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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1214 OF 2016

Mrs. Sheela Kamlesh Mehta

..Applicant.

Vs.

1]The State of Maharashtra

2]The Central Bureau of Investigation.

...Respondents.

Mr. Abad Ponda with J. Sanghavi and Shilpi Jan i/b PDS Legal for
Applicant.

Mr. Anil Singh, AGS with Ms. Rebecca Gonsalvez and Ms. Gitika Gandhi
for Respondent No.2-C.B.I.

Mr. Ajay Patil, APP for Respondent No.1-State.

CORAM: A.S. GADKARI, J.

DATE : 3rd October 2017.

P.C.

1] By this application under Section 482 of Cr. P.C., the applicant has impugned the Order dated 16th April 2016 passed in Misc. Application No.24 of 2016 (arising out of RC No.5(E)/2015/CBI/EOW/Mumbai) by the Special Judge (C.B.I.), Mumbai, thereby rejecting the application of the applicant for return of property seized in the said crime.

2] Heard Mr. Ponda, the learned Counsel for the applicant, Mr. Anil Singh, the learned Additional Solicitor General of India and perused the record annexed to the application including the affidavit-in-reply filed by Shri A.V. Pawar, Inspector of Police, C.B.I., EOW, Mumbai dated 10.1.2017.

3] It is the prosecution case that, the officials of National Textile Corporation and the Ministry of Textile colluded with Mr. Kamlesh Mehta (accused No.5), Director of M/s Hall and Anderson Limited, Kolkatta and illegally transferred the sick unviable textile mill namely M/s Shree Madhusudan Mills (subsequently renamed as M/s Hall and Anderson Limited) located at Lower Parel, Mumbai and transferred the land in favour of Kamlesh Mehta of M/s Hall and Anderson Limited, thereby causing wrongful loss of Rs.1750 Crores to the Government Exchequer. A preliminary enquiry vide PE No.26(A)/2014-DLI dated 13.5.2014 was undertaken by the Economic Offences Wing, C.B.I and after finding prima facie substance in the allegation against the persons named therein, the present FIR bearing No.5/E/2015 has been registered by the C.B.I on 8.6.2015 against six accused persons. During the course of investigation, the Investigating Agency took search of two lockers allegedly belonging to the applicant herein and seized gold and diamond ornaments/jewellery

from the said lockers. Thereafter the said lockers are sealed as contemplated under Section 102 of Cr. P.C. The investigation of the present crime is being carried out by the respondent No.2 and the same is not yet completed. The application filed by the applicant for return of property bearing Misc. Application No.24 of 2016 before the Special Judge (C.B.I.) came to be rejected by the impugned Order dated 16th April 2016.

4] Mr. Ponda, the learned Counsel appearing for the applicant submitted that the ornaments which have been seized by the Investigating Agency is the Stridhan of the applicant and the applicant is entitled to use the same. He submitted that the applicant is ready and willing to undertake that, she will not dispose off the said ornaments after its return to her and will abide by all the terms and conditions imposed upon her by this Court. He further submitted that the applicant is a Taxpayer and has mentioned the said ornaments in her Tax Returns. He submitted that the applicant has not been made as an accused till date and merely because her husband Mr. Kamlesh Mehta impleaded is made an accused in the present crime, she should not be made to suffer for it. He submitted that the husband of the applicant who was the Director of M/s Hall and Anderson Limited has officially taken over the charge of the erstwhile M/s Shree Madhusudan Mills in view of terms of settlement filed before the Supreme Court and

therefore the said transaction has sanctity in the eyes of law. He submitted that C.B.I has unnecessarily lodged the present crime and has no reason to investigate the same. He submitted that M/s Hall and Anderson Limited has filed a Criminal Writ Petition No.4140 of 2016 in this court for quashing the present F.I.R. bearing No.5/E/2015 and the Division Bench of this Court by its Order dated 4th July 2017 has prima facie accepted the contentions of the petitioner therein and by way of interim relief has directed that, during the pendency and till the final disposal of the said petition, the investigation shall go on, however, chargesheet qua the petitioners shall not be filed in the subject crime without prior leave of the Court. He submitted that the Division Bench of this Court has found merits in the submissions of the petitioner and therefore it is an additional ground for the petitioner for seeking retrun of property during the pendency of investigation and trial. In support his contention, Mr. Ponda relied upon the following two decisions of the Apex Court:

- (i) Basavva Kom Dyamangouda Patil (Smt.) Vs. State of Mysore
And Anr.
(1977) 4 SCC 358: 1977 SCC (Cri) 598.
- (ii) Sunderbhai Ambalal Desai Vs. State of Gujarat with
C.M. Mudaliar Vs. State of Gujarat.
(2002) 10 SCC 283 : 2003 SCC (Cri) 1943

5] Per contra, Mr. Anil Singh, the learned Additional Solicitor General of India vehemently opposed the application and submitted that during the investigation the applicant and her husband namely Mr. Kamlesh Mehta (accused No.5) were interrogated about source of acquisition and ownership of gold and diamond jewellery in question and till date the applicant is unable to produce any documentary proof about her acquisition/ownership of 5.484 Kg gold jewellery and 146.43 Carats diamond jewellery. He submitted that the investigation of the present crime is in progress and the applicant and her husband Mr. Kamlesh Mehta are unable to account for and explain their acquisition/ownership of the said jewellery seized from the said two lockers. He submitted that the applicant has shown that she has availed unsecured loan from her husband (accused no.5) and other Company and the said aspect is under investigation. He submitted that the C.B.I is also investigating the role of accused persons in signing and submitting the said Terms of Settlement before the Supreme Court by undervaluing the cost of land thereby giving benefit to the husband of the applicant and causing huge loss to the government Exchequer. He therefore prayed that the present application may therefore be rejected.

6] The record clearly indicates that the investigation of the present crime is at a crucial stage including investigation into the proceeds of crime acquired by the main accused Kamlesh Mehta (accused No.5), husband of the applicant. It further appears from the record that the applicant and her husband till date are unable to produce clear undisputed proof of ownership of the said jewellery in question and has also not revealed adequate source of their income to acquire the said jewellery. It is to be noted that, the C.B.I is suspecting that the seized assets of the applicant are belonging to Mr. Kamlesh Mehta (accused No.5) and the said ornaments are purchased in the name of present applicant from the funds provided by her husband Kamlesh Mehta (accused no.5). It is the specific contention of the C.B.I that till date the applicant or her husband have not produced sufficient documentary proof or material to prove their source of income in acquiring approximately 5.484 Kg gold jewellery and 146.43 Carats diamond jewellery. As noted earlier, the investigation of the present crime is at crucial stage and role played by each accused is yet to be crystallized and the C.B.I. has yet to reach to final conclusion about acquisition of the jewellery/ornaments by the applicant and/or source of acquiring the same by the applicant.

7] After taking to consideration the facts and circumstances of the present case, the complex nature of offence and the crucial stage of instigation, it will not be appropriate to direct the return of the said property (jewellery) seized by the respondent No.2-C.B.I. during the course of and till completion of investigation. I find no error or irregularity either on facts or in law in the impugned Order dated 16th April 2016 passed by the Special Judge, (C.B.I.), Mumbai.

Application is accordingly rejected.

(A.S. GADKARI,J.)