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

Reserved on: 16th March, 2021

Date of decision: 7th April, 2021

+ **W.P.(C) 1541/2021 & CM APPL. 8482/2021**

MILEN IVANOV DAVRANSKI Petitioner

Through: Ms. Tanya Aggarwal and Mr.
Navneet Kumar, Advocates.

versus

UNION OF INDIA Respondent

Through: Mr. Rajeev Sharma, Mr. Rajat
Krishna and Mr. Saket Chandra,
Advocates.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. The Petitioner, who is a Bulgarian National, has preferred the present writ petition, seeking a writ of mandamus against the Union of India, to take steps to expedite the extradition of the Petitioner to Bulgaria i.e. his homeland.
2. The Petitioner is currently lodged in Central Jail, Tihar.
3. The brief background of the case is that a request was received by the Union of India from the Ministry of Justice, Government of Bulgaria, through the diplomatic channels, requesting for extradition of the Petitioner, vide letter dated 17th July 2020. Upon the said request being received, the Union of India, under section 5 of the Extradition Act, 1962 (*hereinafter*, "*the Act*"), had requested the Additional Chief Metropolitan Magistrate-01, Patiala House Courts, New Delhi (*hereinafter*, "*ACMM*") to enquire into the extradition request relating to the Petitioner, in view of the offences

involved, by determining as to whether a *prima facie* case for extradition is made out against the accused, in accordance with the provisions of the Act and the Extradition Treaty between the Union of India and the Government of Bulgaria.

4. The said request was considered by the Id. ACMM and the Id. ACMM recommended the extradition, vide order dated 6th November, 2020. The Id. ACMM held:

“Thus, I conclude my report with following conclusion:

- a. The FC wants to be extradited to requesting state voluntarily to face the charge of distribution of narcotic substance as ordered against him.*
- b. Offence alleged against fugitive criminal for which extradition has been sought is an extraditable offence.*
- c. The certified documents along with wrest warrant by the republic of Bulgaria for apprehension of the fugitive criminal are duly authenticated and certified and the same has not been contested by the FC.*

In view my above report, I hereby recommend to Union of India the extradition of the fugitive criminal for the offence of distribution of narcotics substances to the requesting state i.e. Republic of Bulgaria.”

5. The grievance of the Petitioner in the present petition is that though the Id. ACMM recommended extradition, the process of extradition has not been given effect to, yet, and the Petitioner is still confined in prison. Hence the present writ petition, has been filed by the Petitioner, praying for directions to the Union of India to expedite his extradition. The relief

sought for in this petition is as under:-

“Issue writ in the nature of mandamus or any other appropriate writ/order/directions whereby directing the respondents to take expeditiously steps to extradite the petitioner to Bulgaria.”

6. The matter was first heard on 5th February, 2021, on which date an objection was raised on behalf of the Union of India under Section 31(1)(d) of the Act stating that there are three FIRs, pending against the Petitioner in the State of Goa, and the same are unconcerned with the offence concerned in extradition proceedings. Hence, on the said date, permission was sought by the Union of India to place the details of the said cases on record before this court. The Union of India has since filed its counter affidavit and submissions have been made on behalf of the authorities concerned.

7. Vide order dated 2nd March, 2021, a direction was also given to the Petitioner to supply his address in Goa and the Government of Goa was impleaded and directed to verify the same. The address had been supplied in compliance of the said order. Mr. Patil, Id. counsel, appearing for the State of Goa has also confirmed that the address given by the Petitioner, in Goa, stands verified.

8. The question that now arises in this petition is as to whether the Petitioner's extradition, in terms of the order of the ACMM, is to be allowed to be expedited or not.

Submissions of the Petitioner

9. The contentions of Ms. Aggarwal, Id. counsel appearing for the Petitioner, arguing for expedited extradition of the Petitioner, are as under:-

- (i) That Section 24 of the Act is extremely clear to the effect that if a person has been permitted to be extradited upon an inquiry under section 5 by the ACMM, he would have to be discharged immediately, unless sufficient cause exists to the contrary.
- (ii) That although three other FIRs are pending against the Petitioner, in all three cases, bail has already been granted. In two of the said cases, the Petitioner has also been given permission to travel abroad. Specific reference is made to the conditions of bail, which were imposed by the learned Magistrate in Goa, as per which, the Petitioner is permitted to travel in India as well as abroad, and there is no embargo on travelling during the pendency of the said cases.
- (iii) The conditions of bail are almost identical in all three cases and according to Id. counsel for the Petitioner the conditions themselves show that there cannot be any embargo on the Petitioner being expedited or even permitted to travel abroad, including to Bulgaria.
- (iv) That insofar as the third case against the Petitioner, where an explicit permission to travel abroad has not been granted, is concerned, it is submitted that by the time an application for permission to travel abroad, was moved in the said case, the Petitioner had already been taken into custody for being produced in Delhi, due to the warrant issued by the Id. ACMM in Delhi, pursuant to the inquiry conducted on the basis of the extradition request issued by the Government of Bulgaria. It was under those circumstances that the application of the

Petitioner for permission to travel abroad, in the third case, was withdrawn.

- (v) That, therefore, the Petitioner can be extradited and permitted to travel abroad, despite the pendency of the three cases against him in Goa, as Section 31(1)(d) of the Act includes the portion stating – *“until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise.”* Hence section 31(1)(d) of the Act, would not be an impediment in implementing the extradition. Further, it is submitted that “or otherwise” would cover the case of the Petitioner as the Petitioner has been granted bail in three cases and permission to travel abroad in two of the cases. Emphasis is levied on the meaning of the word ‘discharge’ and “bail”, by relying upon the Law Lexicon and the Black’s Law Dictionary, to argue that discharge would mean a situation where the Petitioner is no longer held in confinement.
- (vi) That even on humanitarian grounds, the Petitioner has a single mother who has various mental ailments and the Petitioner is a single child. Further, the address in Bulgaria has been duly verified by the Embassy of Bulgaria in India.
- (vii) That the co-accused in the three cases, Mr. Ivo Petrov Merohenov, is already on bail in all cases and he has also been given permission to travel abroad, which is being currently processed by him for travelling to Bulgaria. Accordingly, it is argued that two citizens who are accused in the same cases cannot be discriminated against each other and have to be

treated at parity. There is no allegation against the Petitioner as to any bail conditions having been violated, and there is also no apprehension that his presence cannot be secured by the Union of India.

- (viii) Further reliance is placed upon Article 11 of the Extradition Treaty between the Union of India and the Republic of Bulgaria, to argue that even if a case is pending before an Indian Court, the Union of India has the discretion to still permit the extradition.
- (ix) A verbal submission is made for compensation for delay in extradition proceedings.
- (x) It is submitted that the Petitioner still has the option of approaching the Court in the third case pending in Goa, for permission to travel abroad, and the same ought not to be prejudiced by the pendency of the present petition.

Submissions of the Respondents

10. On the other hand, Mr. Sharma, ld. counsel appearing for the Union of India, has submitted:

- (i) That Section 31(1)(d) of the Act is clear and categorical to the extent that - if any criminal proceedings, apart from the ones pursuant to extradition, are pending against any person who may have obtained an extradition order, unless and until the accused has been acquitted or his sentence has expired in the said cases, he cannot be permitted to be discharged or to travel in pursuance of the extradition order. As per the said Section

31(1)(d), the policy is clear that primacy would have to be given to offences committed in India and trial thereof.

- (ii) That “or otherwise” in section 31(1)(d) of the Act is to be read in context of acquittal or expiration of sentence, and would mean a form of discharge- as contemplated under Section 227 of CrPC, wherein if the case of the prosecution is not sufficiently made out, the Judge can consider discharging the accused. Thus, the mere grant of bail or permission to travel abroad, would not be sufficient by itself, under Section 31(1)(d), to mean as constitutive of discharge, and to permit extradition.
- (iii) That the extradition request by the Govt. of Bulgaria, itself shows that the Petitioner is wanted in serious offences in Bulgaria, including the allegation that he was the leader of an organised criminal group of narcotics. Further emphasis is levied upon the allegations in the other three FIRs pending in Goa, to argue that even despite the fact that he moved from Bulgaria to India he continued to indulge in criminal activities, and hence the present case is not a case for permitting the Petitioner to be discharged or for his extradition to be expedited.
- (iv) Further reliance is placed on the judgment of the Division Bench of this court in *Brij Bhushan Bansal vs. Union of India, 197 (2013) DLT 20*, to argue that the conditions of surrender under Section 31(1)(d) are mandatory in nature, and

are not optional. If any of the said conditions are satisfied, extradition cannot be permitted.

- (v) Insofar as bail is concerned, reference is made to Section 7(4) and Section 8 of the Act, which gives the option to the Magistrate to *prima facie* decide the case for requisition by the foreign state. The same is therefore not mandatory.

11. Insofar as the State of Goa is concerned, it is submitted by Mr. Patil, Id. counsel for the State of Goa, that the Petitioner was given bail but only to stay in the territorial jurisdiction of the State of Goa. Thus, according to Mr. Patil, releasing the Petitioner, has to be in compliance with the conditions which are imposed in the bail order, and in any event, charges are yet to be framed in one of the cases which are pending against the Petitioner. He further submits that all the three cases are at a nascent stage and hence the Petitioner ought not to be released or extradited.

Analysis and Findings

12. The case is governed by the provisions of the Extradition Act, 1962. It is not in dispute that extradition is both an administrative as well as a judicial act, as has been held in ***Brij Bhushan Bansal vs. Union of India, 197 (2013) DLT 20***. Upon receiving an extradition request from the requesting state, the proceedings involve consideration at the administrative level by the Government, a judicial consideration and *prima facie* enquiry by the Magistrate and, thereafter, a consideration at the administrative level once again. The judicial enquiry is held to be sandwiched between the administrative actions. It has been held by the Id. Division Bench of this court in ***Rosline George v. Union of India and Others, 1991 ILR Del 308***

(Criminal Writ Appeal No. 692/1989, decided on 14.12.1990):

“76.Extradition proceedings are by their very nature partly judicial and partly administrative. The judicial part, i.e., the inquiry before the Magistrate is sandwiched between the two administrative actions. The entertainment of the request received by the foreign State and the consideration thereof as to whether to issue an order to a Magistrate to inquire into the offence is an administrative decision of the Government of India. Thereafter, it is the Magistrate who issues or endorses the warrant for the arrest of the fugitive criminal. When the fugitive is brought before the Magistrate, he holds the inquiry and if he is of the opinion that no prima facie case is made out, he can discharge the fugitive criminal; on the other hand, if he is of the view that a prima facie case is made out, then he will make a report and forward the same with the written statement, if any; of the fugitive criminal to the Central Government for its consideration. After the report etc. is received, it is again a matter pertaining to the political will of the State, whether to pass the order of extradition. This is again an administrative act. The fugitive criminal is certainly entitled to a proper judicial inquiry and this is provided for in section 7 of the Act. An impartial scrutiny is his right, but once this takes place, the decision whether to pass an order of extradition depends on the Government of India. It is hardly legitimate to say that the discretion vested in the Government of India will be examined "with an evil eye and an unequal hand". If the decision is patently arbitrary or malafide, then the fugitive criminal has recourse to law.”

13. In the present case, the prayer is for a direction to be issued to the Respondents to take expeditious steps for extraditing the Petitioner to Bulgaria. It is not disputed that there are three FIRs pending against the

Petitioner in the State of Goa, which are unconcerned and unrelated to the offences *qua* which extradition is sought by the Government of Bulgaria. The details of the said FIRs are as under:

- i) Mapusa Police Station Goa, FIR No. 275/2019 u/s 419 and section 420 of the IPC- arrested on 15th January 2020 and released on conditional bail on 20th January 2020.
- ii) Mapusa Police Station Goa, FIR No. 02/2020 u/s 380 read with section 34 of the IPC – arrested on 5th January 2020 and released on conditional bail on 15th January 2020.
- iii) Margao Town Police Station Goa, FIR No. 3/2020 u/s 420 of IPC and Section 66 of the IT Act, 2000 – arrested on 21st January 2020 and released on conditional bail on 24th January 2020, with a specific condition that the accused cannot leave the State of Goa and the Country.

14. In the first FIR, FIR No. 275/2019, the Petitioner/ Accused, had sought bail from the competent Court at Mapusa, Goa. A conditional bail was granted to the Petitioner, on the following terms and conditions:

“The applicant is released on P.R. Bond of Rs. 25,000/- each (Rupees Twenty-Five Thousand only) with one local surety in the like amount.

The applicant shall abide by the following conditions, failing which his bail shall stand canceled:

a. That applicant shall not commit any offence while he is on Bail.

b. That applicant shall not directly or Indirectly make any inducement threat or promise to any person acquainted with the

facts of the case, so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

c. The Applicant shall not leave the Country or the State of Goa without the prior permission of this Court.

d. The Applicant shall furnish copy of his Passport and Visa to the Investigating Officer and the Investigation Officer to verify the same.

e. The applicant to produce duly filled Form 'C' carrying the details of his passport and visa.

f. The Applicant shall furnish his detailed temporary residential address in Goa as well as his permanent residential address of his native place with Photo Identity proof and contact number to the Investigating Officer. The Investigating Officer to verify the address.

g. The Applicant shall attend at the Mapusa police station after every 15 days till the filling of the chargesheet and the time of attendance shall be between 4.00 pm to 5:00 pm.

h. The Applicant shall remain present at the police station and in the Court as and when required by the Investigating Officer or by this Hon'ble Court."

15. Similar bail orders have been granted in the other two FIR's as well. The Petitioner had, thereafter, moved applications for permission to travel abroad, while on bail in the first two, before the competent Courts. The said application for permission to travel abroad has been allowed in the first and the second FIRs, on the following terms and conditions.

“12. Hence. in view of the above. the application is allowed, permission is granted to the applicant to leave India and visit Bulgaria for a period 3 months commencing from the date he leaves India on following conditions:

- i) Applicant shall furnish one local surety of Rs.20,000/-*
- ii) Applicant shall give an undertaking in the form of an affidavit before the Court stating that he will personally appear before the Court as and when required by the Court.*
- iii) Applicant shall also specify in such affidavit his detailed residential address in Bulgaria to which the communication from the court shall be sent, and shall furnish notarized copy of passport of the applicant*
- iv) Applicant shall furnish his latest phone- numbers which shall be verified by the IO and intimate the Court in case of any change of phone numbers.*
- v) Applicant shall authorize/nominate one person having local address In Goa to accept summons on his behalf and this person shall also be responsible to convey to the applicant, service of summons once order is passed on the chargesheet.*
- vi) Applicant shall furnish email IDs if any and shall give an undertaking in the form of affidavit to accept service by email as proper service.*
- vii) Applicant shall furnish full size photographs duly attested by him.*
- viii) Applicant shall state the name of the advocate who would represent him in the chargesheet filed against him and to give necessary authorization to his advocate to keep the matter going.*
- ix) Applicant shall give an undertaking in the form of affidavit that he has authorized his advocate to do all the necessary acts and he shall not dispute his identity during the trial, and he will not hamper the trial.”*

16. However, in the third FIR i.e., FIR No. 03/2020 in the Margao Town P.S., when the Petitioner had filed an application seeking permission to travel abroad, in the meantime, the extradition request of the Govt. of Bulgaria, was allowed by the Magistrate, and hence the said application is stated to have been withdrawn by the Petitioner before the competent Court. The Respondents on the other hand have submitted that they had filed a reply to the said application for permission to travel abroad in FIR No. 03/2020 and had strongly opposed the grant of permission to travel abroad to the Petitioner in the said case.

17. The question that arises for consideration before this Court in the present case is as to whether a writ of mandamus ought to be issued to the Union of India, directing the Government to expedite the extradition of the Petitioner, or not.

18. The concept of extradition, itself, involves the handing over of a fugitive to a foreign country (*hereinafter, "the requesting state"*), by the State where the fugitive is currently located (*hereinafter, "the requested state"*). Extradition, in no way, means or involves releasing an accused fugitive into freedom and granting them liberty, but rather merely involves handing over the accused from the police in one state, to another, for being tried for the offences that have been committed by the accused fugitive in the requesting state. The Court in extradition proceedings is, therefore, not concerned with the release of the person from jail, but rather is only concerned with the handing over of the person from one country to the another. This principle has been recognized by the Id. Supreme Court in ***Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Others, AIR 1955 SC 367*** and has also been followed by the Division

Bench of this court in *Brij Bhushan Bansal (supra)*. The Supreme Court in *Hans Muller (supra)* held as under:

“39. The Extradition Act is really a special branch of the law of Criminal Procedure. It deals with criminals and those accused of certain crimes. The Foreigners Act is not directly concerned with criminals or crime though the fact that a foreigner has committed offences, or is suspected of that, may be a good ground for regarding him as undesirable. Therefore, under the Extradition Act warrants or a summons must be issued; there must be a magisterial enquiry and when there is an arrest it is penal in character; and this is the most important distinction of all - when the person to be extradited leaves India he does not leave the country a free man. The police in India hand him over to the police of the requisitioning State and he remains in custody throughout.

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42. In a case of extradition, he does not leave a free man. He remains under arrest throughout and is merely handed over by one set of police to the next.”

19. Further, in the present case, there exists an Extradition Treaty between the Republic of India and Republic of Bulgaria, dated 23rd October 2003. The said Treaty came into force from 1st February 2007 and was notified on 3rd December 2007.

20. As per the said Treaty, both the countries, which are parties to the Treaty, have agreed for mutual legal cooperation for the purposes of extradition. Both the countries have agreed to surrender the persons, other than their own nationals, who are accused or convicted of any extraditable offence, to each other. The said surrender through extradition is to take place irrespective of the place of commission of extraditable offence. However, as

per Articles 3 and 11 of the Treaty, under certain circumstances, the requested country can refuse to extradite the accused fugitive. The said Articles read as under:

Article 3
Refusal to Extradite

1. *Extradition shall not be granted in cases when:*
 - a) *criminal proceedings have been instituted or a judgement has been passed by the judicial authorities of the Requested Party upon the person sought in respect of the offence or offences for which extradition is requested;*
 - b) *by the date of receipt of the request for extradition, the criminal prosecution or the execution of the punishment has been barred by lapse of time that constitutes a limitation under the law of either of the Contracting parties.*
2. *Extradition shall not be granted if the offence, in respect of which it is requested, is regarded by the Requested Party as a political offence, an offence of political character, or as an offence connected with such an offence.*
3. *For the purpose of this Treaty the following offences shall not be deemed to be offences within the meaning of para 2:*
 - a) *any offence in respect of which both Contracting Parties have the obligation pursuant to a multilateral international agreement to extradite the person sought, or to submit his or her case to their competent authorities for a decision as to prosecution;*
 - b) *murder, manslaughter or culpable homicide, maliciously wounding or inflicting grievous bodily harm;*
 - c) *kidnapping, abduction, or any comparable form of unlawful detention, including the taking of hostages;*

- d) *placing or using an explosive, detonating device, destructive device, firearm or ammunition, capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage;*
 - e) *any other offence related to terrorism which, at the time of the request is, under the Law of the Requested State, not to be regarded as a political offence;*
 - f) *an attempt or conspiracy to commit, or aiding, abetting, inciting or participating in the commission of, any of the foregoing offences.*
4. *Extradition shall not be granted if the Requested Party has substantial reasons to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person on account of his or her race, religion, nationality, ethnic origin, political opinions, sex or status, or that person's position may be prejudiced for any of those reasons; or if that person has not received or would not receive the minimum guarantees in criminal proceedings as contained in the International Covenant on Civil and Political Rights.*

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Article 11
Temporary Extradition or Postponement of
Surrender

1. *The decision whether or not to extradite shall be taken and immediately communicated to the Requesting Party, regardless of whether, criminal proceedings against the person sought have been instituted in the territory of the Requested Party, or whether he or she is serving a sentence on the territory of the Requested Party in respect of an offence other than that for which extradition is requested.*
2. *The Requested Party may, after having granted extradition, postpone the surrender until the criminal proceedings or the sentence referred to in para 1 are completed. The Requested Party may instead of*

postponing surrender, temporarily extradite the person sought to the Requesting Party in accordance with conditions to be determined by mutual agreement between the Parties. The extradited person shall be detained during his or her stay in the territory of the Requesting Party and shall be transferred back to the Requested Party within the agreed period, which shall not exceed three months.”

21. Article 3 of the Extradition Treaty, between Union of India and Republic of Bulgaria, applies when criminal proceedings have been instituted or judgment has been passed by the Courts in India, in respect of the offence or offences *qua* which the extradition is requested. This provision would not be applicable in the present petition as the offence *qua* which the extradition of the Petitioner is sought by the Republic of Bulgaria is not the same offence for which the Petitioner is being tried in the State of Goa, in India.

22. Under Article 11(1) of the Treaty, the decision on whether to extradite the accused fugitive or not, is to be taken by the Government of India, regardless of other criminal cases pending against the person, and regardless of whether the person is serving a sentence for an offence other than the offence for which extradition is requested. Thus, the extradition request has to be processed despite the pendency of any other criminal proceedings in India. However, under Article 11(2) of the Treaty, once the extradition is granted, the surrender can be postponed until the criminal proceedings in India are completed, or the sentence, if any, is completed, as referred to in Article 11(1).

23. An option for the requested state, like the Union of India in the present case, under Article 11(2) of the Treaty, would be to temporarily

extradite the person to the requesting state, subject to certain conditions and a mutual agreement between the Government of India and the Republic of Bulgaria. If, however, such a temporary extradition is effectuated, Republic of Bulgaria has to ensure that the fugitive is detained in Bulgaria, during their stay in Bulgaria, and shall duly transfer back the person to India, within the mutually agreed period, which cannot exceed a period of 3 months. The above are the provisions as contemplated in the treaty between the Union of India and the Republic of Bulgaria.

24. Even under the Extradition Act, 1962, there are various restrictions placed on the surrender of a fugitive criminal. These restrictions are provided under section 31 of the Act. The said section reads as under:

“31. Restrictions on surrender—

(1) A fugitive criminal shall not be surrendered or returned to a foreign State—

- (a) if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character;*
- (b) if prosecution for the offence in respect of which his surrender is sought is according to the law of that State barred by time;*
- (c) unless provision is made by that law of the foreign State or in the extradition treaty with the foreign State that the fugitive criminal shall not be determined or tried in that State for an offence other than—*

- (i) *the extradition offence in relation to which he is to be surrendered or returned;*
- (ii) *any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or*
- (iii) *the offence in respect of which the Central Government has given its consent;]*
- (d) *if he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise;*
- (e) *until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.*

(2) *For the purposes of sub-section (1), the offence specified in the schedule shall not be regarded as offences of a political character.*

(3) *The Central Government having regard to the extradition treaty made by India with any foreign State may, by notified order, add or omit any offence from the list given in the Schedule.”*

25. The interpretation of Section 31(1)(d) of the Act, which is extracted above, has been subject matter of diverse interpretation by both sides. The case of the Petitioner is that the phrase “*discharge, whether by acquittal or on expiration of his sentence or otherwise,*” appearing in Section 31(1)(d) of the Act, would include discharge by bail or by orders permitting the Petitioner to travel abroad in pending criminal proceedings against the Petitioner. However, it has been argued on behalf of the Respondent that the

words “*or otherwise*” would only apply *qua* the provisions such as Section 227 of the CrPC, where the accused is discharged by the Trial Court. It is further contended by the Respondent that if there are any criminal cases pending in India, the fugitive criminal cannot be surrendered or returned to the foreign state, during such pendency.

26. Thus, the crucial question in this case is as to whether, the Petitioner who has been granted bail in the three FIRs pending against him in the State of Goa, would be entitled to be extradited expeditiously, if he is given the permission to travel abroad in the third case by the trial court.

27. The wording of Section 31(1)(d) of the Act is similar to Art.3(3) of The Extradition Act of 1870 (Imperial) of UK. The said provision reads:

“3. Restrictions on surrender of criminals. The following restrictions shall be observed with respect to the surrender of fugitive criminals: -

.....

(3) A fugitive criminal who has been accused of some offence within English jurisdiction not being the offence for which his surrender is asked, or is undergoing sentence under any conviction in the United Kingdom, shall not be surrendered until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise “

Even under Section 88 of the Extradition Act, 2003 of UK, if the person, whose extradition is sought, is charged with an offence in UK, then the extradition hearing itself could be adjourned. Section 88 of the Extradition Act, 2003 of UK reads:

“88. Person charged with offence in United Kingdom

(1) *This section applies if at any time in the extradition hearing the judge is informed that the person is charged with an offence in the United Kingdom.*

(2) *The judge must adjourn the extradition hearing until one of these occurs—*

(a) the charge is disposed of;

(b) the charge is withdrawn;

(c) proceedings in respect of the charge are discontinued;

(d) an order is made for the charge to lie on the file, or in relation to Scotland, the diet is deserted pro loco et tempore.

(3) *If a sentence of imprisonment or another form of detention is imposed in respect of the offence charged, the judge may adjourn the extradition hearing until the person is released from detention pursuant to the sentence (whether on licence or otherwise)*

(4) *If before he adjourns the extradition hearing under subsection (2) the judge has decided under section 79 whether the person's extradition is barred by reason of the rule against double jeopardy, the judge must decide that question again after the resumption of the hearing."*

28. Art. 8 of the French law of Extradition of 10th March 1927, also similarly provides:

"In the case where an alien is being prosecuted or has been convicted in France and where his extradition is requested of the French Government because of a different offence, surrender can be affected only after the prosecution has been terminated and, in the case of conviction, after the penalty has been executed."

29. Similar provisions exist in most multilateral and bilateral extradition treaties. The purpose of the same is to ensure that the sovereign rights of the country where the fugitive is located are not impinged upon in any manner and that the usual process of the domestic courts is not interfered with. In *Extradition in International Law & Practice*¹, the author observes:

“5.1.1. Postponement of surrender

*Occasionally problems do arise when a person sought to be extradited is, at the time of the request for extradition under arrest, in custody, out on bail, under prosecution or serving a sentence for a crime committed in the asylum state. In such circumstances the requested state while not rejecting the application for extradition may postpone or defer extradition until the person in question has been discharged whether by acquittal or on expiration of his sentence or otherwise the proceedings are terminated. Provisions are generally found in the national statutes and in the bilateral as well as multilateral treaties for the postponement or deferment of extradition of the person concerned if he has been accused of some offence not being the offence for which his surrender is sought, or is undergoing sentence under any conviction in the requested state until the conclusion of the proceedings and the full execution of any punishment awarded to him
xxx”*

30. The common refrain in all statutes and treaties thus appears to be that if the person, sought to be extradited, is accused of an offence in the requested state, or has been convicted in the requested state, then either the extradition proceedings itself are postponed/ adjourned, or the surrender is postponed until the conviction is undergone, or the criminal proceedings have resulted in a final conclusion/ termination.

¹ S. Bedi, *Extradition in International Law & Practice*, (1991, Discovery Publishing House) Vol.1 [282]

31. A perusal of Section 31(1)(d) of the Act shows that there are two situations that are contemplated within this provision where the fugitive is not to be surrendered by the Union of India. First, if the person is *accused* of an offence, which is not the offence in respect of which he is sought to be extradited, and secondly if the person is *convicted* of an offence in India. In either of these cases, until and unless there is a finality to the said criminal proceedings, either by means of a discharge of the accused - by acquittal or due to the complete sentence having been undergone, the surrender cannot be processed. The phrase "*or otherwise*" appears as a subset of the word discharge, and hence the same would have to be interpreted *ejusdem generis* and would only be deemed to mean any other form of discharge, which has a finality attached to it. For e.g., discharge by the trial court under Section 227 of the CrPC., the allowing of a mercy petition conclusively discharging the accused, the grant of a pardon, or any other relief where the criminal proceedings against the accused are concluded/terminated, and a final decision has been rendered, which would no longer require the accused's presence in India. Mere temporary release on bail would not be sufficient.

32. Applying this rationale to the facts of the present case where the Petitioner is an accused in three FIRs, has been granted bail in all the said three FIRs, and has even been permitted to travel abroad in two of the FIRs, the Petitioner may even be able to seek permission to travel abroad in the third FIR. However, as the pendency of all these three FIRs is not disputed and the fact is that the Petitioner is still being tried for the said offences under the three FIRs, it is clear that the criminal proceedings against him have not concluded and he has not been conclusively discharged. The charges which have been levelled against him in the said FIRs are still under

investigation, and he has not been acquitted or discharged in the same. Thus the grant of bail or the permission to travel abroad in pending cases/ FIRs would not be covered by the phrase “*discharged, whether by acquittal or on expiration of his sentence or otherwise*” under Section 31(1)(d) of the Act. Section 31(1)(d) of the Act, restricting the surrender of an accused fugitive squarely applies to the case of the Petitioner as he is still an accused in India, with cases and charges pending to be investigated and determined against him. An order of bail or an order permitting him to travel abroad would not constitute ‘discharge’ under Section 31(1)(d), and the said prohibition would therefore be applicable.

33. It is the settled position in law, as held in the case of *State of West Bengal v Jugal Kishore More, 1969 (1) SCC 440*, that the procedure of handing over or surrender of an accused fugitive would be determined by the domestic law or municipal law. Further it has also been recognized by the Id. Supreme Court of India in *Bhavesh Jayanti Lakhani v. State of Maharashtra, 2009 (9) SCC 551*, while holding that the Extradition Treaty between the United States of America and India is subject to the provisions of the Extradition Act, 1962, observed:

“58. The Act as also the treaties entered into by and between India and foreign countries are admittedly subject to our municipal law. Enforcement of a treaty is in the hands of the Executive. But such enforcement must conform to the domestic law of the country. Whenever, it is well known, a conflict arises between a treaty and the domestic law or a municipal law, the latter shall prevail.”

Both these judgments of the Id. Supreme Court have been considered by the Division Bench of this court in *Brij Bhushan Bansal (supra)*.

34. Accordingly, this court is of the opinion that in view of the above position, the request of the Petitioner- accused, for an expedited surrender and extradition, cannot be allowed, until the Petitioner continues to be an accused in the three FIRs lodged against him in Goa, India, and the said cases are pending before the domestic fora.

35. It is also noted that the present petition only relates to the extradition request *qua* the Petitioner made by the Republic of Bulgaria to the Union of India, and the Union of India has already clarified in response to the *note verbale*, dated 22nd January 2021, received from the Republic of Bulgaria, by a reply note dated 4th February 2021, that the Petitioner cannot be extradited to Bulgaria in view of the three pending FIRs.

36. The Petition is accordingly dismissed. This would however not prejudice or bar the Petitioner from approaching the appropriate fora to avail of the benefit of the orders granting bail as also permission to travel abroad, in accordance with law.

37. The petition and all pending applications are disposed of in the above terms.

भारतमेव जयते

PRATHIBA M. SINGH
JUDGE

APRIL 7, 2021

dk/Ak