

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 800 OF 2022
WITH
INTERIM APPLICATION NO. 2413 OF 2022
WITH
BAIL APPLICATION NO. 1911 OF 2022
WITH
INTERIM APPLICATION NO. 2660 OF 2022**

Wayram Singh

.. Applicant

Versus

State of Maharashtra and anr.

.. Respondent

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Mr. Niranjan Mundargi a/w Mr. Subir Sarkar for the Applicant in both

Mr. H.S. Venegaonkar a/w Mr. Shantanu Thorat for respondent

Ms. Shinde, APP for the State in BA No.800/22 , Ms. A.A. Takalkar, A.P.P. for the State in BA No. 1911/22.

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**CORAM: BHARATI DANGRE, J.
DATED : 29th SEPTEMBER, 2022**

P.C:-

1. The two applications are listed together but the learned counsel Mr. Mundargi and Mr. Venegaonkar are at consensus that the two applications need to be separated. Accordingly, BA No. 800 of 2022, where the prosecuting agency is the EOW, Banking Unit-II, Mumbai. the learned APP seeks four weeks time to file an affidavit. List the

said application for hearing on 23/10/2022.

2. As far as BA No. 1911 of 2022 is concerned, the applicant seek his release on bail in P.M.L.A Special Case No. 8 of 2019. The applicant is also aggrieved by the order passed by Special Judge under the PMLA Act, on 4/05/2022, when his application filed under section 88 of Cr.P.C came to be rejected, on the prosecuting agency strongly contesting the said application.

When I have perused the order, it can be seen that the Special court has laid his emphasis on the gravity of the subject matter and the nature of accusations faced by the applicant and specifically, the court was impressed by the submission advanced on behalf of the Enforcement Directorate, that it is yet in the process of identifying the proceeds of crime, layering and integration thereof. Attributing the applicant the role of Chairman of PMC Bank, since 2015 and his role as Director since 1999, it was held, that he was one of the original promoter and Director of HDIL and its various group Companies and he held shares to his credit, which were gifted to his relatives.

The learned Judge also gave weightage to the voluminous documents filed along with the complaint and the accusations leveled

therein.

Dealing with the argument about an application being entertained and the discretion to be exercised by the court while exercising the power under section 88 of Cr.P.C, the Special Judge was of the specific opinion, that considering the prominent role attributed to the applicant, safety of the trial, proceeds of the trial, security of various assets are important parameters while exercising the power.

3. The learned counsel Mr. Mundargi specifically submit that since he was not arrested during the course of investigation an application was moved under section 88 of Cr.P.C and since it was expressed that the power would not be exercised unless and until the accused is taken into custody and exercises control over him, he presented himself before the Court on securing a production warrant and that is how the court gained custody over him. The Court proceeded to pass the order by recording that the applicant was arrested and undergoing judicial custody in EOW offence and though ED has not preferred to arrest him, the rigors of conditions contemplated under section 45 (1) of P.M.L Act cannot be overlooked, and therefore refused to exercise the discretion under

section 88 of Cr.P.C and rejected the application.

4. The Special Judge has made reference to the decision of the Hon'ble Apex Court in *Satender Kumar Antil Vs. CBI and anr.* AIR 2022 SC 3386 and the order was passed on 4/05/2022. The further clarification from the Hon'ble Apex Court, which came in form of *Satender Kumar Antil v. CBI.* decided on 11/07/2022, was not available.

Mr. Mundargi would submit, that in the wake of the authoritative pronouncement from the Hon'ble Apex clarifying its earlier decision and once again reiterating the position as regard section 88 of Cr.P.C in cases, where an accused has not been arrested while carrying out the investigation, the matter shall be remanded back to the Special Court so that in light of the further directions by the Hon'ble Apex court on 11/07/2022, the issue can be re-determined. He would also submit that the co-accused Joy Thomas Kanjirathingal came to be released on bail on 7/09/2022, when the attention of court was adverted to the decision dated 11/07/2022 and following the said pronouncement, a conclusion was derived that the co-accused deserve his release under section 88 of Cr.P.C as it was imperative to follow the guidelines issued by Hon'ble Apex Court.

On both this count, I am convinced with the submission of Mr. Mundargi and deem it appropriate to remand the application filed by the applicant under section 88 (Exh. 143) to the Special Court under the PMLA for reconsideration on both the aspects, being release of the Applicant in the light of the latest authoritative pronouncement of Hon'ble Apex Court in case of *Satender Kumar Antil (Supra)* and also on the ground, that if the co-accused has conferred with the said benefit, why the applicant should be kept away from it. The learned Judge apart from the two factors shall decide the application of the applicant by invoking power under section 88 of Cr.P.C on its merits, as expeditiously as possible.

Bail Application No.1911 of 2022 is disposed off.

(SMT. BHARATI DANGRE, J.)