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

Reserved on:16th November, 2018
% *Delivered on: 7th January, 2019*

\+ **W.P.(CRL) 2061/2017 & Crl.M.A.No.12002/2017**

RITESH NARPATRAJ SANGHVI ..... Petitioner
Represented by: Dr. Harsh Surana and Ms. Deepali S. Surana, Advocates

versus

UNION OF INDIA ..... Respondent
Represented by: Mr. Rajesh Gogna, CGSC with Mr. Akhilesh Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present writ petition the petitioner seeks quashing of final judgment and order cum inquiry report dated 1st June 2017 passed by the Learned Additional Chief Metropolitan Magistrate in Complaint Case no. 22/4/13 whereby the Learned Trial Court recommended the extradition of the petitioner to the requesting state that is Kingdom of Thailand for facing trial for the offence of murder and quashing of letter dated 7th July 2017 issued by the Ministry of External Affairs to The Royal Thai Embassy whereby the Government of India decided to extradite the petitioner to Thailand to face trial in case No. 187/2555 for the offence of murder.

2. Briefly stated the allegations against the Petitioner are that he killed an American national namely Ms. Wendy S. Albano at Bangkok, Thailand

on 12th February 2012. The Thai Government has made the petitioner, prime suspect on the basis of evidence collected from the spot. The petitioner surrendered before Mumbai Police on 29th September 2014 pursuant to the issuance of non-bailable warrants. On 1st October 2014 after obtaining transit remand from the court of Learned Additional Chief Metropolitan Magistrate, Mumbai, he was produced before the court of Learned Additional Chief Metropolitan Magistrate, Delhi. Thereafter, the petitioner was sent to judicial custody.

3. Learned Additional Chief Metropolitan Magistrate, Delhi completed the inquiry and passed the final extradition enquiry report vide impugned order dated 1st June, 2017 and the same was communicated to The Royal Thai Embassy vide the impugned letter dated 7th July 2017.

4. Learned counsel for the petitioner challenges the letter dated 7th July 2017 on two grounds. Firstly, that the inquiry report having not been received by the petitioner till the 13th July, 2017, admittedly no opportunity was given to the petitioner to file the written statement under Section 7 (4) of the Extradition Act and before the said written statement could be filed, the letter dated 7th July, 2017 was sent. Learned counsel for the petitioner further submits that supply of inquiry report to the counsel of the petitioner on 2nd June, 2017 would not be compliance of the mandate of the Act for the reason that supply of the inquiry report has to be to the fugitive criminal and even if, the inquiry report was supplied, counsel for the petitioner was not in India, hence it was no valid service of the report. The petitioner made a request to file written statement to the court to be filed till first week of July. It is quite evident from the order passed by the Learned Metropolitan Magistrate dated 13th July 2017 that the copy of the Preliminary Enquiry

was not served on the Petitioner due to which he was unable to file the Written Statement. The Ministry passed the extradition order on 7th July 2017 when the written statement of the petitioner was not on record.

5. The second ground of challenge of learned counsel for the petitioner to the letter dated 7th July, 2017 is that the said letter suffers from non-application of mind as despite the petitioner having spent nearly four years in custody in India, there is no mention of the same in the letter dated 7th July, 2017, informing the Kingdom of Thailand about the period spent so that the same may be taken into account, in case, the fugitive criminal is finally convicted and awarded sentence. The Indian authorities have also not discussed regarding the jail term already undergone by the petitioner in India with the Thai authorities. It is contended that the Extradition Letter dated 7th July 2017 was passed without any application of mind, in a clerical and mechanical manner. The Indian Authorities have not discussed with the Thai Authorities that Death Penalty should not be imposed on the petitioner as per universally practiced procedure in cases of Extradition of one's national to other countries.

6. Challenging the inquiry report dated 1st June, 2017 learned counsel for the petitioner submitted that the mandate of Section 10 (2) (a) & 10 (2) (d) of the Extradition Act, 1962 (in short the Act) has not been followed. The 'Arrest Warrant' issued by the Thailand Court has to be signed and sealed/stamped by the learned court issuing it. The 'Arrest Warrant' is in Thai language and Indian External Affairs Ministry's Officials & the Courts cannot understand Thai language. The translation in English attached with the document in Thai language was not at all signed in the first place. The said document cannot be termed as 'duly authenticated' as per the provisions

of the Act. He also submitted that the Union of India through Ministry of External Affairs had filed an application under Section 5 of the Act before the Learned Metropolitan Magistrate for Preliminary Enquiry on mere photocopies on the basis of which cross-examination was conducted. The documents received in India for inquiry and considered to form the basis of the Inquiry report were not duly authenticated by the competent authority of the requesting state.

7. Learned Standing Counsel for the Central Government submitted that the Central Government has the discretion to either Suo moto take action to extradite a person or may order the Magistrate to carry out an enquiry. Counsel for the petitioner was competent to receive the copy of the Warrant of Committal on behalf of the accused. As per the order dated 1st June 2017 it is evident that the same was handed over to the counsel for the petitioner. No written statement was filed on behalf of the petitioner despite notice being received by him. The right of the petitioner is limited that he can only prove that offence is of political character or not an extraditable offence. Even after an inquiry, it is the sovereign power of the Government of India whether to extradite a person or not.

8. Section 7, 10 and 17 of the Act reads as under:

Section 7. Procedure before Magistrate. -

"(1) ... ...

(2) Without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State 1[***], and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal accused or has been convicted is an offence of political character or is not an extradition offence.

(3) If the Magistrate is of the opinion that a prima facie case is not made out in support of the requisition of the foreign State 1[***], he shall discharge the fugitive criminal.

(4) If the Magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State, he may commit the fugitive criminal to prison to await the orders of the Central Government and shall report the result of his inquiry to the Central Government, and shall forward together with such report, and written statement which the fugitive criminal may desire to submit for the consideration of the Central Government."

Section 10. Receipt in evidence of exhibit depositions and other documents and authentication thereof.-

"(1) **…. …..**

(2) Warrants, depositions or statements on oath which purport to have been issued or taken by any Court of Justice outside India or copies thereof, certificates of, or judicial documents stating the facts of conviction before any such Court shall be deemed to be duly authenticated if—

(a) the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or of such State;

(b) ... ...

(c) ... ...

(d) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a Minister of the State where the same were issued, taken or given."

Section 17. Dealing with fugitive criminal when apprehended.-

"(1) ... ...

(2) ... ...

(3) The Magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of that Government."

9. As noted above, the challenge to the inquiry report is twofold; that the documents received in India for inquiry and considered were not duly authenticated by the competent authority and original documents were not filed before the Court. Section 10 (2) of the Act provides that the warrants, depositions or statements on oath which purport to have been issued or taken by any Court of Justice outside India or copies thereof, certificates, etc., shall be deemed to be duly authenticated if purportedly signed by a Judge, Magistrate or officer of the State. A perusal of the Trial Court Record reveals that the warrants Ex.1/8 are duly signed by the competent authority. Further even if no original documents were placed initially, the fact that subsequently authenticated documents were placed in the course of inquiry is not disputed. The scope of an inquiry as per Section 7 of the Act before the learned Metropolitan Magistrate is limited and the Magistrate is not required to see whether the offence alleged against the petitioner has been proved beyond reasonable doubt but whether there is a prima facie case or reasonable ground to believe that the fugitive criminal has committed an extraditable offence. The documents placed on record complied with the mandate of Section 10 of the Act. Hence there is no merit in the challenge to the inquiry report.

10. Petitioner challenges the letter dated 7th July, 2017 of the Govt. of India on the ground that the right to file written submissions was not given

to the petitioner as the copy of the inquiry report was supplied only on 13/14th July, 2017 and the period of incarceration undergone was not informed so that in case the petitioner is convicted and sentenced, benefit of the period undergone can be given to him. Admittedly, as per the record copy of the inquiry report was served on the counsel for the petitioner on 2nd June, 2017 in the Court and the counsel being the constituted attorney of the petitioner, the petitioner cannot claim that he had no service of the inquiry report till 13/14th July, 2017. It was for the learned counsel for the petitioner to have ensured that the copy of the inquiry report was passed on to the petitioner so that he could have filed his written statement if so desirous. Further merely non-mentioning of the period undergone in custody in India would not vitiate the letter dated 7th July, 2017 for the reason in case on receipt of the inquiry report and pursuant to letter dated 7th July, 2017 the petitioner is extradited, he would be facing a full-fledged trial where all these facts can be brought to the notice of the competent Court.

11. Thus this Court finds no merit in the grounds urged to challenge the inquiry report or the letter dated 7th July, 2017. Hence the petition and application are dismissed.

12. TCR be sent back.

(MUKTA GUPTA)
JUDGE

JANUARY 07, 2019
'vj/ga'