IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 647 OF 2017

Aspen Infrastructure Limited
formerly known as
Synefra Engineering Constructions Ltd.
a Public Limited Company
incorporated under the provisions
of the Companies Act, 1956
having its registered office at 5th floor
Godrej Mellinium,
S. Koregaon Park, Pune 411 001
Through the Authorized signatory
Mr. Nilesh Dhanani ..Applicant

v/s.

Rajgopalan Shridhar
of Pune, Indian Inhabitant
res. At B/11, Kumar Meadows
Manjiri Pune 412307

2. The State of Maharashtra
(through Sr. Inspector of Police
Bund Garden Police Station)

3. The Central Bureau of Investigation
a statutory Investigating Authority
having Office at
Economic Offences Wing,
59 BKC Road, G Block,
Behind City Bank,
Mumbai 400 051 ..Respondent/s

Mr. Archit Jayakar i/b. Jayakar & Partners for the Applicant.

Mr. Ranjit Sangle a/w. Sushant Walimbe i/b. Hitesh Sangle for the Respondent No.1.
Mr. P.H.Gaikwad, APP for the Respondent No.2-State.
Mr. Sandesh Patil for the Respondent No.3-CBI.

CORAM : ANUJA PRABHUDESSAI, J.
DATED : 25th NOVEMBER, 2021.

JUDGMENT.

1. This is an application under Section 439 (2) of Cr.P.C. for cancellation of bail granted to the Respondent No.1 by the Honourable Supreme Court vide order dated 5.7.2011 in Criminal Appeal No.1727 of 2011.

2. Shri Archit Jayakar, learned Counsel for the Applicant submits that while granting bail to the Respondent No.1, the Honourable Supreme Court had imposed a condition that the Respondent No.1 shall file an affidavit before the Magistrate to the effect that he shall not operate the accounts mentioned in the letter dated April 29, 2011. He submits that in compliance with the order dated 05.07.2011, the Respondent No.1 has filed an undertaking before the Magistrate that he shall not operate the accounts mentioned in the said letter.

3. Learned Counsel for the Applicant contends that in breach of the undertaking given to the Honourable Supreme Court, by FAX dated 21.07.2011, which was sent while the Respondent was lodged in the jail, he made a written request to transfer sum of 250,000 Euro to the account of 'Delux Shine Ltd.'. He submits that the letter dated 29.04.2011 refers to the accounts of the Applicant with Credit Suisse Bank, and in terms of the order of the Hon'ble Supreme Court, the Respondent No.1 was prevented from operating the said accounts. He submits that in view of Anti Money Laundering proceedings pending against the Respondent, the Credit Suisse Bank sent copy of the transfer request to Suisse Prosecutor for his consent. The Suisse Prosecutor denied the said request to transfer the funds.

4. Learned Counsel for the Applicant submits that even in the past, i.e. prior to the bail order, the Respondent No.1 had instructed Credit Suisse Bank to transfer the money to his lawyers account as well as other accounts. Learned Counsel for the Applicant therefore contends that the Respondent No.1 had flouted and tried to overreach the bail order dated 05.07.2021 by

issuing instructions to transfer sum of 250,000 Euro from the account referred to in letter dated 29.04.2011 to the account of M/s. Delux Shine Ltd. He therefore contends that the bail order is liable to be canceled for breach of undertaking and flouting the order of the Court.

5. Shri Ranjit Sangle, for the Respondent No.1 submits that the Respondent No.1 has not violated any condition of the bail order. He submits that the FAX dated 21.07.2011 in respect of alleged transfer of 250,000 Euro was neither signed, nor sent by Respondent No.1. He submits that the Respondent No.1 had not made any attempts to withdraw any money from the bank accounts listed in the letter dated 29.4.2011. He further submits that the letter does not mention the account number from which the funds were to be transferred and that the same was not addressed to any bank or branch. He further submits that the Respondent No.1 has no connection with Delux Shine Limited which is based in Hongkong. He submits that the Investigating Agency has not investigated whether the letter which was sent from FAX No.08322732973 was sent by the Respondent No.1. He

submits that the said letter is forged and fabricated, probably by the complainant to get the bail order canceled. He submits that there is inordinate delay in seeking cancellation of bail.

6. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

7. The Applicant herein filed FIR dated 18.09.2009, with Bund Garden Police Station, Pune, pursuant to which crime has been registered against the Respondent No.1 for offences under Section 403, 408, 418, 420, 464, 467, 471, 477A r/w. 34 of IPC. The Respondent No.1 had filed Criminal Appeal No.1272 of 2013 before the Honourable Supreme Court challenging the order of this Court dismissing his Application for bail. By order dated 05.07.2011 the Honourable Supreme Court ordered to release the Respondent No.1 on bail in sum of Rs.50 lakhs with two sureties in the like amount and on conditions stipulated in the order. Condition Nos.4 and 5 which are relevant to decide this application read thus:

> *"(4) The Appellant undertakes before this Court that he shall not operate the accounts mentioned*

in the letters all dated April 29, 2011 addressed by the Director, Directorate of Prosecution, Maharashtra State, Mumbai to the Deputy Commissioner of Police, Zone II, Pune City, which are to be found on pages 368 to 374 of the main paper book compilation.

(5) The Appellant is further directed to file an affidavit before the learned Magistrate to the effect that he shall not operate the accounts mentioned in the letters dated April 29, 2011 referred to above till the conclusion of the trial."

8. In compliance with condition no.5, the Respondent No.1 filed an affidavit before the learned Magistrate that he shall not operate the accounts mentioned in the letter dated April 29, 2011. The Applicant claimed that in breach of the undertaking, by FAX letter dated 21.07.2011, the Respondent No.1 sought transfer of 250,000 Euro from his account in Credit Suisse Bank. The Applicant brought this to the notice of the Investigating Officer, pursuant to the Investigating Officer filed an application before the learned CJM, Pune for cancellation of bail. While the said application was pending before the learned CJM, Pune, the

Respondent No.1 had filed an application before the Honourable Supreme Court, being Miscellaneous Application No.2073 of 2011 in disposed of Criminal Appeal No.1272 of 2011. The Applicant has stated that in view of the observations made by the Honourable Supreme Court, the Investigating Officer withdrew the application for cancellation of bail filed before the CJM, Pune, and the Applicant filed a fresh application before the Honourable Supreme Court for cancellation of bail.

9. The Respondent No.1 herein had disputed the correctness of allegations of breach of conditions. By order dated 05.05.2014, the Honourable Supreme Court observed that this aspect can be appropriately examined by the High Court and hence granted liberty to the Applicant to file an application for cancellation of bail before this Court on the ground of breach of condition nos.4 and 7. In view of the liberty given by the Apex Court, the Applicant has filed this application for cancellation of bail solely on the ground of breach of condition and undertaking nos.4 and 5 in bail order dated 05.07.2011.

10. Before adverting to the facts of the case, it would be advantageous to refer to the decision of Hon'ble Apex Court in ***Vipin kumar Dhir vs. State of Punjab AIR 2021 SC 4865*** wherein the Apex Court has held thus : -

> *"9. At the outset, it would be fruitful to recapitulate the well-settled legal principle that the cancellation of bail is to be dealt on a different footing in comparison to a proceeding for grant of bail. It is necessary that 'cogent and overwhelming reasons' are present for the cancellation of bail. Conventionally, there can be supervening circumstances which may develop post the grant of bail and are non-conducive to fair trial, making it necessary to cancel the bail. This Court in Daulat Ram & Ors. vs. State of Haryana observed that:*
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> *"Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are:*

interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial." These principles have been reiterated time and again, more recently by a 3judge Bench of this Court in X vs. State of Telengana & Anr.

10. In addition to the caveat illustrated in the cited decision(s), bail can also be revoked where the court has considered irrelevant factors or has ignored relevant material available on record which renders the order granting bail legally untenable. The gravity of the offence, conduct of the accused and societal impact of an undue indulgence by Court when *the investigation is at the threshold, are also amongst a few situations, where a Superior Court can interfere in an order of bail to prevent the miscarriage of justice and to bolster the administration of criminal justice system. This Court has repeatedly viewed that while granting bail, especially anticipatory bail which is per se extraordinary in nature, the possibility of the accused to influence prosecution witnesses, threatening the family members of the deceased, fleeing from justice or creating other impediments in the fair investigation, ought not to be overlooked."*

11. In the instant case, the bail is sought to be canceled on the ground of violation of undertaking not to operate the accounts mentioned in letter dated 29.04.2011 addressed by the Director of Prosecution to the Deputy Commissioner of Police, Zone III, Pune City. The accounts mentioned in the letter are Account No.0835-1490-6 (BIP Holding), 0835-1622414-5 (Blue Ocean Consultants) with Credit Suisse Bank PB A/c. No. 90.648 (Rodney Marsh) 100.994 (Sunshine Trade) with (LB Swiss) Provat Bank and A/c. No. 477.214 (Bluewind[UK]), 469.244 (Sunshine Trade Services

Ltd.), 495.158 (Manning Ltd) with Merill Lynch Bank. The Applicant has placed on record copy of the FAX letter dated 21.07.2011 allegedly addressed by the Respondent No.1 to Peter Hartner of Credit Suisse Bank to transfer 250,000 Euro in the account of Delux Shine Ltd. In view of money laundering proceedings initiated against the Respondent No.1, Credit Suisse Bank forwarded the copy of the said FAX to the Suisse Prosecutor for his consent to effect the proposed transfer of the funds. The Suisse Prosecutor has declined the request to transfer the funds.

12. The Respondents have disputed the genuineness of the said FAX. It is to be noted that the said letter which is addressed to Mr. Peter Hartner, only mentions the name and account of the Company in whose account an amount of 250,000 Euro was to be transferred. It is pertinent to note that the Respondent No.1 is prevented from transferring money only from the accounts referred to in the letter dated 29.04.2011. The FAX dated 21.07.2011 does not mention that the Respondent No.1 had sought to transfer money from the account of Blue Ocean Consultant or BIP Holding with Credit Suisse Bank. In fact, the

said FAX does not mention the name of the bank or the branch, the name of the Account holder or the Account number from which the money was to be transferred. It is also on record that the balance in the account of Blue Ocean Consultants was 182,207 Euro whereas the request as per the FAX dated 21.07.2011 was to transfer 250,000 Euro which was in excess of the balance amount in the account of Blue Ocean Consultants.

13. The said FAX, based on which the bail is sought to be canceled, was sent from FAX No.08322732973. Mr. Sandesh Patil, learned Counsel for the CBI fairly concedes that the Investigating Officer has not verified whether the said letter was sent by the Applicant, or whether the Respondent No.1 has any connection with the Delux Shine Ltd., Hongkong, in whose account the money was to be credited. There is thus no material before the Court to hold that the FAX dated 21.07.2011 was sent by the Respondent No.1. In short, the authenticity of the FAX, based on which the bail is sought to be canceled, is in dispute. There is thus no cogent and satisfactory material to prove that the Respondent No.1 has in fact violated the condition of the bail order, or the

undertaking given to the Court. Suffice to say that the bail once granted cannot be canceled in a mechanical or routine manner.

14. It is also pertinent to note that the leave to file the application before this Court was granted by the Honourable Supreme Court vide order dated 05.05.2014. The present application was filed on 17.11.2017 i.e. more than three and half years from the date of the order of the Honourable Supreme Court. The Applicant has not assigned any reasons for the delay in filing the present Application. Moreover, there are no cogent or supervening circumstances justifying cancellation of bail.

15. Hence the Application is dismissed.

(ANUJA PRABHUDESSAI, J.)