THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

CRIMINAL PETITION No.10916 of 2022

ORDER:

Heard Mr. Rajesh Maddy, learned counsel for the petitioner and Mr. N.Nagendran, learned Special Public Prosecutor for Central Bureau of Investigation (CBI) for respondent No.1.

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (briefly referred to hereinafter as 'Cr.P.C') assailing the order dated 05.09.2022 passed by the Principal Special Judge for CBI Cases, Hyderabad in Crl.M.P.No.2380 of 2022 in C.C.No.1 of 2012.

3. It may be mentioned that petitioner is the daughter of respondent No.2 who is accused No.2 in C.C.No.1 of 2012 pending on the file of Principal Special Judge for CBI Cases, Hyderabad (briefly referred to hereinafter as 'CBI Court').

4. Petitioner had filed Crl.M.P.No.2380 of 2022 under Sections 451 & 457 of Cr.P.C. for a direction to the 1st respondent-CBI to release the original certificate of holding in SBI Capital Protection Oriented Fund – Series I through Axis Bank, Bellary Branch with Folio No.10247308 dated 22.12.2007.

5. By the order dated 05.09.2022, CBI Court dismissed Crl.M.P.No.2380 of 2022, against which the present criminal petition has been filed.

6. Learned counsel for the petitioner has referred to the charge sheet No.10 of 2011 dated 03.12.2011, which upon cognizance has been registered as C.C.No.1 of 2012 now pending before the CBI Court. He submits therefrom that the funds invested in the SBI Capital Protection Oriented Fund – Series I through the Axis Bank cannot be construed to be crime tainted money. Already CBI as well as Enforcement Directorate has attached substantial property of respondent No.2 to protect the interest of the prosecution. Release of the aforesaid amount, which has nothing to do with illegal mining

which is the prime allegation against respondent No.2, would in no way effect the prosecution.

7. Order of CBI Court dated 05.09.2022 has been carefully perused, relevant portion of which reads as under:

> "5. It is the case of the petitioner that on 21.12.2007, her father i.e. Accused No.2 in C.C.No.1/2012 purchased certain SBI mutual funds in her name and at the time of investment as well as the maturity the petitioner was minor and her father/Accused No.2 remained as the custodian of the mutual funds till she attained majority. The above mutual funds with SBI Capital Protection Oriented Fund - Series I was invested through Axis Bank, Bellary Branch with Folio No.10247308 on 27.12.2007 for Rs.2,00,00,000/- and the said mutual funds got matured on 20.12.2012. Upon maturity, the proceeds were to be released to the petitioner, but on 24.10.2017, the petitioner was informed by the SBI Funds Management Pvt. Ltd. that due to notice u/s. 102 Cr.P.C. regarding the investigation in RC.17(A)/2009-CBI/HYD from the office of the Additional Superintendent of Police, CBI, ACB, Hyderabad, they are unable to release the proceeds without specific instructions from the CBI and that the proceeds therefrom have been kept in a suspense account. The investment in the said mutual funds has nothing to do with the alleged offence and the petitioner prayed the Court to direct the respondent to release the said proceeds.

6. Whereas, the respondent/CBI contended in the counter that the father of the petitioner i.e. Accused No.2 invested the ill-gotten money to a tune of Rs.2,00,00,000/- in SBI Capital Protection Oriented Fund-Series I, SBI Funds Management Pvt. Ltd., through Axis Bank, Bellary Branch in the name of the petitioner and the said proceeds are pending disposal of the case is the subject matter of the crime proceeds which cannot be released at this stage.

7. Admittedly, the investment made in the form of mutual funds with SBI Capital Protection Oriented Fund - Series I was invested through Axis Bank, Bellary Branch was purchased in the year 2007 and by that time, the petitioner was a minor and the investments were made by the petitioner's father i.e. Accused No.2 and the allegation against the petitioner's father that it is a tainted money. The petitioner has categorically admitted that the Enforcement Directorate passed a Provisional Attachment Order alleging that proceeds of crime were invested and the order was confirmed by the Adjudicating Authority and now the matter is pending before the Hon'ble Supreme Court. Similarly, the petitioner's father has filed Writ Petition No.27120/2009 challenging the issuance of G.O.Ms.No.467, dt.17.11.2009 against which a Writ Appeal was filed, wherein the Hon'ble High Court held that investigation is limited only for the purpose of illegal mining activity and not to probe into the boundary dispute till the same is decided by the Committee constituted by the Hon'ble Supreme Court of India. The pleadings of the petitioner

clearly shows that the amounts which were seized in pursuance of the investigation and the amount referred by the Enforcement Directorate were seized. Admittedly, the petitioner has not invested any amount and her father has invested the amount who is facing criminal cases alleging that he invested the amounts which is a tainted money. Hence, the money invested by the petitioner's father, whether it is a tainted money or it is a genuine investment can only be decided in a detailed trial.

7.1. The judgments referred by the petitioner counsel is pertaining to return of property which was laying in the Courts and police station and defreezing of bank accounts whereas the case on hand the prosecution alleging that it is a tainted money. Hence judgments referred by the petitioner counsel is not applicable to this case on facts.

8. However, in the interest of justice the petitioner/petitioner's father are at liberty for renewal of the mutual funds with a view to fetch the amount without keeping the said amount in suspense account. The respective authorities may renew the mutual funds with a view to benefit the petitioner in future if she/petitioner's father succeeds. But the petitioner/petitioner's father is not entitled for withdrawal of the same in view of the grave allegations made by CBI and Enforcement Directorate against the petitioner's father.

> 9. The petitioner having noticed that the amounts of her father were attached by the Enforcement Directorate which was confirmed by the Adjudicating Authority and matter is pending before the Hon'ble Supreme Court, even though she admitted the fact that the Enforcement Directorate has passed the Provisional Attachment Order but the petitioner failed to add the Enforcement Directorate as one of the party to this proceedings. In their absence also the stage of the case cannot be ascertained in proper perspective. Similarly, the petitioner also failed to add the bank authorities in whose custody/suspense account the amounts were kept. Therefore, the petitioner is not entitled for the relief prayed in the petition.
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> 10. **In the result,** the petition is dismissed."

8. From the above, we find that respondent No.2 who is accused No.2 in C.C.No.1 of 2012 had purchased certain SBI mutual funds in his name as well as in the name of the petitioner. The said mutual funds got matured on 20.12.2012. Though the funds were to be released to the petitioner, the same could not be released by the banker because of notice under Section 102 Cr.P.C. received from the CBI. It is the contention of CBI that the mutual funds were

procured through crime tainted money of accused No.2 (respondent No.2).

9. After adverting to arguments of the parties, learned CBI Court held that the money was invested by accused No.2 and not by the petitioner. Whether the money so invested by accused No.2 is a tainted money or not can only be decided at the end of the trial. However, to protect the interest of the petitioner as well as accused No.2, CBI Court gave liberty to them to seek renewal of the mutual funds so that they are not deprived of the interest that may be accrued on further retention of the mutual funds. Whether the mutual funds were procured by crime tainted money or not can only be decided in the course of the trial. In a proceeding under Section 482 Cr.P.C., such triable questions cannot be gone into and decided.

10. CBI Court also noticed that Enforcement Directorate has initiated proceedings under the Prevention of Money Laundering Act, 2002, whereafter provisional

attachment order was passed which was confirmed by the Adjudicating Authority.

11. In the circumstances, CBI Court took the view that no relief could be granted to the petitioner at this stage.

12. This Court finds no error or infirmity in the view taken by the CBI Court. CBI Court has taken pains to ensure that interest of the petitioner is protected during the pendency of the trial of her father, accused No.2.

13. Present is certainly not a fit case under Section 482 Cr.P.C. to be entertained.

14. Accordingly, Criminal Petition is dismissed.

15. As a sequel, miscellaneous applications pending, if any, in this Criminal Petition, shall stand closed.

UJJAL BHUYAN, CJ

Date: 09.12.2022
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