

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1750 of 2019**

Ramesh C. Bawa	Petitioner
versus	
Union of India and ors.	Respondents

Mr. Vikram Choudhary, senior advocate along with Dr. Sujay Kantawala i/b. Mr. Shalabh K. Saxena, advocate for the petitioner.
Mr. Amit Desai, senior advocate along with Mr.H. S. Venegaonkar, Mr. Gopalkrishna Shenoy and Mr. A. L. Bhise, advocates for the respondent Nos.1 and 2.

**CORAM : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.**

DATE : 4th APRIL, 2019.

P. C. :

1. The present petition is filed by an employee of IL&FS Financial Services Private Limited and he is aggrieved by the action of issuance of summons to him in relation to the investigation into the affairs of IL & FS Ltd. and its subsidiary companies under Section 212(1)(c) and (d) of the Companies Act, 2013. Apart from, assailing the proceedings initiated by the respondents, the petition also pray for quashing and setting-aside the twin condition for grant of bail as set out under Section 212(6)(ii) and it is assailed on the ground that it is violative of Articles 14 and 21 of the Constitution of India.

Mr. Choudhary, learned senior counsel for the petitioner, at the outset, submitted that since the issue raised in this petition is also pending in the Apex Court, he would like to withdraw this petition with liberty to approach the Apex Court by invoking jurisdiction under Article 32 of the Constitution of India. Mr. Desai, learned senior counsel for the respondent Nos.1 and 2 has no objection for withdrawal of the petition. In these circumstances, we grant leave to withdraw the petition with liberty as prayed for, to the petitioner.

2. Mr. Choudhary, learned senior counsel, submitted that in order to enable the petitioner to approach the Apex Court, the petitioner may be granted certain protection from arrest. He submitted that the matter was placed before this Court on 1st April, 2019 and thereafter, it was adjourned today. On 1st April, 2019, Mr. Venegaonkar, learned counsel for the respondent Nos.1 and 2, on instructions, had agreed that till next date of hearing, the petitioner will not be arrested.

3. Mr. Choudhary, learned senior counsel, also submitted that the investigation of the subject case is in progress since last 6 months i.e. from October 2018 and the petitioner has received 7 summons and in pursuance of each of the summons, he has attended the Office of the respondent No.2 and has also cooperated with the investigation. This

statement is not disputed by the respondents. He submit that it is consistent in the light of personal liberty to grant protection as claimed by the petitioner.

4. Mr.Desai, learned senior counsel for the respondent Nos.1 and 2, opposed this prayer of Mr. Choudhary, learned senior counsel for the petitioner, by relying upon the decisions of the Apex Court in the **State of Telanga versus Habib Abdullah Jeelani and ors. (2017) 2 SCC 779** and especially para 23 thereof and **the order dated 4th September, 2018, passed by the Division Bench of the Hon'ble Apex Court in criminal appeal Nos.1114 and 1115 of 2018.**

5. Perusal of the judgment in the case of **State of Telangana (supra)** would reveal that the Hon'ble Apex Court observed that the learned Single Judge of the High Court while expressing his disinclination to interfere on the ground that it was not appropriate to stay the investigation, by taking note of the submission that the accused persons were innocent and they were falsely implicated, had issued a direction to the police not to arrest the petitioners during the pendency of the investigation. The submission advanced on behalf of the State before the Hon'ble Apex Court while assailing the said order was to the effect that when the Court had declined to quash the FIR and investigation, it could not have extended the privilege to the accused persons which is in

the nature of an anticipatory bail. In this backdrop of the facts, Their Lordships made following observations :-

"23. We may hasten to clarify that the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, has the jurisdiction to quash the investigation and may pass appropriate interim orders as thought apposite in law, but it is absolutely inconceivable and unthinkable to pass an order of the present nature while declining to interfere or expressing opinion that it is not appropriate to stay the investigation. This kind of order is really inappropriate and unseemly. It has no sanction in law. The Courts should oust and obstruct unscrupulous litigants from invoking the inherent jurisdiction of the Court on the drop of a hat to file an application for quashing of launching an FIR or investigation and then seek relief by an interim order. It is the obligation of the court to keep such unprincipled and unethical litigants at bay."

6. The proposition of law laid down by the Hon'ble Apex Court no doubt is a salutary one but we do not think that principle can be made applicable to the facts of the present case. While making observations in paragraph 23 of the said judgment, Their Lordships of the Hon'ble Apex Court also observed that the power conferred under Article 226 of the Constitution of India is a device to advance justice and not to frustrate it and the said power has to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest. Two interests are directed to be balanced, one being the grant of protection against prevention of

gross miscarriage of justice if the protection is not granted. Since the learned senior counsel for the petitioner had made motion to withdraw the petition and to take up the issue before the Hon'ble Apex Court, since it is already pending before it, we have granted him liberty to withdraw the petition and club his challenge in those petitions which are already pending before the Hon'ble Apex Court. However, at the same time, a limited relief is sought by learned senior counsel for the petitioner to protect his personal liberty till he approaches the Highest Court agitating his grievance. We do not feel that the exercise of powers under Article 226 would not permit us to exercise discretion vested in us to grant a limited relief to the petitioner, particularly when the investigation is going on since the month of October 2018 and the petitioner has been attending summons of the authorities as and when directed. Even when the petitioner approached us, he was protected since the last date of the order i.e. 1st April, 2019 and we find sufficient justification to continue the protection but since the learned senior counsel for the respondents is not ready and willing to continue his statement, we are required to issue directions to the respondents not to arrest the petitioner till 10th April, 2019, so as to enable the petitioner to approach the Apex Court.

7. As far as the order passed by the Hon'ble Apex Court on 4th September, 2018 in criminal appeal Nos.1114 and 1115 of 2018, on which, heavy reliance is placed by Mr. Desai, learned senior counsel, is concerned, we have carefully perused the said order. The Hon'ble Apex Court was constrained to pass the said order since it was brought to its notice that despite being informed that the Hon'ble Apex Court had listed the matter for hearing on a particular date, the High Court had proceeded to issue directions resulting into release of accused and the directions were implemented. The Hon'ble Apex Court expressed its disapproval over the orders passed and had observed that apart from the constitutional validity of the provisions, apart from the Sections 212(6)(ii) and 212(7) of the Companies Act ought not to have weighed with the High Court for grant of interim relief and the Court ought to have applied broad contours for grant of bail under Section 439 of the Cr.P.C. which was not adverted at all. In this backdrop, the observations were made that the High Court had failed to consider matter such as the nature of gravity of the alleged offence. In the present case, we are not at all touching the merits of the allegations either from the point of view of the petitioner or from the point of view of the respondents and, therefore, we do not find that the said order of the Hon'ble Apex Court is of any succour to the respondents.

8. Mr. Desai, learned senior counsel, does not dispute that the petitioner has been cooperating with the investigation machinery. In such circumstances, we direct the petitioner to continue to co-operate with the investigating agency and we direct the respondents not to arrest the petitioners till 10th April, 2019 and, thereafter, the protection granted by us shall cease to continue.

9. The writ petition stands disposed of.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]