IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2133 OF 2022

Smt.Aasmah Mohd. Farooq Shaikh,
W/o.Mohd.Farooque Shaikh, Age 33 years,
R/o.Flat No.202, Second Floor,
Opus Wallace Fortuna, Noor Baug,
Dongri, Mumbai-400009. Petitioner
versus
1. Union of India
2. The Director, CBI, New Delhi.
3. K.Kumaresan,
Deputy Superintendent of Police,
CBI, EOW, Mumbai.
4. Deputy Superintendent of Police,
CBI, EOW, Mumbai.
5. The State of Maharashtra. Respondents

Mr.Mathew Nedumpara with Mr.Manav Sanghai i/by Nedumpara & Nedumpara, Advocate for Petitioner.

Mr.H.S.Venegavkar, Special Public Prosecutor, for UOI.

Mr.Arfan Sait, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th July 2022

PC :

1. Petitioner challenges the Order dated 21st June 2022 passed by learned Special Judge (CBI) below Exhibits-5, 6, 7 and 8 in Miscellaneous Application No.796 of 2022.

2. Learned counsel for Petitioner submitted that he would restrict his arguments towards assailing the order dated 21st June 2022

allowing application (Exh.8) thereby directing rearrest of the Petitioner who was released on bail vide order dated 3rd June 2022 in R.A.No.575 of 2022.

3. Petitioner was arrested on 23rd May 2022 in CBI Special Case No.519 of 2022 arising out of C.R No.RC/4/E/2017-CBI/EOB/ Mumbai registered with CBI, EOB, Mumbai for the offences punishable u/s.120-B r/w 420, 467, 468, 471 of Indian Penal Code and u/s.13(2) r/w 13(1)(d) of Prevention of Corruption Act.

4. The prosecution case is that on 13th May 2017 CBI, EOB registered crime against Directors and Proprietors of 13 enterprises and public servants for the aforesaid offences. It was alleged that 13 entities were floated IECs and other registration obtained and current accounts were opened for the said entities in 6 banks viz. Punjab National Bank, Central Bank of India, Corporation Bank, Canara Bank, Axis Bank and e-State Bank of Hyderabad, now State of India, Mumbai. The said entities submitted forged import documents such as Bills of Entries, Invoices, Bill of Lading etc. purportedly issued by Jawaharlal Nehru Custom House, Nhava Sheva, Mumbai and New Custom House, Mumbai to the said 6 banks and sent forex remittance in USD equivalent to Rs.2,252.82 crores between 2014-2016 to various entities in Hongkong. The value of the imports in the Bill of Entry submitted to banks is very high than the value declared in the Bill of Entry filed with Customs. Further, the same Bill of Entry was submitted to different banks and payments made multiple times to the entities in Hongkong thereby the accused entities in conspiracy with the unknown bank officers had illegally transferred funds in forex remittance out of India as import payments through forged Bill of Entries, invoices etc. and

caused huge loss of foreign exchange reserve of the country to the tune of Rs.2,252.82 crores. It was alleged that the husband of Petitioner Mr.Mohd.Farooque Shaikh and other accomplices induced poor persons to share their KYCs, by giving petty amount and floated firms and companies in their names as Directors and Proprietors. It was alleged that Petitioner being wife of Mohd.Farooque Shaikh render her assistance to her husband in inducing the persons as employee or staff, prepared false and bogus documents and the same were submitted to authorized dealer banks.

5. Petitioner preferred application for bail before Special Judge, CBI vide Exhibit-7. It was contended on behalf of Petitioner that initially CBI registered crime on 13th May 2017 against Petitioner's husband along with others and there was no whisper against Petitioner in the charge sheet. Various persons were arrested and voluminous charge sheet was filed. The said charge sheet did not specify any role to the Petitioner. No allegations were attributed to the Petitioner and as such Petitioner had nothing to do with the said offence. It was also contended that arrest of Petitioner was abuse of power. Petitioner's husband made complaint to senior Officers of Dongri Police Station on 14th March 2022 against erring officers of CBI. Application was filed u/s.156(3) of Cr.P.C and arrest of Petitioner was counter blast to the said complaint. It was also contended that Petitioner was suffering from various ailments and bed ridden. Her ailment is of such nature that it warrants immediate care. It would be inhuman to keep her in custody and hence she may be enlarged on bail. She is a sick lady having three minor children.

6. The prosecution had contended that offence is of serious

nature. Huge amount was involved. Petitioner's husband is prime accused. Petitioner had rendered her active assistance to her husband in committing the offence. There was active involvement of Petitioner.

7. Learned Special Judge vide Order dated 3rd June 2022 allowed the application for bail preferred by Petitioner and she was directed to be released on bail on execution of her personal bond of Rs.10 lakh with one or two local solvent sureties and for the like amount to the satisfaction of the Court. Provisional cash bail of Rs.10 lakh was allowed for two weeks. There were other conditions, e.g. not to tamper with prosecution witnesses, co-operate with investigating agency as and when required, to remain present before the Court on all future hearings unless exempted by the Court for any genuine cause, furnish Aadhar card and other documents, to surrender passport, not to leave jurisdiction of Court without prior permission of the Court and liberty was granted to the prosecution to seek cancellation of bail in the event of any condition being breached.

8. While granting bail by Order dated 3rd June 2022, it was observed by learned Special Judge that the fact that Petitioner is wife of Mohd. Farooque Shaikh who is one of the accused is not in dispute. The offence was registered by CBI on 13th February 2017 is not in dispute. After detailed and depth investigation the investigating agency filed charge sheet which runs in 42,000 pages in the Court against various accused including husband of Petitioner. It is a matter on record that charge sheet is filed on 19th April 2022 where except minor activities on the part of Petitioner, no serious role is shown to have been played by her in the alleged fraud. The prosecution has not alleged that the Petitioner was one of the

beneficiary along with her husband in the alleged fraud. On the contrary, in paras 48, 143 and 146 of the charge in charge sheet it is alleged that husband of Petitioner had committed illegal acts in the name of Petitioner. All serious allegations appear to be levelled in respect of fraud against Petitioner's husband and his close relatives. There is no history of absconding of Petitioner brought on record by the prosecution during the period of five years of investigation. After five days of filing the charge sheet the Petitioner appears to be arrested by CBI. Petitioner came with a plea that she is suffering from various ailments and she is in dire need of care and proper treatment It was contended that Petitioner being sick woman would be entitled for bail u/s.437 of Cr.P.C. The charge sheet is filed after five years against various persons including Petitioner's husband. Initially in the FIR and in the charge sheet the petitioner is not named as an accused. There is no allegation of involvement of Petitioner in the charge sheet except minor instances. As per remand paper and reply of the prosecution, the role attributed to the Petitioner is that she has rendered her assistance to her husband in preparing forged and false documents. However, in the charge sheet all these acts did not reflect. It appears that Petitioner is arrested after five days after filing of charge sheet. There appears various applications were filed by Petitioner's husband against prosecution. These applications have no direct concern with the Petitioner. Since registration of crime till arrest, the Petitioner is staying in Mumbai. During investigation till filing of charge sheet against husband of Petitioner and others, Petitioner was residing with her husband in Mumbai. From the matters filed by the husband of Petitioner in the High Court and Hon'ble Supreme Court, reference was made to the sickness of Petitioner which was considered by the Courts. It is a matter of fact that this is a documentary case in which investigating agency after five years of completion of investigation filed charge sheet in huge number of pages. It appears that investigation is almost completed now and nothing appears to be remained to be recovered or discovered from the Petitioner. There is no such claim by the prosecution in their reply. Petitioner submitted proof of medical papers on record to show that she is suffering from ailments. The papers do not appears to be recent. Other material available on record cannot be overlooked. Benefit of proviso to Section 437 of Cr.P.C can be given to the Petitioner The trial would not be concluded in near future. The fact that whether Petitioner has actually involved in the alleged fraud would come only in trial. Petitioner is not having any criminal antecedents. Therefore, no prejudice will be caused to the prosecution if the application is considered subject to certain stringent conditions.

9. From the operative part of order dated 3rd June 2022 it is apparent that Petitioner was granted bail on execution of personal bond of Rs.10 lakh with one or two local solvent sureties for the like amount to the satisfaction of Court and provisional cash bail was granted for two weeks.

10. Vide order dated 21st June 2022 learned Special Judge, CBI, ordered that Petitioner who is released on bail by order dated 3rd June 2022 in R.Ano.575 of 2022 be rearrested and after securing her presence, she is committed to judicial custody. The Investigating Officer to act on authenticated copy of order to re-arrest the Petitioner and after arrest she be produced before the Court only for the purpose of committing her to judicial custody and to do investigation, verification as referred in the order.

11. The Order dated 21st June 2022 indicate that Petitioner filed an application for exemption from appearance on 20th June 2022. Petitioner filed application at Exh.6 of recusal from hearing of the case on the ground that application for transfer is preferred before learned Principal Judge. Exh.7 is the application for adjournment preferred by Petitioner. CBI filed application Exh.8 securing personal appearance of Petitioner by way of adopting coercive measures in terms of bail order. The learned Special Judge observed that Petitioner was granted bail on 3rd June 2022 with direction that she shall remain present before the Court on all days future hearing date unless exempted by the Court for any genuine cause and in the event any condition is violated the prosecution was at liberty to seek cancellation of bail. The order further refers to the fact that Miscellaneous Application No.796 of 2022 for modification of bail conditions in regard to the surety concerned as in bail order, furnishing local surety is ordered and it was prayed that surety be allowed within Maharashtra. Miscellaneous Application No.797 of 2022 is instituted for extension of time to furnish surety pursuant to the bail order dated 3rd June 2022. The Court then dealt with the submissions of advocate for Petitioner and grievances made by advocate for petitioner. It is further observed that on 18th June 2022 hen applications were called out or hearing, query was made to the learned advocate about presence of Petitioner. Advocate for Petitioner submitted that Petitioner went to hospital for sonography and he would file an application for exemption. The Court inquired whether Petitioner would remain present in the second session. Then it was submitted by the advocate for Petitioner that Petitioner will take considerable time as she has gone for sonography. Learned

advocate for Petitioner was suggested to place details of hospital where Petitioner is undergoing sonography, scheduled time of hospital about leaving of hospital and name of doctor who prescribed the sonography. The advocate for Petitioner left the Court at around 11.20 a.m claiming that he will file application. The advocate appeared at around 12.45 p.m and filed application for exemption (Exh.3) with documents i.e. OPD paper dated 6th June 2022 of Doctor who examined the Petitioner and prescribed medicine. The Court observed that papers no where shows that the Doctor prescribed sonography. In the application (Exh.3) it was averred that Petitioner has fever and has gone for sonography treatment. Thereafter it was submitted that Petitioner is suffering from fever and that she is at home and did not go to hospital. Learned P.P placed an application for cancellation of bail. The hearing of application was deferred on 20th June 2022. Learned Judge recorded submission of the advocate for Petitioner that roznama dated 18th June 2022 does not disclose what was submitted by the advocate for Petitioner. Incorrect statement was recorded in the Roznama. Advocate for Petitioner submitted that Petitioner was suffering from fever and she is at home and not went to hospital. It was also submitted that learned Presiding Officer should refrain from hearing the matter and defer the hearing of the case pending final hearing and disposal of Transfer Application which is filed before learned Principal Judge. Learned advocate also submitted that notice was issued to the Respondent by learned Principal Judge in the Transfer Application and hearing is scheduled on 28th June 2022 and it was claimed that proceedings be deferred and adjournment be granted. Learned advocate also filed application for exemption (Exh.5) claiming that Petitioner is suffering from severe health issue and she is unable to travel. The receipt of OPD of Saifi Hospital dated 18th June 2022 was attached. Learned Judge observed that OPD receipt shows that Petitioner deposited Rs.1,630/- towards charges of ultrasound pelvis. It was submitted that the Doctor had advised the Petitioner to undergo sonography within 10-15 days and hence appointment was sought of Doctor on 18th June 2022. The Court then recorded submission of P.P appearing for CBI who argued that say filed by CBI may be considered as his arguments It was claimed by the prosecutor for CBI that accused started manipulation of documents in support of her false theory of undergoing sonography after 11.20 a.m. The learned Special Judge then observed that accused has concocted false theory and procured false documents by manipulation after 11.20 am on 18th June 2022 when the Court asked about details of hospital, whether sonography on Petitioner was to be done and which Doctor referred and when. According to the written averments by Petitioner in Exh.6 on 6th June 2022 the Doctor advised her to do ultrasound sonography. Accordingly she sought appointment of Doctor. The OPD receipt of Saifee Hospital refers to deposit of Rs.1,630/- towards ultrasound sonography. Learned Judge after recording factual aspects with regards to the submissions at the instance of Petitioner and documents relied upon, considered the fact that Petitioner was required to remain present on 18th June 2022 and 20th June 2022 and 21st June 2022 unless exempted. Petitioner misused the liberty in support of exemption. There was no ground to grant exemption. Thus, Petitioner has committed breach of order granting bail. There is clear case of manipulation of documents with reference to medical treatment. The application preferred by CBI (Exh.8) was allowed and directions were issued to rearrest the Petitioner.

12. Learned advocate for Petitioner submitted that Petitioner was required to furnish solvent sureties within stipulated time. Securing solvent sureties requires great difficulties. The order required the Petitioner to produce local solvent sureties which she found difficult. The junior advocate representing Petitioner mentioned the matter before Special Judge on 13th June 2022 for extension of time. The advocate was directed to mention the matter on 14th June 2022 which was scheduled date. On 14th June 2022 Petitioner was present Application for extension of Order dated 3rd June 2022 was tendered. The application was directed to be filed in the registry. The presence of Petitioner was not recorded. Application was filed in the registry. It was listed on 15th June 2022. The time limit to produce solvency certificate was to expire on 17th June 2022. There was no manipulation of documents. The junior advocate who appeared before the court could not express properly. There was no intention to mislead the Court. Petitioner is a lady. She is ailing. She was granted bail on merits The exemption application was preferred before Court. Petitioner has never tried to abscond. Petitioner is willing to appear before the Court regularly. Prayer for bail was granted to the Petitioner by considering merits and fact that no role was assigned to her in the charge sheet filed against the co-accused and subsequently she was arrested by alleging minor role. Petitioner need not be rearrested. She has minor children and the impugned order cancelling bail may be set aside.

13. Learned Special Public Prosecutor for CBI submitted that CBI has filed reply opposing relief sought in this petition. The Petitioner was directed to attend the proceedings before Trial Court. Petitioner preferred application for exemption. The advocate for

Petitioner appeared before Trial Court. He left the Court at 11.20 a.m and thereafter Petitioner had manipulated the documents. False ground was urged before the Court claiming exemption. Learned Special Judge has assigned reasons for cancelling the bail. There was breach of order granting bail passed by this Court. There is no infirmity in the impugned order. Petitioner is required to be rearrested.

14. Petitioner was arrested on 21st May 2022. She was in custody. Application for bail was preferred. She was granted bail vide order dated 3rd June 2022. The said order clearly indicate the nature of evidence against Petitioner. The investigation was going on for a period of five years. Petitioner's husband was already arrested. He was charge sheeted. He had grievance against CBI officials. The order dated 3rd June 2022 indicate that charge sheet filed against Petitioner's husband does not attribute any role to the Petitioner. Even after the arrest it has been alleged that Petitioner had rendered her assistance to her husband which fact is not reflected in the earlier charge sheet. It is pertinent to note that Petitioner was directed to be released on stringent conditions. Petitioner had never tried to abscond. The Order dated 3rd June 2022 indicate that Petitioner after arrest of her husband stayed at Mumbai and there was no attempt to flee from justice. Petitioner was supposed to produce local solvent sureties. Application for exemption was preferred by Petitioner. The order passed by learned Judge does indicate that there is some contradictory statement in the grounds for exemption filed by Petitioner. The Respondent CBI preferred application for rearrest of Petitioner. It is not disputed that Petitioner was ailing while she was granted bail. Bail can be cancelld in exceptional circumstances. It is not the case of prosecution that Petitioner has

tampered with witnesses. Petitioner was available and there was no attempt on her part to abscond or avoid facing prosecution before Court. In these circumstances the order dated 21st June 2022 is required to be set aside.

ORDER

(i) The order dated 21st June 2022 passed by Special Judge (CBI), Greater Bombay cancelling bail granted to the applicant vide order dated 3rd June 2022, is set aside;

(ii) The order dated 3rd June 2022 granting bail to the applicant stands restored;

(iii) Order dated 3rd June 2022 passed below Exhibit-7 by Special Judge (CBI), Sessions Court, Mumbai is modified by permitting applicant to furnish sureties in accordance with said order from State of Maharashtra;

(iv) The applicant is granted six weeks time to furnish sureties in accordance with order dated 3rd June 2022 by extending the facility of cash bail granted by Court for six weeks.

(PRAKASH D. NAIK, J.)

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