

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 669 OF 2018**

Central Bureau Of Investigation

.....Applicant

Vs.

Vipul Natvarlal Ambani & Anr.

.....Respondents

Mr. Hiten Venegaonkar for the Applicant.

Mr. Ashok Mundargi, Senior Advocate a/w Mr. Pranav Badekha a/w Ms. Swati Singh i/by Naik & Naik & Co. for the Respondent No.1.

Mr. S.S. Hulke APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 8th JULY, 2022.****P.C.:-**

This is an Application under Section 439(2) of the Code of Criminal Procedure, 1973 (for short, "*the Cr.P.C.*") for cancellation of bail granted to the Respondent No.1 by the impugned Order dated 4th August, 2018 passed below Exh-26 in CBI Special Case No.37 of 2018 pending on the file of learned Special Judge for C.B.I., for Greater Mumbai.

2 Heard Mr. Venegaonkar, learned Advocate for the Applicant-CBI, Mr. Mundargi, learned senior counsel for the Respondent No.1 and Mr. Hulke, learned APP for the Respondent No.2-State. Perused entire record produced before me.

3 Applicant is accused No.9 in RCBSM2018E0001 dated 31st January, 2018 registered by the Bank Security and Fraud Cell of CBI, Mumbai under Sections 120-B r/w 409 and 420 of the Indian Penal Code,

1860 (for short, "*the IPC*") read with Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 (for short, "*the PC Act*"). The investigation of the said case has been culminated into filing of charge-sheet and the same has now been numbered as CBI Special Case No.37 of 2018 pending on the file of learned Special Judge for C.B.I., for Greater Mumbai.

4 By the impugned Order dated 4th August, 2018 passed below Exh-26, Applicant was directed to be released on regular bail by the learned Special Judge for CBI, Mumbai. In para No.11 of the impugned Order, the Trial Court has observed that, there is no material available on record to show direct involvement of the Respondent No.1 in preparation of bogus LOUs and LOCs. That, the Respondent No.1 though is facing a charge of criminal conspiracy, he was not directly connected with main master minds of the said offence. That, the Respondent No.1 was in custody of CBI since 20th February, 2018 till the date of passing of impugned Order dated 4th August, 2018. These are the main grounds which have weighed in the mind of the Trial Court while granting bail to the Respondent No.1.

5 Mr. Venegaonkar, learned Advocate for the Applicant-CBI submitted that, while submitting draft charge with summary of the case before the Trial Court, the Applicant-CBI has alleged that, the Applicant was instrumental in concealing incriminating documents/articles relevant to the case in the office of a law firm and the said documents were subsequently

recovered during the searches which were conducted at the said firm. That, the Respondent No.1 was regularly visiting head office of PNB and meeting with the senior officers of the said Bank in order to continue with the credit facilities provided to the companies headed by the principal accused. He submitted that, the Trial Court therefore has committed an error in observing that, there is no material at all to show involvement of the Applicant in the present crime. He submitted that, Order passed by the Trial Court therefore is erroneous and needs to be quashed and set aside on merits.

6 Mr. Mundargi, learned senior counsel appearing for the Respondent No.1 submitted that, without admitting anything from record and assuming for the sake of argument, even if the contention of the learned Advocate for the CBI as recorded in the foregoing paragraph is accepted at its face value then also, no offence at all is made out by it against the Respondent No.1. He submitted that, concealing incriminating material by an accused to save from the clutches of law, cannot be termed as an offence as contemplated under Section 420 of the IPC. That, till date, the Applicant has not applied any other provision to the present crime alleged against the Respondent No.1. He submitted that, since the date of passing of the Order and release the Applicant on bail, till date there is no report of Applicant committing any breach of conditions imposed upon him by the Trial Court. He submitted that, there are no merits in the present

Application and the same may be dismissed.

7 Perusal of record *prima facie* indicates that, the observations made by the Trial Court in para No.11 are based on the material available on record. There is no direct material to indicate that, the Applicant was directly involved in preparation of the said alleged LOUs and LOCs. Applicant was arrested on 20th February, 2018 and till the date of passing of the impugned Order i.e. 4th August, 2018, he was either in the custody of CBI or in judicial custody for sufficient period and has co-operated in the process of investigation. The investigation of the present crime has already been completed and the CBI has submitted charge-sheet and supplementary charge-sheet. There is no report of violation or breach of any of the conditions imposed upon him while granting bail. Perusal of impugned Order clearly indicates that, the Trial Court has not committed any error in passing the impugned Order.

8 There is another facet to the present Application. The impugned Order was passed on 4th August, 2018. Present Application under Section 439(2) impugning the said Order was filed on 3rd December 2018 and till 14th January, 2021, the Applicant-CBI did not take any steps to even circulate the present Application before any Bench. That, on 14th January, 2021 for the first time at the instance of learned Advocate for the Respondent No.1, who had also filed a Bail Application No.1243 of 2018, present Application was circulated before the co-ordinate Bench and the

same was thereafter adjourned to 28th January, 2021. The Applicant-CBI thereafter also did not take any steps to get the present Application listed before the concerned Bench and on 8th June, 2022, this Court listed old Applications pertaining to the year 2018 for hearing. It therefore indicates that, the Applicant was not seriously interested in pursuing the present Application.

9 In view thereof, this court finds that, there are no merits in the Application.

Application is accordingly dismissed.

10 At this stage, the Court Sheristedar attached to this Court brought to the notice of this Court that, a person in light blue colour shirt having checks on it, is stealthily audio/video recording of the Court proceedings on his mobile phone. She informed that, when the Court staff requested the said person to hand over the said mobile phone/ electronic device to them, he indulged into light tiff with them. That the Court staff has subsequently seized the said mobile phone from the said person. This Court therefore, called the said person in front of it. At that time, it is noticed that he has also having another mobile phone and one pair of AirPods with him, which are also seized from him. Mr. Mundargi, learned senior counsel on instructions from the Advocate on record for the Respondent No.1 submitted that, it is the Respondent No.1, who is personally present in the Court. This Court therefore, called upon the

Respondent No.1 to show his Aadhar Card or PAN Card to ascertain his identity. He submitted that, he is not carrying the Aadhar card presently and he will produce it in the second sessions. The description of the electronic devices/gadgets/mobile phones which are seized from him are-

- a) Mobile Phone made of MI Company (Black Colour) with sim card therein
- b) Mobile Phone made of Apple Company (Blue Colour) with sim card therein, having used leather cover to it.
- c) AirPods made of Apple Company (White colour)

11 It is to be noted here that, the Respondent No.1 has been duly identified by Mr. Badekha, learned Advocate, who is assisting Mr. Mundargi, in a matter. Original Aadhar Card has been produced by the Respondent No.1 in the second session. A photo copy of the same is taken on record.

12 In view of the above, this Court was of the clear opinion that, apart from the proceedings to be initiated against him under the Contempt of Courts Act, a crime/criminal case be registered against the Respondent No.1 under appropriate provisions of law.

13 Mr. Mundargi, learned senior counsel appearing for the Respondent No.1 submitted that, this Court may not do so, as it was an admitted mistake on the part of the Respondent No.1 without having any criminal intent in that. He submitted that, the Respondent No.1 was not aware of the fact that, without permission of the Court, such recording can

be done. Mr. Mundargi, learned senior counsel fairly pointed out that, there is a notice/notification issued by the Registrar General of this Court dated 13th February, 2017 prohibiting audio/video recording inside the Court Halls.

Mr. Mundargi with usual fairness at his command submitted that, to have a serious impact upon such delinquents or litigants, this Court may saddle exemplary cost upon the Respondent No.1, apart from confiscating the said electronic devices/gadgets/mobile phones.

14 Accordingly, the said mobile phones/electronic devices/gadgets as mentioned hereinabove which are seized from Respondent No.1 are confiscated and are kept in sealed envelop in the Court and handed it over to the Prothonotary and Senior Master, High Court, Bombay.

Prothonotary and Senior Master, High Court Bombay is hereby directed to take all these mobile phones/electronic devices/gadgets in his custody and shall not return to the Respondent No.1 at any point of time without Orders from the Court.

15 Mr. Mundargi, learned senior counsel on instructions from the Respondent No.1 submitted that, Respondent No.1 pleades guilty, apologizes and he will pay a cost of Rs.7,50,000/- (Rupees Seven Lacs Fifty Thousand Only) to the Kirtikar Law Library, High Court, Mumbai. He on further instructions from the Respondent No.1 submitted that, the Respondent No.1 hereinafter will not indulge in any such activities in any

Court proceedings in any Court of law in India. The said statement is accepted.

16 Respondent No.1 is directed to pay the said cost of Rs.7,50,000/- (Rupees Seven Lacs Fifty Thousand Only) to the Kirtikar Library, High Court, Mumbai within a period of one week from the date of uploading of the present Order on the official website of the Bombay High Court.

17 List the present Application on Board on 22nd July, 2022 for reporting compliance of payment of costs.

All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR
Digitally signed
by SANJIV
SHARNAPPA
MASHALKAR
Date: 2022.07.13
15:42:15 +0530