

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No.177 of 2023

Mr. Mark Reidy, s/o Mr. Patrick Joseph Reidy, aged about 40 years, a citizen of Ireland and a permanent resident of Switzerland, presently at Rue De La Terrasiere 39, 1207 Geneva, Switzerland.

... Petitioner

Versus

1. The State of Jharkhand
2. Kishor Exports through its proprietor Deepak Agarwal, Kulhi Industrial Area, P.O. & P.S. Ormanjhi, District- Ranchi, Jharkhand.

... Respondents

For the Petitioner	: Mr. Indrajit Sinha, Advocate Mr. Abhijit Mittal, Advocate Ms. Shaivya Singh, Advocate Mr. Prem Mardi, Advocate Ms. Shristi Das, Advocate Mr. Anukalp Jain, Advocate
For the State	: Mr. Manoj Kumar, GA-III
For the Resp. No.2	: Mr. Pandey Neeraj Rai, Advocate Mr. Abhijeet Kr. Singh, Advocate Mr. Harsh Chandra, Advocate Mr. Shashank Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Writ Petition (Cr.) under Article 226 of the Constitution of India has been filed with a prayer for issuance of an appropriate Writ(s)/ Order(s)/direction(s) or a Writ in the nature of *certiorari* for setting aside/quashing the summons dated 14.07.2022 issued by the learned Chief Judicial Magistrate, Ranchi in Complaint Case No.190 of 2021 as the same has

been issued without any authority or force of law and the same is not in accordance with Mutual Legal Assistance Treaty between India and Switzerland (MLAT) as the summons are laden with multiple discrepancies in critical details. Further prayer has also been made for quashing the order dated 13.01.2023 by which the learned Chief Judicial Magistrate, Ranchi issued non-bailable warrant of arrest against the writ petitioner and for issuance of Writ(s)/Order(s)/Direction(s) or a Writ in the nature of *mandamus* directing the Investigating Officer to strictly act in accordance with law and MLAT Procedure established and consequential reliefs.

3. The brief fact of the case is that Ormanjhi P.S. Case No.190 of 2021 was registered on the basis of the written report submitted by one Kishor Exports through Mr. Deepak Agarwal alleging that the owner of WINC and its employees have committed the offences punishable under Sections 419/420/467/468/471/474 of the Indian Penal Code. The undisputed fact remains that the writ petitioner is a permanent resident of Switzerland. The petitioner is alleged to be the owner of WINC. The Investigating Officer of the case of Ormanjhi P.S. Case No.190 of 2021 filed a petition on 14.07.2022 praying therein to issue a warrant of arrest against the writ petitioner and another. The learned Chief Judicial Magistrate, Ranchi, considering *inter alia* that the writ petitioner was residing outside the territory of India to afford him an opportunity of putting forth his contention in respect of the allegations made against him and for the purpose of collecting evidence during the course of investigation and also for the purpose of co-operation and to facilitate the investigation, issued the summons to the writ petitioner and requested the Under Secretary (Legal Cell), Internal Security-II Division, Ministry of Home Affairs with a request to

serve summon in connection with Ormanjhi P.S. Case No.190 of 2021 but at the cause-title of the notice, the case number has erroneously been mentioned as “Complaint Case No.190 of 2021” instead of being “Ormanjhi P.S. Case No.190 of 2021”.

4. Learned counsel for the petitioner- Mr. Sinha draws attention of this Court towards Section 105(B)(2) of the Code of Criminal Procedure, 1973; which reads as under:-

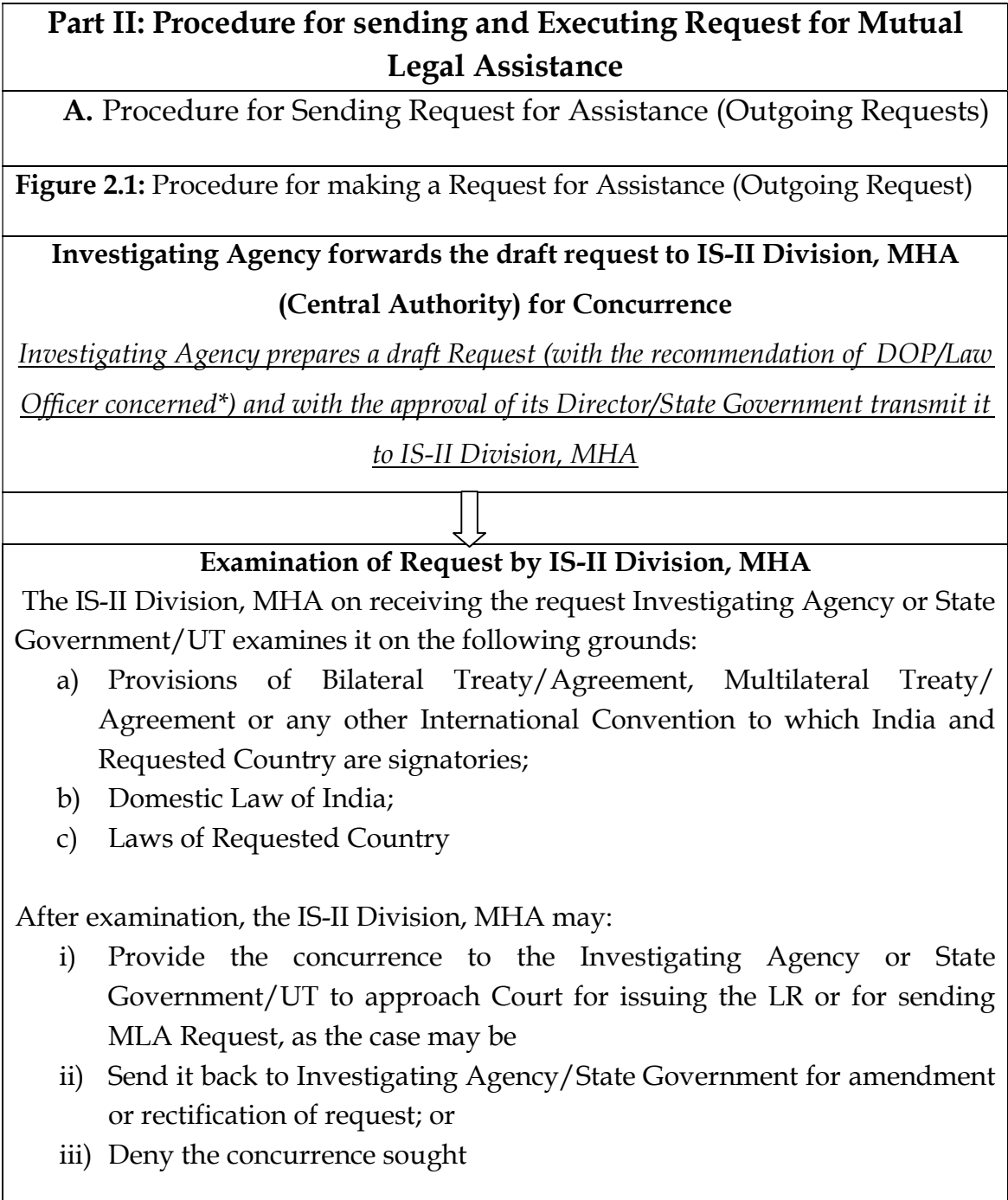
“105-B. Assistance in securing transfer of persons. –

(1) Xxxxx

(2) Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be served or executed.”

and submits that as the said provision of law starts with a non-obstante clause so, the same overrides all other provisions in the Code of Criminal Procedure. Learned counsel for the petitioner next submits that the undisputed fact is that Switzerland is a contracting State with India and the writ petitioner is at Switzerland. Since the object of issuing the summons was requiring attendance of the writ petitioner in connection with investigation of Ormanjhi P.S. Case No.190 of 2021, the proper procedure was for the Investigating Officer or any Officer superior in rank to the Investigating Officer to submit an application before the court concerned and if the court, has been satisfied, it ought to have issued summons against the writ petitioner but the condition precedent is that before issuing the summons and before the Investigating

Officer even approaching the court, the Investigating Officer ought to have approached the Internal Security-II Division, Ministry of Home Affairs, Government of India. In this respect, the learned counsel for the petitioner draws attention of this Court towards page No.85 of the brief which is the part of the Mutual Legal Assistance Treaty; the relevant portion of which reads as under:-



(Emphasis supplied by italics and underline)

5. Mr. Sinha- the learned counsel for the petitioner next submitted that the said notification issued by the Central Government requires that in case of

sending request for assistance, the Investigating Agency is required to forward the draft request to the Internal Security-II Division, Ministry of Home Affairs (Central Authority) for concurrence and after examination, the Internal Security-II Division, Ministry of Home Affairs must provide the concurrence to the Investigating Authority etc. to approach the court for issuing the Letter of Request (LR) or for sending MLA request, as the case may be.

6. Learned counsel for the petitioner- Mr. Sinha next submits that as in this case the Investigating Agency without obtaining the concurrence of the IS-II Division of the MHA has straightaway approached the court, the court ought not to have issued the request for service of summons; as has been made by the impugned summons, the copy of which has been kept at page No.52 of the brief. It is next submitted that another summon, which was served upon the writ petitioner, the copy of which has been kept at page No.49, is also under challenge and has been prayed to be quashed.

7. Learned Government Advocate No.III- Mr. Manoj Kumar appearing for the State on the other hand fairly submits that the case number has erroneously been mentioned as 'Complaint Case No.190 of 2021' and as has been responded to by the Chief Judicial Magistrate, Ranchi in compliance to the order of this Court in this Writ Petition (Cr.); the complaint case No.190 of 2021 should be read as Ormanjhi P.S. Case No.190 of 2021. It is next submitted by the Government Advocate-III that there are serious allegations against the writ petitioner and there is enough materials in the record against him, which has been found during the investigation so far. It is next submitted that the writ petitioner was served with the notice through proper medium by the Ministry of Home Affairs, India on 07.09.2022 but still he is not appearing. It is then

submitted that the summons has been issued to the writ petitioner as per the comprehensive guidelines of Ministry of Home Affairs dated 04.12.2019 and no illegality is there in the notice except discrepancy in the case number as already indicated above. Hence, it is submitted that this Writ Petition (Cr.), being without any merit, be dismissed.

8. Learned counsel for the respondent No.2-informant also fairly submits that the case number has wrongly been mentioned as 'Complaint Case No.190 of 2021' instead of being 'Ormanjhi P.S. Case No.190 of 2021'. Learned counsel for the respondent No.2-informant adopts the submissions made by the learned Government Advocate No.III- Mr. Manoj Kumar and also submits that this Writ Petition (Cr.), being without any merit, be dismissed.

9. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that this Court finds force in the submission of the learned counsel for the petitioner that, since Section 105(B) (2) of the Code of Criminal Procedure starts with non-obstante clause; so, it will override all other provisions of the Code of Criminal Procedure. In this case without doubt, the Investigating Agency has made request for assistance for attendance of the writ petitioner, who is in the contracting State of Switzerland and as the attendance of the writ petitioner is required in connection of investigation of Ormanjhi P.S. Case No.190 of 2021, so, such request has to be in terms of Section 105 (B) (2) of the Code of Criminal Procedure, 1973 as also the notification as the Central Government has made in this respect is already referred to above in this judgement.

10. As has been mentioned in part-2 of the relevant notification of the Central Government which has been quoted above in the foregoing paragraphs

of this judgment; in case Investigating Agency requires such attendance, the Investigating Agency is required to forward the draft request to IS-II Division, MHA (Central Authority) for concurrence and the Investigating Agency has to prepare a draft request and with the approval of the Director of Investigating Agency or the State Government and remit the same to the IS-II Division, MHA and after examination of IS-II Division, MHA may provide concurrence *inter alia* the Investigating Agency to approach the court for issuing the Letter of Request (LR) or for sending the MLA request, as the case may be and only upon such concurrence, the Investigating Agency may approach the court for issuing the Letter of Request (LR) or sending the MLA request, as the case may be.

11. Now coming to the facts of the case, undisputedly in this case, the Investigating Agency has not forwarded the draft request to IS-II Division of MHA (Central Authority) approved by the Director/State Government and hence, there was no occasion for the Central Authority being the IS-II Division, MHA to accord a concurrence and without such concurrence as the Investigating Officer has directly approached the court of learned Chief Judicial Magistrate for issuing summons and for sending MLA request; therefore, this Court is of the considered view that the summons, the copy of which have been kept at page-49 and 52 of the brief dated 14.07.2022, is not in accordance with law. Accordingly the same is quashed and set aside.

12. So far as the prayer regarding quashing the order dated 13.01.2023 by which non-bailable warrant of arrest has been issued against the writ petitioner is concerned, the perusal of the same reveals that non-bailable warrant of arrest has been issued against the writ petitioner as he did not appear in response to

the summons dated 14.07.2022 which has been quashed by this court by this judgment. Hence, as a consequential relief, the order dated 13.01.2023 passed by the learned Chief Judicial Magistrate, Ranchi in connection with Ormanjhi P.S. Case No.190 of 2021 is also quashed and set aside.

13. The Investigating Agency is at liberty to approach the Central Authority being the IS-II Division, MHA with the draft request in accordance with the Guidelines on Mutual Legal Assistance in Criminal Matters issued by the Ministry of Home Affairs and upon concurrence of the Central Authority, the Investigating Agency may approach the Chief Judicial Magistrate, Ranchi afresh for Letter of Request (LR) or MLA request, as the case may be.

14. Keeping in view the relevant procedure for sending Letter of Request (LR) or MLA request having been dealt with in the judgment, Registrar General is directed to circulate the judgment to all the Judicial Officers in the State of Jharkhand as well as to the Director General of Police, Government of Jharkhand for circulating it to all the police officers for information.

15. This Writ Petition (Cr.) is disposed of accordingly.

16. The entire original Case Records be sent back to the court concerned forthwith.

17. In view of disposal of this Writ Petition (Cr.), Interlocutory Applications Nos.986/2024 and 8978 of 2024 is dismissed being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 30th of January, 2025
AFR/ Saroj