

News

Not following through with an ED summons is not enough to issue non-bailable warrants:



The Delhi High Court must meet the requirements of Section 73 of the CrPC before it can issue

The Delhi High Court recently said that a court cannot issue non-bailable warrants (NBWs) against someone just because they didn't follow the Enforcement Directorate's (ED) order.

According to Section 73 of the Code of Criminal Procedure (CrPC), NBWs can only be given by a court when asked to do so by a police agency. Justice Amit Sharma made this decision.

According to the same, NBWs can only be issued against someone who is already in jail, has been charged with a crime that can't be released on bail, or is trying to avoid being caught.

"It is true that non-bailable warrants can be issued against someone who is evading investigation and who may not be named as an accused person in the prosecution complaint. However, for the purposes of Section 73 of the CrPC, that person must be presented as someone accused of committing a non-bailable crime and evading arrest," the Bench said.

It said that even though the ED said that under PMLA, someone can be called in for questioning even if there isn't a formal charge against them, that couldn't get in the way of what Section 73 of CrPC says must happen.

In this case, the Court threw out the arrest orders that Sachin Dev Duggal, an entrepreneur from the UK, could not be freed on bail. He was wanted by the ED for money laundering related to the Videocon group and a bank fraud case.

From January 2022 on, ED sent Duggal several summonses under Section 50 PMLA.

An application for NBWs was made before the PMLA Special Court in Mumbai and the same was rejected in February 2023 after recording ED's own statement that Duggal was only a "witness" and suggesting recourse under section 174 IPC (non-attendance to summons).

The agency then moved the PMLA Special Court in Delhi seeking open-ended NBWs ***"in aid of investigation"***, clearly terming Duggal a ***"suspect"*** whose non-cooperation stalled the probe. The Court issued NBWs on February 10, 2023 and later refused to cancel them.

After considering the case, the High Court cancelled the NBWs, noting that the trial court had not exercised the powers as per the provisions of the CrPC.

Senior Advocate Mohit Mathur with advocates Arshdeep Singh Khurana, Sulakshan S Vedartham, Khushboo Jain and Chetan Nagpal stood for Sachin Dev Duggal.

ED was represented by its Special Counsel Zoheb Hossain, Panel Counsel Vivek Gurnani and lawyers Kartik Sabharwal, Pranjal Tripathi, Daanish Abbasi, Mahesh Gupta, Navin Kumar and Ashish Kapoor

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