these circumstances, all the jurisdictional facts attracting jurisdiction under Section 34-B of Act, 1962, exist.

38. It is further submitted that the request *for Provisional Arrest* of the Petitioner was supported by the documents, which have been duly considered by the Government of India. Consequently, the Application under Section 34-B of the Act, 1962 was filed before the Ld. ACMM, who after consideration had issued NBWs against the Petitioner.

39. The Petitioner has sought to assert that he has been residing in India for number of years and in the year 2000 participated in the proceeding for obtaining his blood samples which got turned down by the Apex Court in the year 2004.

40. It is submitted that the DNA analysis of the blood of the Petitioner on the dress of the deceased came from the sibling of Paramjit Singh i.e. his elder brother, the only sibling of Paramjit Singh in Canada and the Petitioner. The blood also matched with the blood in the car that the Petitioner had rented. The Petitioner had certain injuries on his person just at the time when Samrinder Kaur Bogarh was murdered. The Petitioner did not attend the funeral of the deceased, but fled to India. In the request, location of Paramjit Singh, husband of the deceased being located in USA, warrants were issued for his arrest. News of brother's arrest has reached the Petitioner who may flee to another country or elsewhere in India. *The circumstances justified the application under Section 34-B of the Act, 1962.*



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41. **On merits**, all the averments made in the Petitions were denied.

42. The Petitioner by way of **Rejoinder**, re-affirmed the assertions made in the Petitions.

Status Report filed on behalf of Respondent No. 2, National Central Bureau (INTERPOL) New Delhi:-

43. Status Report was submitted on behalf of CBI, NCB India (INTERPOL) New Delhi wherein it was submitted that India is the Member of International Criminal Police Organisation (INTERPOL), since 1949. The National Central Bureau (NCB) (INTERPOL New Delhi or IP New Delhi) are part of CBI and acts as an interface between various law enforcement Agencies of India and NCBx of other countries, for mutual cooperation to combat crime and trace fugitives. The functioning of the INTERPOL has been explained in detailed.

44. It is further submitted that the role of NCB India is limited to process the request for publication of INTERPOL Notice(s) received from the Indian Law Enforcement Agencies (LEA) and transmitting the same to IPSG, Lyon, France after checking the technical correctness of the Application submitted by the Indian Law Enforcement Agencies. The role of NCB is limited to assisting and facilitating the publication of Notices and diffusions by IPSG, like technical scrutiny of the Application of Red Notice received from the Indian Law Enforcement Agencies and to check its completeness.

45. It is stated that the RCMP Liaison Officer, High Commission of Canada, New Delhi *vide* letter dated 15.02.2016 requested NCB-India to confirm the location and if possible to provide up to date photo of Narinder



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Singh Bogarh against whom allegations were in regard to murder of brother's wife. Bureau of Investigation, Chandigarh, Punjab confirmed the location of the Petitioner and forwarded his photograph *vide* Letter dated 20.04.2017.

46. *Provisional Arrest Warrant* against the Petitioner was received from NCB-Ottawa *vide* IGCS message on 16.02.2018 which was forwarded to the Under Secretary (Extradition), Ministry of External Affairs, New Delhi on 16.02.2018.

47. An e-mail dated 21.02.2018 was also received from RCMP Liaison Officer, High Commission of Canada, New Delhi for *provisional arrest* of the Petitioner which was forwarded to the Ministry of External Affairs along with accompanied dossier. This was forwarded by Ministry of External Affairs to the Court of Ld. ACMM.

48. The NBW (in original) dated 23.02.2018 were forwarded to the Director, Bureau of Investigation, Punjab, Chandigarh for execution.

49. The warrants could not be executed and were returned with the Report that the '*Petitioner is not present in his house and has gone to some other State in connection with his work*'.

50. It is submitted that in these circumstances, appropriate Orders may be passed.

51. *Written submissions have been filed on behalf of the Petitioner as well as the Respondents.*

52. **Submissions heard and record perused.**



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53. The core questions for consideration are:

(i) *Whether the provisional Arrest warrants issued under Section 34-B of the Extradition Act, 1962 remains valid till revoked; and*

(ii) *Whether the provision of Anticipatory Bail under Section 438 Cr.P.C. would be available to a fugitive criminal apprehending arrest in domestic criminal proceedings, facing proceedings under the Extradition Act, 1962?*

54. The Extradition Act, 1962 is a special Legislation designed to give effect to India's International obligations in criminal justice cooperation. In furtherance thereto, India had entered into an Extradition Treaty between Government of India and Government of Canada on 06.02.1987, detailing the procedure to be followed under the Treaty. The provisions of the Treaty are inconsonance with the specific provisions of Section 34-B of the Extradition Act, 1962. The proceedings under this Act, get triggered when a Requisition Request is received from a foreign State by the Central Government. Upon satisfaction, the competent Magistrate acting under Section 5 of the Act, 1962 can conduct an Enquiry. Section 6 mandates the Magistrate to Issue a *Warrant for Arrest of the fugitive criminal*. Once, the fugitive "appears" or "is brought" before the Magistrate, Section 7 empowers the Magistrate to conduct the Enquiry with all the powers and jurisdiction, as available to the Courts of Sessions under the Code of Criminal Procedure.

55. *In the present case*, while the case was registered in Canada on



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account of the murder of Suminder Kaur Bogarh, wife of Shri Paramjit Singh Bogarh (brother of the Petitioner) on 31.12.1986, Royal Canadian Mounted Police arrived in India in 1997-98 for taking the blood samples and the documents. This matter got ultimately decided by the Apex Court on 10.02.2004, whereby the Order of the Special Magistrate directing the Petitioner to appear for blood samples for analysis, was ultimately disposed of with the observations that the samples be taken with the consent of the Petitioner.

56. Thereafter, there was a huge lull period wherein nothing happened till the year 2018 when a request for *provisional arrest* was made by the Canadian Government. Pertinently, there is no record to substantiate that there was any Request ever sent to the Indian Government for the extradition of the Petitioner or that any extradition proceedings are pending before any Court of Law of India. *What can be thus, concluded is that no extradition proceedings have got initiated against the Petitioner.*

57. **The first aspect** which is pertinent is who is the *Criminal Fugitive*. *Section 2(f) of the Extradition Act, 1962* defines it as under:-

“Section 2(f) — fugitive criminal means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State.”

58. There are specific allegations that the Petitioner was an accused along with his brother, for the murder of Smt. Suminder Kaur, wife of Paramjeet Singh, brother of the Petitioner. Apparently, there is a case that got



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registered against the Petitioner and others and that some Trial has also been initiated in respect thereof. In the backdrop of these circumstances, the Petitioner is a *criminal fugitive* and therefore, the Extradition Act is applicable to him.

59. However, the question arises *whether there are circumstances which justify issuance of Provisional Arrest Warrants against him.*

60. For a comprehensive understanding, it may be pertinent to note that the case was registered in the year 1986 and the Petitioner immediately thereafter, came to India. The first endeavour to reach out to the Petitioner was made in the year 1997, when his confessional statements and blood samples were forcibly taken. However, finding that such evidence was illegal and inadmissible, another endeavour was made by the Department of Justice, Canada by moving an Application dated 28.04.2000 to Respondent No.2, who then moved an Application before the Special Magistrate, CBI at Patiala, Punjab for taking the Statements and Blood Samples which got allowed *vide* Order dated 21.10.2000. But this Order was challenged and eventually was modified by the Apex Court *vide* its Order dated 10.02.2004.

61. For the offence allegedly committed in 1986, after the endeavour of 1997 which got settled in 2004, no Application whatsoever of any kind was moved in any Court in India. This matter found a new life in the year 2018, when a request was received from the Canadian Authorities for issue of *Provisional Arrest Warrants leading to issuance of Non-Bailable Warrants* on 23.02.2018, by Ld. ACMM which has led to the present situation of challenging Non-Bailable Warrants in the present Writ Petition.



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62. *Section 34-B of the Extradition Act, 1962 provides for Provisional Arrest which reads as under:-*

“Section 34B. Provisional arrest.—(1) On receipt of an urgent request from a foreign State for the immediate arrest of a fugitive criminal, the Central Government may request the Magistrate having competent jurisdiction to issue a provisional warrant for the arrest of such fugitive criminal.

(2) A fugitive criminal arrested under sub-section (1) shall be discharged upon the expiration of sixty days from the date of his arrest if no request for his surrender or return is received within the said period.”

63. It states that on receipt of an urgent request from a foreign State for immediate arrest of a fugitive criminal, the Central Government may request the Magistrate having competent jurisdiction to issue *provisional warrant* for the arrest of such fugitive criminal. *Article 11 of the Treaty* provided that in case of ‘*urgency,*’ a contracting State may request the *provisional arrest* of the person whose extradition is proposed to be sought.

64. Further, Section 34-B(1) is circumscribed by Section 34-B(2) which further provides that the *fugitive criminal under Sub-Section (1) shall be discharged upon the expiration of 60 days from the date of his arrest, if no request for his surrender or return is received within the said period.* **Article 15 of the Treaty,** likewise provides that the *Provisional Arrest Warrant,* however shall stand discharged, if the requested State has not received the request for extradition within 30 days, thereafter.

65. From the reading of Section 34-B(1) and 34-B(2) of the Act, 1962 along with Article 11 and 15 of the Treaty it emerges that the Provisional



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Arrest Warrants may be issued:-

- (i) when the extradition proceedings are intended to be initiated by the country;
- (ii) such Provisional Warrants can be issued only in the circumstances of “urgency”; and
- (iii) it lapses in case no request/proceedings for extradition are initiated within 60 days.

66. *First and foremost*, the Provisional Arrest warrants were merited in case of *urgency* as stipulated in *Article 11 of the Treaty*. As already noted above, the proceedings referred back to the alleged murder which took place in 1986, the Application for Provisional Arrest has been made in 2018. The Petitioner, as submitted by him, has been residing in India since 1986 and there has been no antecedent or circumstance from where it can be inferred that he is likely to flee from India or to shift in anonymity to any other State or part of India. This is reinforced by the fact that the Petitioner was found available in 1997 when his Statements and Blood Samples were taken forcibly. He was also found available in the year 2000, when the Application was moved before the Ld. Special Magistrate, CBI Patiala for taking his blood samples and statement. He contested these proceedings in various Courts right up to Supreme Court which culminated in the year 2004 and during all this period, he was available and there is no circumstance to infer that he was likely to become not available.

67. The Request for Provisional Warrant was made in 2018 i.e. after about 34 years. In exercise of the powers under Section 34-B of the Act,



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1962, the Ld. ACMM had directed the NBWs dated 23.02.2018 to be issued against the Petitioner. There is no urgency spelled out either in the Application/documents received from the Canadian Authorities nor have they been spelled out in the Application for Provisional Arrest. There are no circumstances establishing *the urgency* of issuing the Provisional Arrest Warrants pending the request to be made for initiation of extradition proceedings. The *first* condition as stipulated in Article 11 of the Treaty, is found conspicuously missing. There is no justification, whatsoever, for issuance of the Provisional Arrest Warrants.

68. *Secondly*, the Provisional Arrest would lapse after 60 days if no request is received for extradition. The reason is obvious; if the Extradition Proceedings are initiated, the Petitioner would have the remedy of seeking Bail under Section 25 of the Act, 1962. There is nothing on record to show that the extradition proceedings are pending or were taken up; the Provisional Arrest Warrant therefore, stand lapsed by virtue of Section 34-B(2) of the Act, 1962.

69. **Thus, the challenge to the NBWs has become infructuous on account of its automatically having lapsed after 60 days of it being issued.**

70. Likewise, the question of grant of Bail would have arisen had there been any Extradition proceedings. There is no question for grant of Anticipatory Bail in the present matter as there are no details of any proceedings under the Extradition Act pending before any Court in India.

71. However, for the academic purposes, it may be considered *whether*



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an Anticipatory Bail Application is maintainable under the Extradition Act, 1962.

72. Similar question came up for consideration in the case of Balchand Jain vs. State of M.P., (1976) 4 SCC 572, wherein Rule 184 of Defence and Internal Security of India Rules, 1971 was under consideration, which imposed explicit limitations on the power to grant Bail to persons accused or convicted for contravention of those Rules. The Apex Court considered in detail the inter-play between the Rule and Section 438 Cr.P.C. and held that if a person is not in custody, but is under an apprehension of arrest and applies for grant of Anticipatory Bail under Section 438 Cr.P.C, his case would clearly be outside the mischief of Rule 184 as when the Anticipatory Bail is granted by the Court, it would not be directing the release of a person in the custody. Therefore, such special Rule do not stand in the way of Court of Sessions or High Court granting Bail under Section 438 Cr.P.C. to a person apprehending arrest on accusation of having committed contravention of any Rule or Order made under the Rules. Therefore, a distinction was drawn between Section 438 Cr.P.C. and the Rule 184 to conclude that *they both operate in separate spheres and the Rule does not impinge upon the jurisdiction of the Court to grant Anticipatory Bail.*

73. Likewise, Section 25 of the Act, 1962 is to be strictly construed when it comes to the life and liberty of an individual. As has been already noted, the Anticipatory Bail Application was applied in apprehension of arrest subsequent to issuance of *provisional arrest warrant* and to say that the powers of the Court under Cr.P.C. is completely ousted by the Extradition Act, would be incorrect.



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74. The *other aspect for consideration* is whether the provisions of Cr.P.C. being a general statute gets overridden and excluded by the Special Act i.e. the Extradition Act, 1962.

75. Section 4(2) read with Section 5 Cr.P.C. clearly makes it evident that the procedural framework of Code of Criminal Procedure shall apply to Special laws unless such Application is expressly or necessarily excluded as has been held in the case of Ashok Munilal Jain and Anr. vs. Assistant Director, Directorate of Enforcement, 2017 SCC OnLine SC 1573 and reaffirmed in the case of Radhika Agarwal vs. Union of India, 2025 SCC OnLine SC 449.

76. There is no provision under the Extradition Act which either expressly or impliedly excludes the provisions of Code of Criminal Procedure. On the contrary, Section 25 of the Act, 1962 expressly incorporates the Bail provisions under Cr.P.C. declaring that they shall apply in the same manner as if it is an offence committed in India with the Magistrate exercising powers akin to those of the Court of Sessions.

77. *From the language of Section 25 of the Act, 1962, it is abundantly clear that the provisions of Cr.P.C. in regard to Bail, has been expressly made applicable and there is no Section which even impliedly excludes the application of grant of Anticipatory Bail under Section 438 Cr.P.C., to fugitive criminal.*

78. Ld. Special Judge, PMLA, New Delhi in the Order dated 19.05.2018 while referring to Section 4 of the Code of Criminal Procedure has proceeded to conclude that Section 25 Extradition Act applies only to a



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fugitive criminal implying that the provision of Bail would be applicable only to those who have been arrested or detained and not to fugitive criminals who apprehends arrest.

79. As already discussed above, there is no Section in the Extradition Act excluding the applicability of the Code of Criminal Procedure especially the provisions of Bail. **Therefore, it is held that the Anticipatory Bail under the Extradition Act in appropriate cases, is not barred under law.**

Conclusion:-

80. In view of the aforesaid, the petition for cancellation of provisional NBW, has become infructuous and no further Orders are required since the Provisional Arrest Warrant dated 15.02.2018 and consequent NBWs issued on 23.02.2018, is deemed to be lapsed as there is nothing on record to show that there were any extradition proceedings initiated or are pending in any Court of India.

81. Likewise, it is held that Section 438 Cr.P.C. (now Section 482 BNSS) for grant of Anticipatory Bail is applicable to Extradition Act, 1962. There is no record of any proceedings pending in any Court in India. However, if there are extradition proceedings pending, the Petitioner may move the appropriate Bail Application before the concerned Court, which shall be then considered on its merits.

82. The Petitions stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 09, 2025



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