IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 473 OF 2023

M/s. Jayantilal Ambalal Chokshi @ Angadia
Through its Partner Mr. Parshottambahi
Shankarlal Patel ...Petitioner

Versus

State of Maharashtra ...Respondent

Mr. Sanjay Dubey a/w Mr. Shyam Upadhyay i/by Mr. Akhlak Khan, Advocate for Petitioner.
Mr. Shantanu Thorat h/f Mr. H. S. Venegavkar, Spl. P.P, Advocate for Respondent – CBI.
Mr. Y. M. Nakhwa, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 19th JUNE, 2023.

P.C. :-

1. The Applicant is aggrieved by order dated 16th November, 2022 passed by Special Judge, C.B.I. City Civil and Sessions Court, Greater Bombay rejecting Miscellaneous Application No. 1067 of 2022 preferred by Applicant for return of Rs.94,24,300/- seized by CBI.

2. On 15th February, 2018 RC.2/E/2018-CBI/BS&FC Mumbai was registered on the basis of written complaint received from Punjab National Bank, ZonalM/s. Jayantilal Ambalal Chokshi @ Angadia Office, Mumbai against the Bank Official of Punjab National Bank and various other persons under Sections 120-B,

409, 420 of Indian Penal Code (for short 'IPC') and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. After registration of case search operations were carried out at various places. During one of search operation premises of M/s. Jayantilal Ambalal Chokshi @ Angadia situated at Pancharatna Building, 2nd Floor Opera House, Mumbai was conducted and cash of Rs.94,24,300/- was recovered from the premises.

3. The Petitioner preferred an application for return of the said cash amount before trial Court. The said application rejected by order dated 16th November, 2022.

4. Learned Advocate for Petitioner submitted that the Petitioner is doing business of Angadia and getting commission on the said sum i.e. to be given to the intending customers. The amount seized by the CBI has no connection with the proceed crime. The amount of Rs.92,24,000/- is the genuine amount belonging to the Petitioner. The said amount has been shown in the income tax return and appropriate order has been passed in that regard by the assessing officer. The Petitioner is not the Accused in the alleged transaction. The amount has no connection with the crime registered by CBI.

5. Learned Advocate for Respondent – CBI submitted that huge cash amount was found during the seizure from the Petitioner. The Application was made before the trial Court belatedly after the period of four years merely because the amount was shown in the income tax return would not be ground for returning the said amount to the Petitioner. The amount was unaccounted and the conduct of the Petitioner was suspicious at the time of raid.

6. First Information Report (for short 'FIR') was registered by CBI on 15th February, 2018. It is in relation to the complaint lodged by Punjab National Bank. The investigation in the said FIR relates to foreign letters of credit. The investigation proceeded and charge-sheet is filed. The case is pending before the Special Court. The Petitioner is not an Accused in the said case. The amount seized by the CBI is not shown to have been connected with the said case. The only allegation is that the amount is unaccounted. The assessment order issued by Income Tax Department, Ahemdabad has been annexed to this Petition. The order indicate that the assessee had filed original return of income for the assessment year 2018-2019 on 30th September, 2018 declaring income of Rs.40,98,714/-. Later on the assessee Jayanti Ambalal

Chokshi filed revised income tax return under Section 139(5) of the Act on 5th March, 2019 declaring income of Rs.41,20,750/- in which disallowance of Rs.22,037/- was made under Section 36 of the Act and the same was proceed under Section 143()1 of the Act at returned income. The order further refers to the fact that the assessee had credited the cash seizure amounting to Rs.94,24,300/- in profit and loss account and he has claim expenses of Rs.60,00,000/- under Section 40(b) of the Act. The order further mentions that the assessee has no objection to the disallowance of Rs.60,00,000/- which was claimed as remuneration paid to the partner. Therefore, remuneration salary of Rs.60,00,000/- claimed under Section 40(b) of the I.T. Act is disallowed an added to the total income of the assessee firm for the year under consideration i.e. assessment year 2018-2019. Thus, the aforesaid amount has been shown in the income tax returns. There is no evidence to show that the said amount is proceeds of crime. In the absence of any link of the said amount to the crime investigated by CBI, there is no impediment in allowing the amount to be return to the Petitioner on certain terms and conditions.

<u>ORDER</u>

i. Criminal Writ Petition No.473 of 2023 is allowed;

ii. Impugned order dated 16th November, 2022 passed by

Special Judge, C.B.I. City Civil and Sessions Court, Greater Bombay is set aside.

iii. The amount of Rs.94,24,300/- seized by CBI during the search connected with CBI Special Case No.38 of 2018 is directed to be returned to the Petitioner on executing bond that amount of Rs.94,24,300/- would be produced before the trial Court as and when directed by the Court.

iv. Before handing over the amount the concerned investigating agency is directed to take photographs of the seized currency notes and prepare Panchanama of handing over the notes to the Petitioner.

v. Petition stands disposed off.

[PRAKASH D. NAIK, J.]