

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

CRIMINAL APPLICATION NO.740 OF 2018

Amritlal Gulabchand Jain
(through his wife
Smt. Leela Amritlal Jain)

.. Applicant

Vs.

The Superintendent of Police
Central Bureau of Investigation,
ACB, Colaba, Mumbai & Anr.

.. Respondents

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Mr. Subhash Jha a/w. Mr. Hare Krishna Mishra i/b. M/s. Law Global,
Advocate for the Applicant.

Ms. Ameeta Kuttikrishnan, Advocate for Respondent No.1 – CBI.

Ms. Neeta S. Jain, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 7, 2018.

P.C. :

The applicant seeks following relief:

“a) *that this Hon'ble Court may be pleased to call for the records and proceedings concerning Special Case No.58 of 2015, from the court of Ld. Special Judge for CBI Cases, Mumbai and after examining the legality, validity and/or propriety of the orders of non-bailable warrants/proclamation issued by the said court*

as against the Applicant from time to time be pleased to quash and set aside the same upon the applicant undertaking to this Hon'ble Court to remain present in the trial Court within four weeks from this Hon'ble Court passing the order of quashing and/or setting aside the warrant of arrest and/or staying the warrant of arrest issued as against the applicant."

2 The applicant is facing prosecution pending before the Special Court CBI for the offences under Section 13(2) read with Section 13(1)(e) of Prevention of Corruption Act ("PC Act", for short) and Sections 109 and 120-B of Indian Penal Code ("IPC", for short).

3 It is the contention of the applicant that he is a heart patient and had undergone surgery in the past in which he has undergone angioplasty and later on another surgery which was followed thereafter. A pacemaker came to be implanted in his heart for monitoring functioning of his heart. Applicant has been undergoing treatment at Ahmedabad and in view thereof it was not possible for him to remain present before the trial Court. In the circumstances, he had preferred an application for exemption.

Reliance is placed upon the medical certificates issued from time to time by different hospitals.

4 It is further contended that the applicant had preferred Criminal Revision Application No.523 of 2016, in this Court challenging the order passed by the trial Court rejecting his application for discharge. The said application was subsequently disposed of by this Court. During the pendency of the application, this Court had passed order dated 3rd July, 2017, wherein it was recorded that since time is being sought by prosecution, counsel representing prosecution stated that till next date of hearing in the matter, if the trial Court proposes to proceed the prosecution will not press for framing charges as far as applicant is concerned. Applicant had preferred Miscellaneous Application in the aforesaid Criminal Revision Application for setting aside the order of Non Bailable Warrant issued by the trial Court. The said application was disposed of by order dated 11th October, 2017, on the ground that the orders impugned in the application are beyond the scope of prayer made in the Revision Application.

5 On 7th June, 2017, the applicant preferred an application for exemption on medical ground. The Special Court

granted exemption for the day. The Court, directed the applicant to furnish evidence of doctor attending him regarding his inability to attend the Court by producing the doctor in the Court. The matter was adjourned to 20th June, 2017. the Court issued Non Bailable Warrant for not complying earlier order on 20th June, 2017 and matter was adjourned to 5th July, 2017. Thereafter another application was filed before Special Court on 5th July, 2017, for recall/cancellation of order of Non Bailable Warrant. The said application was rejected. The matter was adjourned for report on Non Bailable Warrant to 8th August, 2017. On 23rd August, 2017, the Court forfeited bail bond accused no.2 and issued fresh Non Bailable Warrant. For the reasons stated in order dated 7th September, 2017, the Court issued proclamation against the applicant on the ground that he is absconding. It is submitted that on account of serious health condition, the applicant could not appear in the Court. Mr.Jha, appearing for the applicant draw my attention to various medical case papers / certificates, the compilation of said document is taken on record and marked “X” for identification. Mr.Jha pointed out the certificate issued by CIMS Hospital, wherein it is stated that the applicant was examined in the said hospital and was diagnosed to have dilated cardiomyopathy as a consequence of ischemic heart

disease and sever LV dysfunction. He also pointed out report dated 13th September,2016, issued by Bhatia Hospital in relation to CT Scan and MRI Centre. Mr.Jha, learned counsel for the applicant submitted that in the circumstances as stated hereinabove, he could not remain present before the Court. It is submitted that the condition of the applicant is so severe that it is difficult for him even to travel. To show his bonafide and availability he would appear before trial Court. It is submitted that in view of the Non Bailable Warrant and the proclamation. The applicant apprehends that he would be taken in custody. Mr.Jha, also relied upon the decision of the Supreme Court in the case of ***Inder Mohan Goswami & Anr.Vs. State of Uttaranchal & Ors.***¹, to draw support to his submission that Non Bailable Warrants are required to be issued only in exceptional circumstances. The learned advocate for the applicant, on instructions from the applicant, makes a statement that the applicant would remain present before the trial court within a period of about three weeks from today. It is further submitted that two days in advance intimation about his remaining present in trial Court would be given to the respondent - CBI. Learned counsel for the respondent submits that the statement of the

1 (2007) 12 SCC 1

counsel for the applicant may be recorded as an undertaking to this Court. In this circumstances and in view of the statement made by the counsel for the applicant, which is recorded as an undertaking to this Court the relief sought in this application is granted.

6 In the circumstances, I pass the following order:

:: ORDER ::

- (i) The impugned orders passed by the Special Court for CBI, issuing Non Bailable Warrant, forfeiture of Bail Bond and issuance of proclamation against applicant in CBI Special Case No.CBI/0100058/2015, are hereby set aside;
- (ii) The applicant shall appear before the trial Court within a period of three weeks from today with two days advance intimation to respondent - CBI;
- (iii) Criminal Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)