

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

(1)

CRM-M No.10285 of 2021
Date of Decision: 09.11.2022

Assistant Director, Directorate of Enforcement

.....Petitioner.

Versus

Prakash Gurbaxani

.....Respondent.

(2)

CRM-M No.10287 of 2021

Assistant Director, Directorate of Enforcement

.....Petitioner.

Versus

Ashok Solomon

.....Respondent.

CORAM: *HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA*

Argued by:- Mr. S.V. Raju, Senior Advocate,
Addl. Solicitor General of India, with
Mr. Arvind Moudgil, Senior Counsel, Govt. of India with
Mr. Shobit Phutela, Mr. Anshuman Singh and
Mr. Ankit Bhatia, Advocates
for the petitioner in both the petitions.

Mr. R.S. Rai, Senior Advocate, with
Mr. Gautam Dutt, Mr. Keshav Pratap Singh and
Ms. Rubina, Advocates
for the respondent in CRM-M No.10285 of 2021.

Mr. Manav Gupta, Advocate, with
Mr. Abhinav Gupta and Mr. Nitesh Jhahria, Advocates
for the respondent in CRM-M No.10287 of 2021.

MEENAKSHI I. MEHTA, J.

By way of the instant petitions, the petitioner-Directorate of
Enforcement (for short 'the ED') has sought the indulgence of this Court

for quashing/setting aside the orders dated 02.03.2021 (Annexed as P-15 in both the petitions) passed by learned Sessions Judge-cum-Special Judge, PMLA, Gurugram, (for short, 'the trial Court') in the Enforcement Case Information Report bearing No.01/HIU/2019 (here-in-after to be referred as 'the ECIR') and also for remanding the custody of both the respondents-accused to it (the ED) as envisaged under Section 167 Cr.P.C and these petitions are being taken up together for discussion and adjudication as the genesis thereof lies in the same criminal case and similar questions of law and facts are involved therein.

2. Shorn and short of unnecessary details, the common facts, as culled out from the documents/material available on the record, which have culminated in the filing of these petitions, are that on the basis of the complaint moved by the District Town Planner, Gurugram, a criminal case was registered against Chintels India Private Limited, Shobha Developers Limited and QVC Reality Company Limited, at Police Station Bajghera, District Gurugram, vide FIR No.0291 dated 13.12.2018 (Annexed as P-3 in both the petitions) under Section 420 IPC and Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 (for short, 'the Act of 1975'), with the allegations that licences No.190 of 2008, 58 of 2013 and 79 of 2014 were granted to develop a Colony named "International City" in Sectors 106, 108 and 109 in Gurugram and as per the terms and conditions thereof, 25% of the residential plots, i.e 249 plots, out of the total plots as proposed to be carved out in the above-said Colony, were to be reserved under "No Profit No Loss" (for short, 'the NPNL') category.

However, only 84 plots of the said category were found to have been allotted and 55 plots out of the same had been given to the LLP Companies created by Shobha Developers and through these Companies, the said plots were routed back to the said Company (Shobha Developers) in violation of and to circumvent the said terms and conditions so as to earn illegal profits by allotting/selling the same at the rates much higher than the price as had been pre-determined/reserved for such plots. Respondent-accused Prakash Gurbaxani (**in CRM-M No.10285 of 2021**) is the Managing Director of QVC Reality Co. Ltd. and respondent-accused Ashok Solomon (**in CRM-M No.10287 of 2021**) is the Director of Chintel India Pvt. Ltd. After the conclusion of the investigation as conducted by the local police, the Challan had been presented against the accused under Section 10 of the Act of 1975 only, while dropping the offence under Section 420 IPC and both the respondents-accused had, accordingly, been released on bail by the competent Court.

3. However, it is worth-while to mention here that subsequently, the ED registered the ECIR on the basis of the afore-said FIR. Then, respondent-accused Ashok Solomon preferred **Writ Petition (Criminal) No.979 of 2020** in Delhi High Court for seeking the quashing of the above-referred ECIR and vide the order dated 07.08.2020 (Annexed as P-9 in both the petitions), the same was disposed of with the direction for the closure of the said ECIR, while granting liberty to the respondents therein to revive the same if a supplementary charge-sheet was filed or a charge was framed qua the petitioner, i.e the afore-named respondent-accused, concerning the

Scheduled Offence(s). Thereafter, on finding some fresh evidence/material during the further investigation, a supplementary Charge-Sheet/Challan was presented under Section 173(8) Cr.P.C, while adding the offence under Section 420 IPC in the case which led to the revival of the above-referred ECIR as the afore-said offence is one of the Scheduled Offences under the Prevention of Money Laundering Act, 2002 (for short, 'the PML Act') and the offences under Sections 3 and 4 of the said Act were invoked therein.

4. After the presentation of the supplementary Challan, both the respondents-accused were arrested again and on 17.02.2021, the ED moved applications in the Court for seeking their custody but vide the separate orders dated 18.02.2021 (Annexed as P-1 in the petitions) passed thereon, the trial Court declined the above-said request. Feeling aggrieved by the afore-mentioned orders, the ED preferred **CRM-M Nos.8825 and 8827 of 2021** to assail the same and vide the common order passed therein on 01.03.2021 (Annexed as P-14 in these petitions), the Co-ordinate Bench set-aside the said orders (Annexures P-1) and remitted the matter to the trial Court with the direction to decide the same afresh. In compliance of the said order, the trial Court heard both the parties but vide the separate orders dated 02.03.2021 (Annexed as P-15 in both the petitions), it again declined/rejected the prayer of the ED for remanding the custody of the respondents-accused to it. Feeling dis-satisfied with the above-mentioned orders, the ED has moved the present petitions to impugn the same.

5. Before adverting to the discussion on the legality and validity of the impugned orders (Annexures P-15), it is pertinent to mention here

that both the respondents-accused had filed separate applications (Annexed as P-6 and P-7 in the petitions) for seeking the relief of regular bail but the trial Court dismissed the same vide the orders dated 24.02.2021 (Annexed as P-11 in the petitions). Thereafter, they (respondents) moved the petitions bearing **CRM-M Nos.12901 and 12459 of 2021** before this Court for seeking the said relief and the same were allowed by the Co-ordinate Bench vide the common order dated 02.06.2021.

6. It is also relevant and necessary to point it out here that the Petition(s) for Special Leave to Appeal (Crl.) bearing No(s). 7666-7667 of 2021, moved by the ED to lay challenge to the said order dated 02.06.2021, have been disposed of by the Apex Court on 20.10.2021 with the following observations:-

“Heard Mr. S.V. Raju learned Additional Solicitor General appearing for the petitioner.

We are in agreement with his grievance that the High Court has not dealt with the mandatory twin requirements but has granted indulgence to the respondent(s) on extraneous consideration.

However, in the peculiar facts of the present case as the respondent(s) are reportedly senior citizen(s) and had cooperated during the investigation as noted by the High Court, we decline to interfere in these special leave petitions, while leaving question of law open.

The impugned order shall not be treated as precedent in other cases.

The special leave petitions are disposed of accordingly.

Pending applications, if any, stand disposed of.”

From the perusal of the afore-cited observations, it becomes explicit that the relief of regular bail, as extended to the respondents, has not been cancelled and rather, the order passed by the Co-ordinate Bench in this regard, has been upheld.

7. I have heard learned Additional Solicitor General of India (Senior Counsel) for the petitioner-ED in both the instant petitions, learned Senior Counsel for the respondent-accused in **CRM-M No.10285 of 2021** and learned counsel for the respondent-accused in **CRM-M No.10287 of 2021** and have also perused the files carefully.

8. Learned ASG for the petitioner-ED has contended that the applications, as initially moved by the ED for seeking the custody of the respondents-accused had been rejected by the trial Court on 18.02.2021, i.e on the very next day of their arrest, vide the orders Annexures P-1 and the ED had immediately approached this Court to assail the said orders by filing the petitions bearing CRM-M Nos.8825 and 8827 of 2021 and vide the common order dated 01.03.2021 (Annexure P-14) as passed therein, the matter had been remitted to the trial Court with the direction to decide the same afresh but vide the impugned orders (Annexures P-15), the trial Court has again illegally declined the afore-mentioned request of the ED without appreciating the gravity of the offences involved in the case and also the contentions as raised by the ED before it, while blatantly ignoring the order Annexure P-14 and since the matter remained pending in the Courts during the first 15 days from the date of the arrest of the respondents-accused, therefore, the provisions of Section 167 Cr.P.C would not create any bar

for remanding their (respondents') custody to the ED even at this stage. To buttress his contentions, he has placed reliance upon **Parimal Kumar Lodh Versus The State of West Bengal 2016 SCC Online Cal 561** and **Sheel Chand Jain Versus State of M.P and others AIR 2010 MP 130.**

9. Per contra, learned Senior Counsel for the respondent in **CRM-M No.10285 of 2021** and learned counsel for the respondent in **CRM-M No.10287 of 2021** have argued that the respondents-accused have already been thoroughly interrogated by the ED even during the period of their detention in the jail and the Challan/Charge-Sheet has also been filed in the Court and moreover, the order passed by this Court on 02.06.2021 for extending the relief of regular bail to the respondents has been up-held by the Apex Court vide the above-quoted order dated 20.10.2021 and even the period of first 15 days from the date of the arrest of the respondents, as contemplated under Section 167 Cr.P.C, has lapsed long ago and therefore, the present petitions deserve dismissal. In support of their contentions, they have also placed reliance upon **Satyajit Ballubhai Desai and others Vs. State of Gujarat 2014 (14) Supreme Court Cases 434; Ajit Singh @ Jit Singh Vs. State of Punjab 2017 SCC Online P&H 1390; Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni (1992) 3 Supreme Court Cases 141** and **Matang Sinh Vs. The Central Bureau of Investigation 2015 SCC Online Cal 845.**

10. It is again worth-while to mention here that though the instant petitions, which bear the date 03.03.2021, were pending at the time of the grant of the relief of regular bail to both the respondents by the Co-ordinate

Bench vide the order dated 02.06.2021 but however, a perusal of the said order reveals that the factum of the pendency of the same does not find mention therein and this fact also seems to have not been brought to the notice of the Hon'ble Supreme Court at the time of the passing of the aforesaid order on 20.10.2021.

11. It has categorically been observed by the Apex Court in Para No.22 in the judgment rendered in **Satyajit Ballubhai Desai (supra)** that:-

“the correct course for the investigating authorities seeking police remand of an accused who had been granted bail by the High Court, should have been to approach the High Court as power of the Magistrate to grant police remand after the accused has been granted bail by the High Court, would cease to exist and any direction to that effect can be permitted by the High Court only in view of the fact that the High Court considered it just and appropriate to enlarge the accused on bail and the Magistrate cannot be permitted to override the order of bail even if it be for a brief period of few days.”

From these observations, it becomes quite explicit that in view of the above-cited order dated 20.10.2021 as passed by the Hon'ble Supreme Court, this Court does not remain competent any more to consider and adjudicate upon the prayer as made by the ED in the present petitions. It being so, the matter involved in the same, now, survives before this Court for the purpose of the academic discussion only because in the present scenario, the ED, if it deems it expedient and essential, will have to resort to the appropriate remedy, as may be permissible to it under law, to seek

the redressal of its grievance as canvassed in the instant petitions.

12. As regards the legality and validity of the impugned orders (Annexures P-15) handed down by the trial Court on 02.03.2021, the same have been passed in pursuance of the following directions, as were given by the Co-ordinate Bench, while remitting the matter to the said Court, vide order Annexure P-14:-

“In view of the joint statement of learned counsel for the parties, the impugned order (Annexure P-1) dated 18.02.2021 is set aside and the matter remitted to the learned Sessions Judge-cum-Special Judge, PMLA, Gurugram to decide the matter afresh after taking into account all aspects of the matter, as well as the judgments cited by respective counsel for the parties uninfluenced by the impugned order by hearing the case at serial No.1 on 02.03.2021 at 10.00 a.m. positively, in view of the apprehension expressed by the learned Addl. Solicitor General that in the eventuality of the matter not being decided on 02.03.2021, the prayer for enforcement directorate remand would become infructuous. However, nothing stated hereinabove shall be taken to be an expression of opinion on the merits of the case.”

13. However, a bare reading of the impugned orders (Annexures P-15) reveals that the trial Court has not bothered at all to abide by the afore-quoted directions of this Court while passing the same as neither it has properly discussed and dealt with all the contentions, as raised by the Special Public Prosecutor for the ED before it nor has distinguished the facts and circumstances of the matter remitted to it, from those of the cases

wherein the judgments, as cited by him (the Special Public Prosecutor) in support of his contentions, had been passed and it has, rather, touched a different tangent by citing the case law to discard/ignore the same.

14. The observations made by the Apex Court in **Central Bureau of Investigation, Special Investigation Cell-I, New Delhi (supra)** and by the Co-ordinate Bench in **Ajit Singh @ Jit Singh (supra)** as well as by the Calcutta High Court in **Matang Sinh (supra)** are of no avail to the respondents-accused because in **Central Bureau of Investigation, Special Investigation Cell-I, New Delhi (supra)**, the respondent-accused had been arrested on 04.10.1991 and was produced before the Chief Metropolitan Magistrate on 05.10.1991 and on the request of the appellant, he was remanded to judicial custody till 11.10.1991 and on that day, his police custody was sought by the Investigating Officer but while on his way back, the respondent pretended to be ill and was taken to the hospital and was kept there up to 21.10.1991 and was remanded to judicial custody till 29.10.1991 and thereafter, the Investigating Officer again applied for his police custody which was declined whereas in the present case, the request made by the ED for the remand of the respondents to its custody, had been rejected by the trial Court in the very first instance itself and the said order was challenged before this Court and after the matter was remitted vide the order Annexure P-14 passed during the said first 15 days, the trial Court has again declined the said prayer of the ED vide the impugned orders. Then, in **Ajit Singh @ Jit Singh (supra)**, the application for seeking the police remand of the petitioner had initially been allowed and thereafter, it

was declined and the petitioner was remanded to judicial custody and thereafter, he had claimed the default bail under Section 167(2) Cr.P.C but however, as discussed earlier, the facts of the case in hand are entirely distinguishable. In **Matang Sinh (supra)** also, the petitioner was arrested on 31.01.2015 but he had remained hospitalised thereafter and on his discharge from the hospital, he had been remanded to the police custody and during that period, he was again hospitalised and thereafter, the prayer for his further police custody was rejected whereas it is not so in this case.

15. The observations made by Calcutta High Court in **Parimal Kumar Lodh (supra)** and Madhya Pradesh High Court in **Sheel Chand Jain (supra)** are of no help to the ED in view of the above-referred observations made by the Apex Court in **Satyajit Ballubhai Desai (supra)**.

16. As a sequel to the fore-going discussion, it follows that though the impugned orders dated 02.03.2021 passed by the trial Court are not legally sustainable but however, this Court is no more competent to quash/set aside the same as the order passed by this Court on 02.06.2021 granting the relief of regular bail to the respondents has not been interfered with and has, thus, been upheld by the Apex Court. Resultantly, both the petitions in hand, stand disposed of accordingly.

November 09, 2022

Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes