

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

% **Reserved on: 11<sup>th</sup> March 2022**  
**Pronounced on: 11<sup>th</sup> May 2022**

+ W.P.(CRL) 394/2022 & CRL.M.A. 3365/2022 & CRL.M.A.  
3366/2022 & CRL.M.A. 3368/2022

JOSE INACIO COTA ..... Petitioner

Through: Mr. Arpit Batra and Ms. Abhilasha,  
Advocates

versus

UNION OF INDIA & ORS. .... Respondent

Through: Ms. Rekha Pandey, SPP for UOI  
Ms. Nidhi Raman, CGSC for R-2

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

**J U D G M E N T**

**CHANDRA DHARI SINGH, J.**

1. The petitioner has approached this Court by way of the instant writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Code') praying for *mandamus* to the respondents to make full disclosure of the evidence collected during investigation of the crime of rape registered against the petitioner in London.

**Factual Matrix**

2. The facts of the case, as mentioned in the petition, are that the petitioner is a Portuguese national and a person of Indian Origin, who was born in Goa. He is accused of committing rape of a lady at a pub in London, United Kingdom on 28th May 2017. The Petitioner came back to India on 5th June 2017. The petitioner was subsequently charged with the offence of rape under Section 1(1) of the Sexual Offences Act, 2003 of UK. Arrest Warrant was issued against the petitioner on 11th June 2019.

3. On 18th September 2020, upon receipt of the request for extradition, and having been satisfied as to the extraditability of the offence, the Government of India, on 22nd March 2021, ordered magisterial inquiry under Section 5 of the Extradition Act of 1962 before the Court of ACMM-01, Patiala House Courts, New Delhi to inquire into the extradition request as to the extraditability of the offence in terms of the Extradition Act, 1962 and the Extradition Treaty between the Government of the Republic of India and the Government of the United kingdom of Great Britain and Northern Ireland.

4. On 26th March 2021, Extradition proceedings were initiated in a Complaint Case bearing no. 690 of 2021 against the petitioner in the Court of Learned ACMM, wherein, later on, an NBW was issued against the Petitioner on 3rd June 2021. On 9th October 2021, the petitioner engaged a Counsel and made representations to the Governments of India, the UK and Portugal.

5. In the meanwhile, the Petitioner had also approached the Hon'ble Supreme Court under Article 32 vide Writ Petition No. 474 of 2021, on which an order passed on 3<sup>rd</sup> December, 2021, dismissing the petition as withdrawn with liberty to avail appropriate remedies. On 30th December 2021, the petitioner also made an application before the European Court of Human Rights seeking evidence and documents gathered against the petitioner by the police in the UK.

6. Thus, the petitioner, being aggrieved by the initiation of Extradition Proceedings against him in the Court of the Ld. ACMM, Patiala House Courts, has approached this Court for directions to the respondents to make full disclosure of the evidence collected during investigation of the crime of rape registered against the petitioner in London.

### **Submissions**

7. Learned Counsel appearing on behalf of the Petitioner submitted that in the present case evidence produced or information supplied is not sufficient in order to enable a decision to be taken as to the extradition request and therefore prays that this Court be pleased to issue writ to respondents to make full disclosure of evidence collected during investigation in London, U.K.

8. It is submitted that the Petitioner has not been provided with medical evidence, forensic evidence, CCTV footage, audio recordings of the interviews taken by the UK Police, details of call(s) made to the UK Police and, formal police complaint, record of seizure of articles, Details of

incident of brawl done by Danny and any other evidence related to the crime.

9. Learned counsel on behalf of petitioner stated that the deposition of the complainant does not carry substantive evidentiary value as it is akin to the statement made under Section 161 of the Code. It is also submitted that the petitioner was kept in the dark and it was only after the expiry of four years that he was informed of the proceedings against him. It is also alleged that this is a false case lodged against the petitioner at the behest of the complainant and is racially motivated.

10. It is also submitted that, in a separate matter, an FIR has been filed bearing no. 80 of 2021 against the petitioner under Section 324 and 504 of Indian Penal Code, 1860 (hereinafter "IPC") and by virtue of that, the extradition of the petitioner deserves to be postponed as he might be required to face trial in India itself.

11. *Per Contra*, learned Counsel for the Union of India argued that the petitioner is a fugitive criminal, a Portuguese national, who is wanted by the Government of United Kingdom for standing trial in the UK for the offence of rape, punishable with an imprisonment of more than one year, contrary to Section 1(1) of Sexual Offences Act, 2003, UK. It is submitted that similar conduct in India amounts to offence under Section 375 of the IPC which is punishable with an imprisonment of more than one year. Therefore, it fulfils the criteria of dual criminality and is considered extraditable in terms of Article 2(1) of the Extradition Treaty.

12. The Government of India, Ministry of External Affairs, having been satisfied on the basis of material submitted along with the Extradition Request pursuant to the Extradition Treaty by the Government of UK, including the arrest warrant issued by the Surrey Magistrate, West Division, UK, having lawful authority to issue the same, requested the Court of learned ACMM-01, New Delhi, Patiala House Courts, under section 5 of the Extradition Act, 1962, to inquire into the extradition request as to the extraditability of the offences involved by determining whether prima facie case is made out against the accused.

13. It is submitted that the Extradition Request is supported by the several documents sent by the British High Commission, which are annexed in Annexure F (Colly), and satisfy the requirement of Article 11 of the Extradition Treaty as well as provisions of Extradition Act, 1962.

14. The Counsel for Respondent submitted that the petitioner herein has been evading physical surrender before the Special Extradition Court, ACMM-I, Patiala House Courts, New Delhi on one pretext or the other on several dates. It is submitted that the present petition is nothing but a gross misuse of the process of law as the Fugitive Criminal is only attempting to vitiate the extradition proceedings before the Court of ACMM-I, by filing the instant writ petition. It is contended that the plea raised by the petitioner herein to the effect that he has been implicated in a false and fabricated case by the U.K. Police on made up charges and that the petitioner is a victim of racial discrimination, is baseless and the petitioner has not produced any document or evidence to substantiate this allegation.

15. Learned Counsel stated that the petitioner should surrender and lead evidence before the Learned Magistrate, ACMM-I, Patiala House, New Delhi, where the extradition enquiry is pending, to show that he has been falsely implicated on account of his race and color. It is also submitted that the material sent by the United Kingdom Authorities along with the Extradition request of the petitioner herein are all authenticated documents and satisfy the requirement of Section 10 of the Extradition Act, 1962 as well as the Extradition Treaty. It is accordingly prayed that the instant petition is nothing but a gross abuse of process and should be dismissed with costs.

**Analysis**

16. In the instant case, the only question for consideration of this Court is whether the accused/petitioner is entitled to disclosure of evidence *qua* the extradition proceedings under Article 226 of Constitution of India.

17. Extradition owes its etymological origins to the Latin words *ex* and *traditium*, meaning thereby - 'handover of criminals'. Extradition is a formal process by which one state requests another to deliver/handover an individual accused of having committed an offence for the purposes of trial or prosecution in the requesting state. Extraditable persons may include those charged with a crime but not yet tried, those tried and convicted who have escaped custody, and those convicted *in absentia*. However, an essential condition that is mandatory for the process of initiating extradition is that those crimes of which an individual is accused of, must be punishable by law in the requesting state and be committed outside the

state of the offender. It is also necessary that the two countries must have entered into the Extradition Treaty. Although states may extradite without a treaty, those cases are still a rarity. The Extradition Treaty between India and the UK (“The Treaty”) was signed on 22nd September 1992.

18. Before appraising the facts of this case, the relevant statutes/instruments that are applicable in the instant case need to be culled out, namely - the Extradition Treaty between India and the UK (1992) and the Extradition Act, 1962 of India. The objective of the Treaty is to make the cooperation of the two countries in the suppression of crime more effective by making further provision for the reciprocal extradition of offenders.

19. Article 1 of the Treaty creates a duty to extradite “any person accused or convicted of any extradition offence”. The process of extradition is determined by Article 11 of the Treaty, and the grounds for refusal of extradition are listed in Article 9. In the present petition, the petitioner has not challenged that the offence of Rape under Sexual Offences Act of the UK is not an extradition offence. Therefore, any challenge to the Extradition Proceedings must show that either the process of extradition under Article 11 was not followed, or that any of the grounds for refusal under Article 9 are applicable in the present case.

20. Having stated so, it is pertinent to refer to the said provision, which is reproduced hereunder.

*“Article 11. Extradition Procedures:*

*(1) Subject to the provisions of Article 22 of this Treaty, the request for extradition shall be made through the diplomatic channel.*

*(2) The request shall be accompanied by:*

*(a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality, and residence;*

*(b) a statement of the facts of the offence for which, extradition is requested, and*

*(c) the text, if any, of the law:*

*(i) defining that offence and*

*(ii) prescribing the maximum punishment for that offence.*

*(3) If the request, relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting State and by such evidence as according of the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State, including evidence that the person requested is the person to whom the warrant of arrest refers.*

*(4) If the request relates to a person already convicted and sentenced, it shall also be accompanied:*

*(a) by a certificate of the conviction and sentence;*

*(b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.*



*(5) In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph (4) of this Article as if he had been accused of the offence of which he was convicted.*

*(6) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.”*

21. The petitioner has argued that there has not been disclosure of certain evidence, which has led to grave injustice. In this light and the fact that the petitioner is an accused person, Article 11(3) becomes relevant. The express requirements of the aforesaid Article are threefold - *firstly*, the necessary warrant of arrest is to be accompanied with the extradition request; *secondly*, the evidence will be appreciated on the threshold of practice of concerned law in the Requested State, whether the provided evidences will be sufficient for committal to the stage of trial; *thirdly*, the person requested is the person to whom the warrant of arrest refers.

22. Before delving further, it is pertinent to mention the documents which have been provided to the petitioner already in the Extradition proceedings by the Ld. ACMM:

- i. Copy of the order No. T-413/70/2020 dated 22<sup>nd</sup> March, 2021 passed by the Dy. Secretary (Extradition) CPV Division, Ministry of External Affairs.

- ii. Copy of the certificate dated 18<sup>th</sup> Septemebr, 2020 of Julian Gibbs, certifying authentication of documents in support of request for surrender of Jose Inacio Cota.
- iii. Copy of the statement of Detective Constable Timothy French on oath dated 16<sup>th</sup> September, 2020 before District Judge, (Magistrate Courts).
- iv. Copy of Exhibit TF/A certified copy of warrant of arrest issued by Surrey Magistrate, West Division dated 11<sup>th</sup> June, 2019.
- v. Copy of the Exhibit TF/B photographs of Jose Inacio Cota.
- vi. Copy of the Exhibit TF/C fingerprints/palm of Jose Inacio Cota before Sussex & Surrey Police.
- vii. Copy of Exhibit TF/D Record of Interview of Jose Inacio Cota.
- viii. Copy of the affidavit of Paul Thomas, Police Officer employed by Surrey Police based as Staines Police Station dated 16<sup>th</sup> September, 2020.
- ix. Copy of the Exhibit GS/A Record of Interview of Sarah Jane Cook (subject to anonymity) dated 01<sup>st</sup> June, 2017 by Gary Standard an investigator with Surrey Police in Sex Offences Investigation Unit.
- x. Copy of the affidavit on oath dated 16<sup>th</sup> September, 2020 of Shivaun O'Shea the Solicitor and Specialist Extradition Prosecutor of the Crown Prosecution Service of England and Wales.
- xi. Copy of the certificate issued by District Judge (Westminster, Magistrate Court) certifying that the written and photographic

- matters contained in the Exhibits a deposition of French Timothy Thomas Paul, Standard Gary and O'Shea Shivaun,
- xii. Copy of supplementary bundle in the case of Extradition Request of Jose Inacio Cota from India:
- a) Copy of the certificate dated 12<sup>th</sup> March, 2020 issued by Julian Gibbs, Head of Extradition, Extradition Section, Home Office
  - b) Statement of Law dated 22<sup>nd</sup> September, 2020 of Shivaun O'Shea the Specialist Extradition Prosecutor employed by the Crown Prosecution Service England and Wales.
  - c) Copy of Exhibit SOS/A referred to in the Deposition of Shivaun O'Shea Extract from Stones Justices Manual.
  - d) Copy of the Exhibit SOS/B referred to in the Deposition of Shixaun O'Shea i.e., draft Indictment.
  - e) Copy of the certificate dated 22<sup>nd</sup> December, 2020 issued by District Judge, Westminster, Magistrates Court certifying the Exhibits in the deposition of O'Shea Shivaun.

23. As per Article 11(3), an extradition request of an accused person must accompany an arrest warrant issued by a Judge, Magistrate, or other competent authority in the territory of Requesting State. In the present case, the accused person has been provided with the warrant of arrest against him by the Ld. ACMM from a lawful authority (Annexure F of the Petition).

24. The terminology for the standard of evidence in Article 11 (3) is “as according to the law of the Requested State, would justify his committal for trial if the offence had been committed in the territory of the Requested State.” The aforesaid provision establishes that the Treaty, in specific terms, stipulates that the provisions of the Extradition Act will be applicable in the case involving extradition proceedings and issues related therein. Here, other than Chapter III, the Act would be applicable in matters involving the United Kingdom of Great Britain and Northern Ireland, in accordance with Section 3(1) of the said Act.

25. As held in several cases, the Act is a *lex specialis* which specifically deals with cases of Extradition, wherein it is explicitly provided that the standard of evidence required to initiate such proceedings is only to establish *prima facie* findings which is akin to the requirement of standard of evidence at the stage of framing of charges, which is the first stage of trial.

26. Section 7 of the Extradition Act that is applicable is furnished hereunder:

*“Section 7. Procedure before magistrate:*

*(1) When the fugitive criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of session or High Court.*

*(2) Without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State 1 and on*

*behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal accused or has been convicted is an offence of political character or is not an extradition offence.*

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

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

27. The importance of Section 7 has been appreciated by this Hon’ble Court in the case of **Ram K. Mahbubani v. Union of India & Anr. 2008 SCC OnLine Del 1048**,

*“11. Section 7 is of great importance as it bestows on the Magistrate powers of inquiry akin to that of the Court of Session or High Court. Thus, the Magistrate would be competent to inquire into a case of murder, in respect of which extradition has been requested for, despite the fact that ordinarily he would not be empowered by the Code of Criminal Procedure, 1973 (CrPC) to do so. Conceptually, this should not pose any problem since the Magistrate is to return a finding only of a prima facie character; he does not sentence or punish the fugitive criminal.”*

28. As stated, it is clearly established that the Court must only evaluate whether a prima facie case is made against the accused. The elucidation of the standard of evidence may be done by reading sections 7(3) and 7(4) of

the Act with Article 11(3) of the Treaty. The same conclusion directly appears in *Aman Vyas v. Union of India 2019 SCC OnLine Del 9168*, where after an analysis of the Article, the Delhi High Court held as under:

*“28. Thus, even as per Article 11(3) of the Extradition Treaty the requirement is not that a chargesheet has been filed, but the material placed is sufficient to justify committal for trial, that is, there is prima facie material to satisfy the requested state that the fugitive is involved in the offence/offences.”*

29. A similar understanding can be found in *Sarabjit Rick Singh v. Union of India (2008) 2 SCC 417*, where Article 9(3) of the Indo-US Extradition Treaty were conjointly read:

*“50. The provisions of a statute, it is trite law, must be harmoniously construed. When a statute is required to be read with an International Treaty, consideration of the provisions contained in the latter is also imperative. On a conjoint reading of Section 7 and Section 10 of the Act read with paragraphs 2 and 3 of Article 9 of the Treaty, we are of the opinion that the word “information” occurring in Section 7 could not mean evidence which has been brought it on record upon strict application of the provisions of the Evidence Act. The term “information” contained therein has a positive meaning. It may in a sense be wider than the words “documents and the evidence”, but when a document is not required to be strictly proved upon applying the provisions of the Indian Evidence Act or when evidence is not required to be adduced strictly in terms thereof, the use of the word “information” in Section 10 of the Extradition Act as also Articles 9(2) and 9(3) of the Treaty becomes relevant. Documentary evidence, no doubt form part of a judicial record; but then even in a court governed by Criminal Procedure Code 1973 documents are to be supplied only when the cognisance of the offence*

*is taken. At this stage, therefore, the requirement of subsection (5) of Section 173 of the Code of Criminal Procedure was not necessary.*

30. Accordingly, in **Ram K. Mahbubani v. UOI & Anr. (2008) SCC OnLine 1048**, it was held as under:

*“12. This question was raised and clarified by the Division Bench in Charles Gurmakh Sobhraj v. Union of India, 29(1986) DLT 410, Maninder Pal Singh Kohli v. Union of India, 142(2007) DLT 209 (DB): 2007 (97) DRJ 178[DB] and by a Single Bench in Nina Pillai v. Union of India, 1997 I AD (Delhi) 463. Kamlesh Babulal Aggarwal v. Union of India, 2008 VI AD (Delhi) 37 was recently decided by a Division Bench of which one of us (Vikramajit Sen, J.) was a member holding, inter alia, that, (a) Section 7 is independent of Section 17; (b) the enquiry under Section 7 is similar to an indictment or the framing of charges under Section 228 of the CrPC and; (c) under Section 7(3) and (4) of the Extradition Act the Court is only to satisfy itself that a prima facie case exists in support of the requisition for extradition. The Special Leave Petition against this Judgment has been dismissed by the Supreme Court on 15.5.2008. In Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417, the request of the USA for extradition of the Petitioner was ‘recommended’ by the learned ACMM, Delhi, which Order was affirmed by the Division Bench of this Court. Their Lordships have opined that in extradition proceedings “no witness is examined for establishing an allegation made in the requisition of the foreign state.... No formal trial is to be held. ... whereas the contents of documents is to be proved for the purposes of trial but not for the purposes of arriving at an opinion in regard to the existence of a prima facie case in an enquiry. Strict formal proof of evidence in extradition proceedings is not the requirement of law”. By virtue of Section 7, the Magistrate has the power, inter alia, to take such evidence as may be produced in support of the requisition of the foreign state on the one hand and on behalf of the fugitive criminal on the other.”*

31. Therefore, it is settled that the evidence required will be sufficient if upon application of mind it may be decided whether a prima facie case against the accused exists.

32. As stated in the judgment *Sarabjit Rick Singh v. Union of India (2008) 2 SCC 417*, it was held by the Hon'ble Supreme Court of India as under:

*“34. The Magistrate is to make an inquiry. He is not to hold a trial. The Code of Criminal Procedure makes a clear distinction between an inquiry, investigation and trial. Authority of the Magistrate to make an inquiry would not lead to a final decision wherefor a report is to be prepared. Findings which can be rendered in the said inquiry may either lead to discharge of the fugitive criminal or his commitment to prison or make a report to the Central Government forwarding therewith a written statement which the fugitive criminal may desire to submit for consideration of the Central Government. Sub-Section (2) of Section 7 of the Act envisages taking of such evidence as may be produced in support of the requisition and also on behalf of the Fugitive Criminal. The Magistrate is required to arrive at prima facie finding either in favour of the fugitive criminal or in support of the requesting State.*

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*38. Section 10 of the Act provides that the exhibits and depositions as also the copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence. Distinction must be borne in mind between the evidence which would be looked into for its appreciation or otherwise for a person guilty at the trial and the one which is required to make a report upon holding an inquiry in terms of the provisions of the Act. Whereas in the trial, the court may look into both oral and documentary evidence which would enable it to ask questions in*



*respect of which the accused may offer explanation, such a detailed procedure is not required to be adopted in an inquiry envisaged under the said Act.*

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*55. The use of terminology 'evidence' in Section 7 of the Act must be read in context of Section 10 of the Act and not 'de hors' the same Act. It is trite that construction of a statute should be done in a manner which would give effect to all its provisions."*

33. In the present case, the evidence envisaged under Section 10 of the Act have been produced before the learned Magistrate for inquiry into extradition proceedings. The Court has to arrive at a conclusion where there is prima facie evidence that an extraditable offence may have been committed. Whether the evidence is sufficient or fit for conviction or acquittal is a matter of trial.

34. On the basis of the jurisprudence as detailed above, *in Niranjan Patel vs. Union of India, 2012 SCC OnLine Del 2147*, this Court conjointly read Article 9(3) of the Indo-US Extradition Treaty with the Sections 7(3) and 7(4) of the Act and held as under:

*"11. It is now fairly well settled that the Magisterial inquiry which is conducted pursuant to the request for extradition is not a trial. The said enquiry decides nothing about the innocence or guilt of the fugitive criminal. The main purpose of the inquiry is to determine whether there is a prima facie case or reasonable grounds which warrant the fugitive criminal being sent to the demanding State. The jurisdiction is limited to the former part of the request and does not concern itself with the merits of the trial, subject to exceptions, as outlined in the preceding paragraph 7, in which case the request for extradition is denied by the Central Government."*

35. Further, in the specific context of Section 7 of the Act, the standard for intervention is extremely high, as evident from the case of ***Kamlesh Babulal Aggarwal Versus Union of India, (2008) SCCOnline Del 533*** which reads as under:

*“12. ‘Prima facie’ has a definite connotation in law. It is defined as "at first sight" or "accepted as so until proved otherwise" or "on face of it", or "so far as it can be judged from the first disclosure." The prima facie case will prevail until contradicted and overcome by other evidence. While determining whether a prima facie case has been made out, the relevant consideration is whether on the evidence laid it was possible to arrive at the conclusion in question.”*

36. It is not the issue before this Court whether a prima facie case against the petitioner is made out or not, therefore, this Court refrains from commenting on the merits of the evidence received from the authorities. However, in the opinion of this Court, from a bare perusal of the said evidence attached as Annexure F(Colly) of the Petition, it can be seen that the evidence that has been provided is in accordance with the practice of evidence that may be provided along with Extradition Requests. The Court of ACMM is the appropriate Court to examine the merit of the evidence provided and the sufficiency thereof.

37. It is given that the present petitioner is the same person to whom the arrest warrant refers and nothing to the contrary has been suggested or contended so far.

38. Furthermore, the petitioners have approached this Court under Article 226 of the Constitution, asking to intervene with the sufficiency of evidence for the purpose of Extradition proceedings. There is ample

jurisprudence to suggest that the scope of the inquiry of this Court should be limited unless there are exceptional circumstances, as held in ***Pragnesh Desai Versus Union of India 2004 SCC OnLine Del 68***:

*“13. When, on the basis of the material received, the Central Government has formed the view that the request for surrender does not fall within the ambit of Section 31 of the Act, enumerating restrictions on surrender and orders a magisterial inquiry, it would neither be prudent nor proper for this Court to interfere in exercise of powers under Article 226 or 227 of the Constitution.*

*14. The judicial review being a part of the basic structure of the Constitution of India, powers of this Court under Article 226 of the Constitution cannot be circumscribed in any way by any law. But, the judicial decisions over the years have evolved some self-imposed restraints as a matter of propriety, policy and practice, which may be observed while dealing with cases under all laws. Some of these restrictions, illustrated by the Apex Court in *Addl. Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr.*, (1992) Supp(1) SCC 496, are; (i) discretionary jurisdiction may not be exercised for correcting mere errors of law or of facts acting as a Court of appeal or revision; (ii) resort to this jurisdiction is not permitted as an alternative remedy for relief which may be obtained by other mode prescribed by Statute; (iii) under this jurisdiction the Court does not enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed; (iv) the Court does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is mala fide or is prompted by the extraneous considerations or is made in contravention of the principles of*

*natural justice or any Constitutional provision; (v) the Court may intervene where: (a) the authority acting under the concerned law does not have requisite authority or the order passed is in breach of the provisions of the concerned law or (b) when the authority has exceeded its power or jurisdiction or has failed to exercise jurisdiction vested in it and (c) where the authority has exercised its power dishonestly or for an improper purpose; and, (vi) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by applying wrong test or misconstruction of Statute or by omitting to take into consideration the relevant material.”*

39. Accordingly, the only circumstance where the petitioner's concern of 'lack of disclosure of evidence' would require an intervention from this Court would be if such alleged lack of disclosure amounts to a violation of the Principles of Natural Justice, which is not the case in these circumstances.

40. The petitioner has claimed that there exists a failure to comply with a 'duty of disclosure' by virtue of the petitioner not having received humongous amounts of documentary evidence, medical evidence, forensic evidence, CCTV footage, audio recordings of the interviews taken by the UK Police, details of call(s) made to the UK Police and, Formal police complaint, record of seizure of articles, Details of incident of brawl done by Danny and any other evidence related to the crime. Since no such duty emanates from either the Act or the Treaty, such a duty can, if at all, be said to arise from the Principles of Natural Justice, as a general principle of adequate disclosure of materials to the party exists within administrative law.

41. However, even in such a characterization of a duty of disclosure, the enquiry by the Magistrate under Section 7 of the Act and Article 11(3) of the Treaty is limited to evaluating whether a prima facie case is made against the party, as discussed in detail above.

42. Under Principles of Natural Justice, it is settled law that (a) where at the stage where an authority is merely required to form an opinion as to whether an enquiry should be held into allegations or contraventions, it is not required to give to the notice details of nature of evidence and documents, and (b) where a hearing for determination of guilt is to be held de novo, without any reference to any preliminary enquiry report, then the report need not be disclosed to the party affected.

43. These principles can be succinctly illustrated through the case of ***Natwar Singh v Director of Enforcement, (2010) 13 SCC 255***, wherein it was held as under:

*“34. As noticed, a reasonable opportunity of being heard is to be provided by the Adjudicating Authority in the manner prescribed for the purpose of imposing any penalty as provided for in the Act and not at the stage where the Adjudicating Authority is required merely to decide as to whether an inquiry at all be held into the matter. Imposing of penalty after the adjudication is fraught with grave and serious consequences and therefore, the requirement of providing a reasonable opportunity of being heard before imposition of any such penalty is to be met. In contradistinction, the opinion formed by the Adjudicating Authority whether an inquiry should be held into the allegations made in the complaint are not fraught with such grave consequences and therefore the minimum requirement of a show*

*cause notice and consideration of cause shown would meet the ends of justice.*

*48. On the fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one-way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.”*

44. In the present case, the enquiry by the Magistrate is a preliminary enquiry only to ascertain whether a prima facie case can be made against the petitioner, as clearly stipulated by the statute as well as the treaty which vests the magistrate in such authority. Furthermore, the Magistrate noted sufficient reasons to uphold a prima facie case being made, including a number of pieces of evidence as mentioned in the Extradition Petition. Furthermore, the petitioner will get adequate opportunity to represent himself, ask for disclosure of evidence, as well as cross-examine the same at the stage of the trial. Thus, it is clear that no violation of the duty to adequate disclosure can be said to have occurred in the present case.

45. The petitioner has also claimed that Article 9 of the Treaty ought to be applied on account of racial motivation behind his trial. In this light, Article 9(1)(a) becomes relevant. It stipulates:

*“Article 9 — Grounds for Refusal of Extradition*

*(1) A person may not be extradited if:*

*(a) he satisfies the Requested State that the request for his extradition (though purporting to be made on account of an extradition offence) has in fact been made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions;”*

46. Accordingly, in order for Article 9 to be deemed applicable, the petitioner must reasonably “satisfy” the Court that the request for his extradition has been made for the purpose of prosecuting him on account of his race. However, the petitioner has not provided any substantial proof on record to suggest any discrimination that might be applicable against him in the United Kingdom.

47. In any case, within the domestic law, whereas the courts recognize and act against the presence of ‘actual bias’ as a Principle of Natural Justice, ‘a mere apprehension of bias’ is not enough to claim relief by the parties. Subsequently, in *Ashok Kumar Lingala v State of Karnataka (2012) 1 SCC 321*, a similar threshold was upheld even in a circumstance where the parties had a history of “bad blood” with the officers involved, and yet, the Court refused to intervene in the statutory process, and held as under:

*“25. While the appellant may have some apprehensions about the fairness of the officers of the concerned department, we do not consider them to be sufficient for us to mistrust the State functionaries in the absence of any material to suggest that there is any real likelihood of bias.”*

48. A mere unsubstantiated apprehension of discrimination or bias cannot be held to be a sufficient reason to mistrust the state functionaries of the United Kingdom, hence, a case for claiming of relief under Article 9 of the Treaty is not made out. Accordingly, there appears no reason to intervene with proceedings and pass any such order for disclosure of additional information or evidence.

49. Furthermore, as stated in the status report, the petitioner has been escaping arrest on frivolous grounds and the present petition is one such attempt. In light of these facts, the present petition is nothing but a misuse of process to delay the extradition proceedings.

### **Findings & Conclusion**

50. In the instant case, *firstly*, the petitioner has been evading the process of law, *secondly*, requisite evidence for extradition proceedings against the petitioner has already been supplied, *thirdly*, only a *prima facie* case is to be seen by the ACMM in the course of extradition proceedings, *fourthly*, no case of violation of scheme or provisions of the Extradition Act or Treaty has been made out, and *lastly*, there is also no justiciable proof of the petitioner being arraigned due to racial discrimination/ the instant case being racially motivated is not made out.



51. Therefore, in light of the reasoning mentioned above, no case is made out for invocation of the writ jurisdiction of this Court. This Court while exercising its writ jurisdiction cannot substitute its opinion for the opinion of the ACMM. Thus, any intervention by this Court in this regard would be totally unwarranted and uncalled for.

52. The instant writ petition is accordingly dismissed as being devoid of merits.

53. It is made clear that any observations made herein are only for the purposes of the adjudication of the instant petition and shall have no bearing whatsoever on the merits of the case, at any stage in any proceedings before any Court.

**CHANDRA DHARI SINGH, J**

**May 11, 2022**  
**gs/@dityak**

नित्यमेव जयते