

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 739 OF 2017
IN
CRIMINAL APPLICATION NO. 420 OF 2017
WITH
CRIMINAL APPLICATION NO. 740 OF 2017
IN
CRIMINAL APPLICATION NO. 419 OF 2017**

Mr. Subroto Roy Sahara. ... Applicant.
Versus
Securities & Exchange Board of India
& ors. ... Respondents.

Mr. A.Y. Sakhare, Senior Advocate a/w. Mr. Ashok Saraogi and Mr. Aabad Ponda i/b. Dhananjay V. Dubey, advocate for Applicant.

Mr. Omprakash Jha i/b. The Law Point, advocate for Respondent-SEBI.

Mrs. N.S. Jain, APP for Respondent-State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : AUGUST 22, 2017**

P.C.:

1 The applicant herein is being prosecuted in SEBI Special
Case No. 224 of 2014 and 223 of 2014. The applicant had

approached the Special Court (SEBI) praying for exemption of his personal appearance on the ground of illness and had also placed on record a certificate issued by Dr. R.M. Jain, Noida. The learned Special Court has rejected the application vide order dated 18/5/2017. Learned Special Court has specifically observed that the accused No. 1 being company has filed discharge application. This prima facie indicates calculated strategic steps by Accused No. 5 i.e. the present applicant to circumvent the legal process.

2 This Court had considered the application seeking exemption filed by Ravishankar Dubey i.e. the co-accused. This Court has observed as follows :

“11 The applicant shall give undertaking to the court that he would attend the court proceedings on every stipulated date. The said undertaking may be taken on record and upon failure to abide by the undertaking, the learned Special Court may take coercive action against the applicant. In the eventuality that the applicant files an

application seeking exemption, the same may be considered on its own merits, more particularly, if a case is made out that there are inevitable circumstances, due to which he cannot attend the court. The learned Special Court shall not grant exemption to the accused at the stage of framing of charge and recording of evidence.”

3 The respective Counsel in both the Applications have submitted that the learned Counsel for the Accused has almost concluded the arguments in the proceedings seeking discharge and therefore, it should not be assumed that the Applicant is attempting to protract the proceedings. It is true that the charge cannot be framed till the discharge application is finally decided and therefore, the accused-applicant seeks exemption from attending formal dates before the Trial Court.

4 At this stage, this Court is directing the applicant to furnish an undertaking and undertaking is duly furnished. The

undertaking is taken on record and marked as Article "X" for the purpose of identification. The undertaking is reproduced below :

"(i) The inquiry/trial in SEBI Special Case No. 224 of 2014 shall not be delayed on account of my absence. I say that either I will remain present on each and every date of hearing or my advocates shall remain present on such dates and the hearing of the case would not be delayed on account of my absence before the Court. In the event that none of us are present, the Hon'ble Special Court shall be free to take such steps, as required under law.

(ii) I state that I have filed a Discharge Application in the aforesaid case before SEBI Special Court, which is pending. The Discharge Application is being heard and there shall be no delay in hearing of the said Discharge Application, on account of any absence of me or my duly instructed advocates. I shall extend my full co-operation for just conclusion of the trial of the case.

(iii) I state that during the pendency of the discharge application or such time this Hon'ble Court may order, my personal presence is really not required and if my personal presence in the trial Court is dispensed with/exempted, I

shall remain present before the Hon'ble Special Court on the date fixed for framing of charges. I shall however reserve my right to make a request at that stage, before Hon'ble Special Court to grant me time if the order of discharge goes against me, to approach the higher forums, seeking appropriate reliefs.

(iv) I state that I shall remain physically present before the Hon'ble SEBI Special Court, at the time of framing of charges to answer the charges, if the charge would be required to be framed by the Hon'ble court and the challenge to my prayer for discharge is not accepted by the Special Court and the Superior Court.

(v) I further undertake that during the period of trial of the case before the Special Court or any time thereafter, I shall not raise any objection to the effect that the trial proceedings had taken place in my absence and I shall also not dispute my identity.

(vi) I state that I shall also not challenge the fact that trial has taken place in my absence, in any appellate proceedings that may arise out of the final judgment in the aforesaid SEBI Special Case.

(vii) I undertake to remain personally present during my statement under section 313 of the Code of Criminal Procedure.

5 Taking into consideration the undertaking given by the applicant that he would not protract the proceedings nor flee from justice, the applications seeking exemption deserve to be allowed.

6 The applications are allowed on the following conditions.

(i) The applicant is exempted from causing his appearance before the trial Court only till the discharge application is decided.

(ii) Upon the discharge application being disposed of, the applicant shall personally remain present before the trial court on the scheduled date.

(SMT. SADHANA S. JADHAV,J)