[Corrected as per speaking to minutes order dt.13.12.2023]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Application No.348 of 2022

Union of India
Through
CBI, EOB, Mumbai,
Having address at
CBI Building, Plot No.C-35-A,
'G' Block, Bandra Kurla Complex,
Bandra (East), Mumbai-400 052. ... Applicant.

Versus

1. Mohd.Farooq Mohd. Hanif Shaikh
   Age 40 years, Occ.: Business
   R/o. Wallace Fortuna Tower,
   OPUS 2nd Floor, Flat No.202,
   Opp. Fazlani School,
   Noor Baug, Dongri, Mumbai-400 009
2. The State of Maharashtra ... Respondents

Respondent No.1/
Ori.Accused

Mr DP Singh, Special Counsel a/w Advocate Kuldeep S. Patil and Advocate Ranjeet H. Patil for applicant/CBI.
Mr Karan Bhosale, Advocate a/w Adv. Shweta R. Rathod i/b Elixir Legal Services, for respondent No.1.
Mr AD Kamkhedkar, APP for State.

Coram : R. N. Laddha, J.

Date : 11 December 2023.

Order :

By the present application, the applicant is challenging the judgment and order dated 25 February 2022 passed by the learned Special Judge, CBI, Greater Mumbai, disallowing the prayer of the applicant for an order under Section 267 of the Code of Criminal Procedure, 1973 (for short 'CrPC'), for the production of respondent No.1/original accused in a case being investigated by the applicant.

2. The record indicates that a case has been registered as CBI/EOB/Mumbai being RC 0682017 E 0004 on 13.5.2017 against the Directors and proprietors of M/s Stelkon Infratel Private Limited, and twelve other entities and unknown others, as well as public servants under Sections 120-B read with 420 of the Indian Penal Code (IPC) and 13(2) r/w 13(i)(d) of Prevention of Corruption Act (PC Act).

3. It is alleged that between 2014 and 2016, 13 entities were created using IECS registration at fictitious or non-existent addresses. Current accounts were opened in the name of these entities in six banks, viz. Punjab National Bank, Central Bank of India, Corporation Bank, Canara Bank, Axis Bank and e-State Bank of Hyderabad Bank, now State Bank of India, Mumbai. During 2014-2016, these

entities submitted forged import documents such as Bills of Entry, Invoices, Bill of Lading, etc. These documents were purportedly issued by Jawaharlal Nehru Customs House (JMCH), Nhava-Sheva, Mumbai and New Customs House (NCH, Mumbai). The entities illegally sent Forex remittances in USD equivalent to Rs.2252.82 Crores to various entities in Hong Kong. The value of the imports in the Bill of Entry submitted to the bank is higher than the value declared in the Bill of Entry filed with Customs. Further, the same Bill of Entry was submitted to a different bank and payment was made multiple times to the entities in Hong Kong. Thereby, the accused entities, in conspiracy with the unknown bank officers and others, illegally transferred funds out of India as import payments using forged Bill of Entries, Invoices, etc. This caused a huge loss to the Foreign Exchange Reserve of India.

4. Based on the investigation so far, it has been revealed that the accused persons, including Mohd. Farooq, Mohd. Gaus, Mohd. Hussain alias Raja, Brijesh Lohia, Kiran Kokare, Sonu Kalia, and other accomplices induced poor and illiterate individuals to share their KYCs by offering a small amount of money. Then, they used these KYC documents to

create firms and companies in the names of these individuals, making them directors and proprietors of these entities. The accused persons obtained IEC, VAT, and other registrations for 13 entities (11 firms and 2 companies) and opened current accounts in the branches of Punjab National Bank, Canara Bank, Corporation Bank, e-State Bank of Hyderabad, Central Bank of India, and Axis Bank in Mumbai.

5. During the period of 2014-2016, Mohd. Farooq, the accused/respondent No.1, along with his accomplices, collected a large sum of cash amounting to Rs.2252 Crs. from various entities who wish to launder money to Hong Kong illegally. The collected cash was then layered through various angadias, cheque discount brokers, and the accounts of the members of multiple cooperative societies.

6. The accused entities imported low-value Chinese goods from Hong Kong, and cleared the consignment by filing a Bill of Entry for low values through the online mode in the EDI system of JNCH and NCH, BPT, Mumbai. The value of the imported consignment in USD, declared in the Bill of Entry filed for these entities, is very low. The EDI system of Customs assigns a unique automated serial number to each Bill of Entry of an entity. The Bill of Entry is a crucial

document that must be submitted to the bank to send payment to the supplier of the imported goods.

7. The investigation has revealed that the accused persons were involved in a criminal conspiracy to send huge foreign remittances in USD illegally to Hong Kong. To achieve this, they prepared forged Bill of Entries for namesake entities with inflated high USD values of the consignment and other details in the same serial number. They also affixed forged seals and signatures of the Customs officer of JNCH and NCH, Mumbai. In addition, the accused persons prepared forged invoices of Chinese suppliers for high value and forged Bill of Lading to support the details of USD in the Bill of Entry and other documents. Finally, they submitted these documents to six banks between 2014 and 2016 to arrange the required funds through various angadias and brokers, which was mainly Havala money and already layered into the accounts of the said accused entities.

8. The banks used these funds to send Forex remittances to various entities in Hong Kong by exploiting forged Bill of Entries (BEs) and invoices. The BEs were used to convert INR into USD as per the exchange rate, and the Forex

remittance was sent based on the USD value found in the forged BEs and invoices. The goods imported were for a lower value, but the money sent abroad using the forged BEs and invoices was of higher value. The accused persons had collected and enjoyed illegal income/commission through Havala activities and shared the same among themselves and other persons. This modus operandi caused a loss of Forex in USD equivalent to Rs.2252 Crores and also the consequent import duty in the name of import of goods, which affected the economy at large. In total, a large amount of USD equivalent to Rs.2187.37 Crs. approximately were sent on 1174 occasions from the accounts of 13 entities and six banks to various entities in Hong Kong, holding accounts with HSBC, Hong Kong.

9. The investigation has revealed that Shaikh Mohd. Farooq Hanif Shaikh is the main kingpin of trade-based money laundering in Dongri-Mumbai. He, along with his brothers Shaikh Mohd. Gaus Hanif Shaikh alias Mohd. Gaus, Shaikh Mohd. Hussain, Hanif Shaikh alias Raja, Late Mohd. Salim and other accomplices have committed the instant fraud in connivance with public servants as part of a well-knitted conspiracy.

10. The investigation has also revealed that Shaikh Mohd. Farooq, respondent No.1/accused, used to coerce or intimate poor and illiterate account holders into providing their KYCs to open bank accounts and establish fake firms to launder Havala money. Additionally, Shaikh Mohd. Farooq had some public servants from banks under his influence, who helped him launder large sums of money out of the country through their acts of omission or commission. The clout of Shaikh Mohd. Farooq is evident from the fact that he managed to impede the investigation conducted by ED, CBI, Income Tax, and GST. It has also been revealed that Shaikh Mohd. Farooq had purchased several properties in Mumbai, Haridwar and other places, either in his name or his wife.

11. The investigation has revealed that Mohd. Farooq, respondent No.1/accused, was the chief architect of a massive fraud. He was assisted by his brothers and other accomplices, and together, they opened 200 bank accounts for the 13 entities in question. They sent huge Forex remittances and made namesake imports to sustain the image of the importer with banks to get his funds transferred as import payments. They had submitted a forged Bill of Entities and had remitted Rs.2189.35 Crs. In 1175 instances to 178 foreign entities.

The consequent duty loss to Custom is Rs.657 Crs.

12. The investigation revealed that Mohd. Farooq, the first respondent/accused, along with his team, has been continuously threatening the prime witnesses of this case. It has been brought to notice that Mohd. Farooq has arranged false complaints and made false criminal cases against the witnesses at various police stations in Mumbai. Additionally, Mohd. Farooque has also threatened and manhandled officials of multi-State cooperative societies, banks and some CHAS.

13. On 22.4.2018, respondent No.1/accused was arrested by ED, Mumbai, in connection with ECIR/MBZO/03/2017. He was then produced before a competent Court and lodged in Taloja Central Jail. The PMLA Court rejected his application for bail. Subsequently, on 10.8.2018, this Court rejected the application of the respondent No.1 for bail. Respondent No.1/accused filed Writ Petition No.2829 of 2019 before the High Court seeking his release. The High Court, vide order dated 6.6.2018, allowed the respondent No.1 to attend to his ailing wife either in the hospital or home, but with the condition that he remains in custody of a minimum of two police officials.

14. Respondent No.1/accused was granted the liberty to visit his ailing wife until 25.6.2019 by the order of this Court dated 10.6.2019. Subsequently, this Court extended the liberty earlier granted till 2.7.2019 and directed respondent No.1 to be admitted to Taloja Central Prison on 3.7.2019. However, respondent No.1/accused filed I.A.No.93194 of 2019 in SLP (Cri) No.6922 of 2018, and the Honourable Supreme Court extended the order dated 6.7.2019 and 25.6.2019 passed by this Court until further orders on 3.7.2019.

15. It is submitted that at present, the respondent No.1/accused is in the custody of Maharashtra police officials. He is being held in connection with a case that was registered and chargesheeted by the Enforcement Directorate (ED) vide ECIR/MBZO/03/2017. The case is being heard in the PMLA Special Court, Greater Bombay and is numbered as Special Case No.6 of 2018.

16. The applicant filed an application in the trial Court under Section 267 of the CrPC to obtain a production warrant against respondent No.1/accused on 24.2.2022. The CBI Special Judge, Greater Bombay, passed an order dated 25.2.2022 disposed of this application and granted

permission to CBI/applicant to summon respondent No.1/accused through jail authority for interrogation only as per law after obtaining suitable orders from Special PMLA Court in whose custody at present respondent No.1/accused is currently in.

18. Mr DP Singh, the learned Counsel, submitted that the interrogation of the respondent/accused is essential to unearth the facts related to finding the identity of the persons who provided the funds in cash, details of the amount collected and sent by respondent No.1/accused, identity of the persons who layered the case into RTGS credit, preparation and authorship of the forgery of the signature and seals of the Customs officer in the Bill of Entry, Bill of Lading, Chinese invoices etc., the reason and nature of the transaction between the Indian parties and the beneficiaries in Hong Kong.

19. The learned Counsel submitted that the order under Section 267 CrPC is made for the purpose of, *inter alia,* furthering the pending investigation. He submitted that the respondent No.1/accused has been given liberty to attend to his ailing wife, which cannot be construed as being released on bail until he executes the bail bonds. Respondent No.1 is

still under the judicial custody of the Special Judge under PMLA.

20. It is submitted that the learned Special Judge has not considered the fact that this is a separate case registered at the instance of the applicant wherein they require the custody of respondent No.1/accused to answer serious economic fraud committed by him. The investigation until now *qua* the respondent No.1 establishes his complicity in the crime.

21. On the other hand, the learned Counsel for the respondent/accused submitted that the respondent/accused, by order of the Division Bench of this Court, dated 5.12.2023, in Criminal Writ Petition No.1153 of 2023, granted bail to the respondent/accused and therefore, he is no longer in custody. According to the learned Counsel, Section 267 CrPC has no application post granting bail. He invited the attention of this Court to the orders passed in Writ Petition No.495 of 2022 dated 17.2.2023 to contend that the applicant/CBI made a statement that the respondent/accused will not be arrested till the next date provided the petitioner shall cooperate with the investigating officer. He submitted that executing a bail bond is a

procedural requirement for which some time will be required.

22. The learned Counsel for the respondent/accused submitted that Section 267 CrPC is not applicable after bail has been granted. However, the learned Counsel representing the applicant/CBI submitted that respondent No.1/accused was granted bail by the Division Bench of this Court on 5.12.2023 but has not executed bail bonds yet. Therefore, respondent No.1/accused falls within the ambit of Section 267 CrPC.

23. After examining the records, it is apparent that the Division Bench of this Court granted bail to the respondent/accused in Criminal Writ Petition No.1153 of 2023 on 5.12.2023. However, the bail bond has not been executed to date. According to Sections 441 to 444 CrPC, the accused cannot be released on bail unless a valid bond of the accused and surety are obtained in terms of the bail order. When the impugned order was passed, the bail order in favour of the respondent/accused did not exist. However, the Division Bench of this Court has now granted bail to the respondent/accused. In these circumstances, the trial Court shall determine the consequences of bail order, including the

effect of non-execution of bail bond. The criminal application stands disposed of accordingly.

[R. N. Laddha, J.]