

Before Vikas Bahl, J.

HARMANDEEP SINGH—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CRM-M No.34203 of 2021

September 17, 2021

The National Investigation Agency Act, 2008 – Ss. 13, 21 and 43 – Code of Criminal Procedure, 1973 – Ss. 160 and 482 – The Unlawful Activities (Prevention) Act, 1967 – Ss. 10, 11, 13, 17, 18, 20 and 21 – Petition filed u/s 482 Cr.P.C. seeking directions to respondents to give an advance notice in case his detention is required pursuant to notice issued by the National Investigation Agency – Dismissed – Held – Scheduled Offence being investigated by NIA is to be tried only by Special Court – Section 21 shows bail application has to be filed before the Special Court – Appeal against order granting or refusing bail shall lie to a Bench of 2 Judges of the High Court – Real prayer is only to get ‘advance notice’ – Petition thus, not maintainable – Further held – Court should not interfere in the investigation – Petition dismissed.

Held that, a perusal of section 21 would clearly show that in case any person is seeking bail, then the same has to be filed before the Special Court. In case such a bail is granted or refused, then an appeal would lie before a bench of two Judges of this High Court.

(Para 14)

Further held that, it is, thus, apparent that since in the present petition, the real prayer is only to get 'advance notice' before arrest and not to challenge the notice under Section 160 Cr.P.C., thus, the present petition under Section 482 Cr.P.C. would not be maintainable.

(Para 15)

Further held that, in the present case, as per the facts on record, only a notice under Section 160 Cr.P.C. has been issued to the petitioner to appear on 15.08.2021. This Court cannot possibly enter into the realm of conjectures and surmises and foresee by guess work as to what would be the further course adopted by the Investigating agency. At one stage, learned counsel for the petitioner was wanting that the counsel for the respondent-NIA should disclose as to whether they wish to arrest the petitioner or not. This Court would not want to

become a party to such information being sought. In case, the present petition is entertained, then it could open up a pandora's box inasmuch as every person apprehending arrest would come to the Court and file a petition under Section 482 Cr.P.C. in order to enquire from the Investigating Authorities/ Police Authorities as to "what they are going to do next". The same can seriously prejudice the investigation in a case. Moreover, the offences alleged to have been committed in the present case are very serious and thus, the NIA is to be given a free hand to investigate, so that all the culprits can be brought to book and all the material which is necessary can be collected.

(Para 19)

Veneet Sharma, Advocate, *for the petitioner.*

Karanbir Singh, AAG, Punjab.

Sukhdeep Singh Sandhu, Advocate, for respondent No. 3- NIA, Chandigarh.

VIKAS BAHL, J. (Oral)

(1) The present petition has been filed under Section 482 Cr.P.C. for directing the Respondents to give an advance notice in case the Petitioner is required to be detained pursuant to the Notice dated 13.08.2021(Annexure P-3) issued by the respondent No.3. i.e. National Investigation Agency (hereinafter referred to as the "NIA").

(2) The brief facts of the case are that the petitioner is stated to be working as Work Inspector in the P.W.D Department, Punjab since the year 2016. An FIR No.135 dated 25.04.2020 was registered under Sections 10,11,13,17,18,20,21 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the Act of 1967) at Police Station Sadar, Amritsar in which two persons namely Bikram Singh @ Vicky and Maninder Singh @ Manni were arrested. The investigation in the same was transferred to NIA and the case was registered as RC-23/2020/NIA/DLI dated 08.05.2020 under Sections 10,11,13,17,18,20,21 of the Unlawful Activities (Prevention) Act, 1967 (Amendment 2012). During investigation, the name of one Gursant Singh S/o Dilbagh Singh, who is stated to be the paternal uncle of the petitioner, surfaced and the said Gursant Singh was arrested by the NIA in June 2020 and since then, he is in custody. The challan in the case has been presented against 8 persons including the said Gursant Singh as apparent from the orders dated 20.10.2020 as well as 12.08.2021. It is further submitted that on 13.08.2021, the NIA issued a notice under

Section 160 Cr.P.C. to the petitioner in which the petitioner was directed to appear on 15.08.2021 at 16:00 hours. It is submitted that instead of complying with the said notice under Section 160 Cr.P.C. and appearing before the NIA, the petitioner has filed the present petition.

(3) It has been averred in paragraph 6 of the present petition that the petitioner was on duty on 15.08.2021 on the occasion of Independence Day being a government servant. At any rate, no reply was filed to the said notice under section 160 Cr.P.C. nor the petitioner has appeared in pursuance of the same before the NIA.

(4) Learned counsel for the petitioner has submitted that as per the provision of Section 160 Cr.P.C., it is only a witness who can be summoned and the said fact is apparent from a conjoint reading of Sub Section 1 and 2 of Section 160. A reference has been made to Section 160 Cr.P.C. which is reproduced as under:

“160. Police officer’s power to require attendance of witnesses.—(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person [under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person] shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.”

(5) It has been argued by learned counsel for the petitioner that the heading of the said Section clearly shows that it is for attendance of witnesses and not for attendance of accused. It is further submitted that since under Sub Section 2, the State Government has been permitted to frame rules to provide for payment of reasonable expenses to every person attending in pursuance of Notice under Section 160 (1), at any place other than his residence, the same would indicate that the said

provision is meant for witnesses and not for accused. Learned counsel for the petitioner has further relied upon the judgement of the Hon'ble Supreme Court in *State Rep. by Inspector of Police and others versus N.M.T Joy Immaculate*¹ for the said proposition and has also relied upon two judgements of the High Court of Jharkhand at Ranchi i.e. *Writ Petition (Cr.) No.680 of 2015* titled as *Ashok Kumar Singh versus State of Jharkhand through S.P, Vigilance, Ranchi* and *Writ Petition (Cr.) No.13 of 2014* titled as *Dilip Garodia versus State of Jharkhand through Vigilance*. Further reliance has been placed upon a judgement of the Karnataka High Court in *Writ Petition No.11028/2021* titled as *Manish Maheshwari versus State of Uttar Pradesh*. The sum and substance of the argument of the learned counsel for the petitioner is that notice under section 160 Cr.P.C. can only be issued in case the person to whom it is issued is being called as a witness and not as an accused. It is further submitted that in case, the petitioner is to be called as an accused then a notice under Section 41(A) Cr.P.C. should be issued. Learned counsel for the petitioner has further stated that he has apprehension that when he would appear before the NIA in pursuance of the notice under Section 160 Cr.P.C., he would be apprehended and thus, he is seeking the prayer of being given an advance notice in case he is required to be detained/arrested. For the said purpose, the petitioner has relied upon an order dated 30.09.2020 titled as *Balwinder Singh Vs. State of Punjab and others* passed by a Co-ordinate Bench of this Court which is annexed as Annexure P-4 along with the petition. Further reference has been made to Section 43- D (4) of The Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the "Act of 1967") to state that in case, the person is alleged to have committed offences under the Act of 1967 then, since the provision of Section 438 of the Code of Criminal Procedure, 1973 have been made inapplicable, thus, the petitioner does not have a right to file a petition for anticipatory bail and hence, has filed the present petition.

(6) Learned counsel appearing for respondent-no.3-NIA has vehemently opposed the maintainability of the present petition under Section 482 Cr.P.C. It has been submitted that in the present case, the petitioner has not challenged the notice under Section 160 Cr.P.C. and is indirectly seeking anticipatory bail which even as per the case of the petitioner, could not have been granted. Learned counsel for respondent-NIA has relied upon the National Investigation Agency Act,

¹ 2004(5) SCC 729

2008 (hereinafter referred to as 'The 2008 Act') more so, Section 13 and Section 21, to state that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every Scheduled Offence investigated by the agency shall be tried only by the Special Court within whose local jurisdiction it has been committed. A reference has also been made to "The Schedule", as per which, the Act of 1967 has been mentioned at Sr. No.2. By referring to Section 21 of The 2008 Act, it has been stated that under Sub Section 4, an appeal shall lie to the High Court against an order of the Special Court granting bail/dismissing bail. It is, thus, submitted that as per the Act of 2008, bail application is only required to be filed before the Special Court and in case of grant or refusal of the same, an appeal is maintainable and that too before a bench of two Judges of the High Court and not before a single Judge. For the said proposition, the learned counsel has relied upon a judgement of the Hon'ble Supreme Court in *State of Andhra Pradesh through I.G. National Investigation Agency versus Md. Hussain @ Saleem and connected matters*² to contend that application for bail in such matters would not lie before the High Court either under Section 439 or under Section 482 of the Code of Criminal Procedure and the same would only lie before the Special Court and an appeal against the same would lie before a bench of two Judges of the High Court.

(7) It has further been argued by learned counsel for the respondent-NIA that it has repeatedly been held by the Hon'ble Supreme Court that a petition under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision for the redressal of the grievance of the aggrieved party. For the said purpose, reliance has been placed upon a judgement of the Hon'ble Supreme Court in *State of Punjab versus Davinder Pal Singh Bhullar and others*³ and *CRA No.45 of 2020* titled as *State Rep. by the Inspector of Police versus M. Murugesan and another*. It has further been argued that the Court should not interfere with the investigation nor should the Court direct as to in what manner the Investigating Agency should investigate. For the said purpose, reliance has been placed upon the judgement of the Hon'ble Supreme Court in *Union of India versus Parkash P. Hinduja and Anr.*⁴ It has also been submitted that as per the latest judgement of the Hon'ble Supreme Court in *CRA No.330 of 2021* titled as *M/s Neeharika Infrastructure Pvt. Ltd. versus State of Maharashtra and*

² 2014 (1) SCC 258

³ 2012(1)RCR (Cr.)126

⁴ 2003(3) RCR (Cr.) 556

others, Hon'ble Supreme Court has not appreciated the fact that certain interim orders are being passed to the effect that "no coercive steps to be adopted" or "not to arrest" in petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India instead of relegating the accused to file anticipatory bail/ seek alternate remedy in accordance with the statute.

(8) Learned counsel for the respondent-NIA has also submitted that as per the judgement of the Hon'ble Supreme Court in *N.M.T Joy Immaculate* (*supra*), it has been specifically observed that the police officers are fully authorized to require the personal attendance of the suspects also. To buttress the said argument, reliance has been placed on the judgement of the Delhi High Court in *Satish Mohan Agarwal versus Union of India and others*⁵. It has been submitted that the petitioner wants this Court to enter into guess work as to what would happen in the course of enquiry/investigation and in order to pre-empt the same, the present petition has been filed. It is submitted that such a petition is legally not maintainable. It is also sought to be argued by relying upon some documents to state that from the said documents, it is apparent that the petitioner has falsely stated in his petition, on affidavit, that on 15.08.2021, the petitioner was on duty on the occasion of Independence Day whereas documents from the employer/senior of the petitioner would show that he was on leave. It has been submitted that the petitioner has not approached this Court with clean hands. It is also submitted that in the present petition, no cause of action survives since the notice under Section 160 Cr.P.C. dated 13.08.2021 was for the petitioner to appear on 15.08.2021 and since he has not done the same, thus, the present petition also deserves to be dismissed on the said ground.

(9) In rebuttal to the arguments of learned counsel for the respondent no. 3-NIA to the effect that the petitioner was not on duty on 15.08.2021, an objection has been taken that the documents sought to be relied upon have not been supplied nor are a part of the record and thus, cannot be read.

(10) This Court has heard the learned counsel for the parties. In the light of the vehement objection raised by learned counsel for the respondent with respect to the maintainability of the present petition under Section 482 Cr.P.C., this Court would first like to examine as to whether the said petition is maintainable or not. It would be relevant to

⁵ 2011(3) RCR (CrI.) 242

reproduce the head note and the prayer clause of the said petition. The same is reproduced hereinbelow:

“Petition under Section 482 Cr.P.C. for directing that the petitioner be given advance notice in case he is required to be detained pursuant to the Notice dated 13.08.2021(Annexure P-3)issued by the respondent No.3.

Any other order or direction which this Hon’ble Court may deem fit in the facts and circumstances of the present case.

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It is, therefore, respectfully prayed that this petition may kindly be allowed and the petitioner be given advance notice in case he is required to be detained pursuant to the Notice dated 13.08.2021(Annexure P-3) issued by the respondent no.3 in the interest of justice.

It is, further prayed that requirement of filing certified copies of Annexure P-1 to P-4, in the interest of justice.”

(11) A perusal of the above would show that in fact the petitioner has not sought to challenge the notice dated 13.08.2021, which has been issued under Section 160 Cr.P.C. It is not the case of the petitioner that he is actually shown as an accused and is being sought to be called under Section 160 Cr.P.C. Thus, the real relief which the petitioner is seeking is for being given an 'advance notice' in case he is required to be detained pursuant to the notice dated 13.08.2021, as according to him, he has an apprehension that he could be detained/arrested in pursuance of the said notice. The petitioner is also wanting this Court to get into the realm of conjectures and surmises and guess as to what would be the next step of the NIA and on the basis of the same, grant relief to the petitioner. Learned counsel for the petitioner has relied upon Section 43D of the Act of 1967. The relevant portion of the said Section is reproduced hereunder:

“43D. Modified application of certain provisions of the Code.—(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

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(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.”

(12) It is the contention of learned counsel for the petitioner that no anticipatory bail is maintainable under the Act of 1967 and thus, even with the apprehension of arrest/detention in mind, he could not have filed the petition under Section 438 Cr.P.C. Even taking the said argument on its face value, the petitioner by filing this petition under Section 482 Cr.P.C. is indirectly seeking what he could not have been granted on account of the said bar under Section 43-D (4). Moreover importantly, learned counsel for the respondent-NIA has referred to the provisions of the NIA Act, Section 13 (1) and Section 21 which are important for our purpose, and are thus, reproduced hereinbelow:

“13. Jurisdiction of Special Courts.—(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.”

“21. Appeals.—(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment,

sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after

the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days.”

(13) A perusal of the above provisions would show that in case of every Scheduled Offence being investigated by the NIA, the same is to be tried only by the Special Court notwithstanding anything contained in the Code. A reference to the Schedule would show that the Act of 1967 is listed at Sr. No. 2 and thus, the present case is to be governed by Section 13 (1) and section 21 of the 2008 Act read with the provisions of the 1967 Act.

(14) A perusal of section 21 would clearly show that in case any person is seeking bail, then the same has to be filed before the Special Court. In case such a bail is granted or refused, then an appeal would lie before a bench of two Judges of this High Court. The Hon'ble Supreme Court of India in the matter of *Md. Hussain @ Saleem (supra)* has held as under:

“20. The order passed by this Court on 2.8.2013 in SLP (CrI.) No.7375/2012 and SLP (CrI.) No.9788/2012 is therefore clarified as follows:-

(a) Firstly, an appeal from an order of the Special Court under NIA Act, refusing or granting bail shall lie only to a bench of two Judges of the High Court.

(b) And, secondly as far as prayer (b) of the petition for clarification is concerned, it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as The Unlawful Activities (Prevention) Act, 1967, such offences are triable only by Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under Section 439 or under Section 482 of the Code. The application for bail filed by the applicant in the present case is not maintainable before the High Court.

(c) Thus, where the NIA Act applies, the original application for bail shall lie only before the Special Court, and appeal against the orders therein shall lie only to a

bench of two Judges of the High Court.”

(15) A perusal of the above judgement would show that after considering the provisions of the 2008 Act, it was specifically concluded that the bail application has to be filed only before the Special Court and the same would not lie before the High Court either under Section 439 Cr.P.C. or under section 482 Cr.P.C. of the Code of Criminal Procedure and the appeal filed against the order passed in the same would only lie before the bench of two Judges of the High Court. It is, thus, apparent that since in the present petition, the real prayer is only to get 'advance notice' before arrest and not to challenge the notice under Section 160 Cr.P.C., thus, the present petition under Section 482 Cr.P.C. would not be maintainable.

(16) In the judgement of the Hon'ble Supreme Court in *Davinder Pal Singh Bhullar's case (Supra)* in paragraph 33, it has been held that Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in Cr.P.C. for redressal of the grievance or any other alternate remedy is available. The relevant portion of the said judgement is reproduced hereinbelow:

“33. The power under Section 482 Cr.P.C. cannot be resorted to if there is a specific provision in the Cr.P.C. for the redressal of the grievance of the aggrieved party or where alternative remedy is available.

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However, the High Court has not been given nor does it possess any inherent power to make any order, which in the opinion of the court, could be in the interest of justice as the statutory provision is not intended to by-pass the procedure prescribed.”

(17) Further the said aspect was reiterated by the Hon'ble Supreme Court in the case of *M. Murugesan (supra)*. In the present case, even if the version of learned counsel for the petitioner to the effect that no anticipatory bail is maintainable under the Act of 1967 is taken on face value then also the relief which is sought by the petitioner, cannot be granted on two grounds. Firstly, since the grant of anticipatory bail, even as per the version of learned counsel for the petitioner, is barred and there is no challenge to the said provision, thus, the present petitioner is indirectly seeking the said relief, which even as per his own argument, is barred. Moreover, at any rate, any such application has to be filed before the Special Court. Even in case the

argument of the Learned Counsel for the Petitioner to the effect that such an application for anticipatory bail is not maintainable before the Special Court then also, the present Petition filed under Section 482 Cr.P.C. before a Single Judge bench would at any rate be not maintainable as it is a bench of two Judges of this Court who as per the 2008 Act are required to adjudicate cases arising from the orders passed by the Special Court with respect to bail.

(18) The present petition would not be maintainable on account of another principle of law. In ***Parkash P. Hinduja*** (*supra*), the Hon'ble Supreme Court in paragraph 19 has held as under:

“19. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court under Section 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.”

(19) It has been held that Court should not interfere in the investigation. In the present case, as per the facts on record, only a notice under Section 160 Cr.P.C. has been issued to the petitioner to appear on 15.08.2021. This Court cannot possibly enter into the realm of conjectures and surmises and foresee by guess work as to what would be the further course adopted by the Investigating agency. At one stage, learned counsel for the petitioner was wanting that the counsel for the respondent-NIA should disclose as to whether they wish to arrest the petitioner or not. This Court would not want to become a party to such information being sought. In case, the present petition is entertained, then it could open up a Pandora's box inasmuch as every person apprehending arrest would come to the Court and file a petition under Section 482 Cr.P.C. in order to enquire from the Investigating Authorities/ Police Authorities as to “what they are going to do next”. The same can seriously prejudice the investigation in a case. Moreover, the offences alleged to have been committed in the present case are very serious and thus, the NIA is to be given a free hand to investigate, so that all the culprits can be brought to book and all the material which is necessary can be collected. Learned counsel for Respondent No.3-NIA submits that in the present case, the main accused who has been arrested with Rs. 29 lacs in his possession is in fact an Over Ground Worker of Banned Terrorist organization Hizb-

UI-Mujahideen (HM).

(20) The Hon'ble Supreme Court in its latest judgment *M/s Neeharika Infrastructure Pvt. Ltd.* (*supra*), while giving various directions, has also observed as under:

“Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.”

(21) Thus, viewed from all angles, the present petition under Section 482 Cr.P.C. is not maintainable.

(22) To be fair to the learned counsel for the petitioner, the judgments relied upon by learned counsel for the petitioner are also required to be considered. The primary argument of the learned counsel for the petitioner is that the notice under Section 160 Cr.P.C. can be issued to a witness and not to an accused. The said notice has not been challenged by the petitioner. Although at first blush, the said issue looks to be the main issue but on a careful perusal of the file as well as the prayer clause, it is apparent that the said issue is not the main issue and the main issue is to seek an advance notice before arrest/detention. As on date, there is nothing on record to show as to whether the petitioner is an accused or a suspect. It is only the apprehension of the petitioner that he could be made an accused or could be detained. Even with respect to the aspect of Section 160 Cr.P.C., the primary judgment relied upon by the learned counsel for the petitioner is *N.M.T Joy Immaculate* (*supra*). Paragraph 22 of the said judgment is reproduced hereinbelow:

“22. Section 160 of the Code of Criminal Procedure deals with police officer's power to require attendance of witnesses. This Section aims at securing the attendance of

persons who would supply the necessary information in respect of the commission of an offence and would be examined as witnesses in the inquiry or trial therefor.

This Section applies only to the cases of persons who appear to be acquainted with the circumstances of the case, i.e. the witnesses or possible witnesses only. An order under this Section cannot be made requiring the attendance of an accused person with a view to his answering the charge made against him. The intention of the legislature seems to have been only to provide a facility for obtaining evidence and not for procuring the attendance of the accused, who may be arrested at any time, if necessary. In other words, this Section has reference to the persons to be examined as witnesses in the trial or inquiry to be held after the completion of the investigation. As an accused cannot be examined as a witness either for or against himself, he cannot be included in the class of persons referred to in the Section. But the police officers are fully authorised to require the personal attendance of the suspects during the investigation.”

(23) In the above stated paragraph, it has been submitted that the police officials are fully authorized to require personal attendance of the suspects also. The judgment of the Delhi High Court relied upon by the learned counsel for the respondent-NIA also holds that under Section 160 Cr.P.C., even a suspect can be called. The relevant portion of the judgment of Delhi High Court in *Satish Mohan Agarwal* (*supra*), is reproduced hereinbelow:

“Thus, Section 160 Criminal Procedure Code enables a police official to investigate the crime by calling such persons who have some kind of knowledge about the crime. Section 160 specifies that only a police official assigned with the investigation, can issue the notice only to any person. Thus power under Section 160 Criminal Procedure Code of issuing notice is a power exercised in investigation of a crime and to know the facts and circumstances of the case from those who are acquainted with the facts and circumstances of the case. Notice under Section 160 Criminal Procedure Code can be issued to any witness and even to a suspect, so as to know from him the facts and circumstances of the case so that an effective investigation

can be done of the crime committed. Thus, there is no question of infringement of any right of a person much less fundamental right. It is settled law that the power of investigating a crime is a statutory right of the police and the court cannot interfere into this right of the police.”

(24) From the above, it is apparent that even a suspect can also be called under Section 160 CrPC. However, the said issue as per this Court is purely academic in the present case as the Petitioner is not seeking setting aside/quashing of the Notice under Section 160 on any ground much less, on the ground that it could not have been issued to him.

(25) Reliance has also been placed upon the judgment of the High Court of Jharkhand at Ranchi in the case of *Dilip Garodia* (*supra*). The same would not further the case of the petitioner inasmuch as in the said case, the notice under Section 160 Cr.P.C. was under challenge and it was sought to be quashed on the ground that in fact the petitioner therein had been made an accused and yet a notice under Section 160 Cr.P.C. was issued. The same is not the issue in the present case as there is no challenge to the Notice under Section 160 CrPC nor is it anybody's case that the Petitioner has already been made an accused.

(26) In the judgment of Karnataka High Court in *Manish Maheshwari's case* (*supra*) on which also reliance has been placed by the Learned Counsel for the Petitioner, a writ petition had been filed under Article 226/227 of the Constitution of India with a prayer to quash the notice dated 01.06.2021, which has been issued under Section 41-A of the Code of Criminal Procedure. In the aforesaid case, initially a notice under Section 160 Cr.P.C. had been issued and a reply to the same had been filed and thereafter, for mala fide reasons in order to arm-twist the petitioner, the notice under Section 41-A was issued. The said notice under Section 41-A was specifically challenged and it was held that the same is vitiated by mala fide and is also without jurisdiction. The relevant portion of the said judgment is also reproduced hereinbelow:

“In the light of the above rulings and in the facts and circumstances of this case, it is held that the writ petition by the petitioner, who is not an accused and his liberties not being governed by the Code of Criminal Procedure and in the light of the fact that issuance of Section 41A of Cr.P.C Notice being vitiated by malafides and being one without

jurisdiction, the writ petition is held to be maintainable. The points for consideration are answered accordingly.”

(27) In the present case, neither there is any challenge to the Notice under Section 41-A nor there is any mala fide alleged much less, prima facie proved nor the Notice under Section 160 is without jurisdiction.

(28) With respect to the third judgment relied upon by the Learned Counsel for the Petitioner i.e. *Ashok Kumar Singh's* case (*supra*), it is observed that is not clear as to what is sought to be challenged in the said case. It has been specifically mentioned in the said judgment that a number of prayers have been made, however, during arguments, the said prayers have been limited. Further, in the said case, there was a requisition sent by the Investigating Officer before the Court for adding the name of the petitioner in the accused column and it was subsequent to the same that the notice under Section 160 Cr.P.C. was issued. Moreover, in the aforesaid case, there was no argument raised with respect to the maintainability of the said petition. On the other hand, in the present case, the petitioner has not come to the Court to state that he is an accused as per respondent No. 3-NIA and thus, the notice under Section 160 Cr.p.C. could not have been issued. In fact, no challenge has been made to the said notice. Moreover, in the present case the Learned Counsel for Respondent no.3-NIA has strongly opposed the maintainability of the present petition.

(29) The notice is very clear and as to how and in what manner the investigation would progress, is best known to the investigation team. The judgments sought to be relied upon by the learned counsel for the petitioner do not even remotely further the case of the petitioner nor do they entitle the petitioner to the relief prayed for in the present petition. In fact, the present petition under Section 482 Cr.P.C. being not maintainable deserves to be dismissed. With respect to the order passed by a Coordinate Bench in *Balwinder Singh's* case (*supra*), it is stated that the said petition was filed under Section 482 Cr.P.C. for issuance of directions to the respondent to open the locks of the house of the petitioner therein. It had come about that the NIA had raided the house of the petitioner therein in his absence and had put a lock and had also further stated in the reply that nothing incriminating was found during the search and as such, they had not seized anything and since the petitioner therein was not available to whom the possession of the room could be restored and as such, it was only for the purpose of security and safety of the room, that a new lock was put. Further,

learned counsel for NIA in the above said case, upon instructions, had submitted that they had no objection in case the keys of the premises, in question, are handed over to the petitioner therein. It is in the said background that the petition was entertained and further relief was granted. The above judgment is also not applicable to the facts of the present case as in the present case no relief for breaking open the locks of the petitioner's house has been prayed for and only a prayer for grant of advance notice before arrest/detention has been prayed for, regarding which, as per the detailed discussion hereinabove, the present petition under Section 482 has been held to be not maintainable, more so, before a Single Judge.

(30) Keeping in view the above said facts and circumstances, the present petition is dismissed.

J.S Mehndiratta