IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 378 OF 2023

Gopal Bhatter .. Applicant

Versus

Central Bureau of Investigation and Anr .. Respondents

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Mr. Sandeep Karnik i/b Ms.Priyianka S. Karnik for the applicant.
Mr.Hiten Venegavkar for respondent no.1 CBI.
Mr. S.R.Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 5th SEPTEMBER, 2023

P.C:-

1 The present application is filed by the applicant being aggrieved by rejection of his application, seeking return of cash amount of Rs.30 lakhs seized by the CBI while investigating the case registered against him u/s.7 of the Prevention of Corruption Act.

The impugned order rejected the application on the ground that no case is made out to return the cash of Rs.30 lakhs as the report of CFSL as regards the mobile data seized during personal search of the applicant as well as the data from the laptop is awaited.

Heard learned counsel Mr.Sandeep Karnik for the applicant and Shri H.S. Venegavkar for the CBI.

A charge-sheet is filed against the applicant by the CBI, ACB, Mumbai for the offence punishable u/s.7 of the Prevention of Corruption Act.

2 During the course of investigation, a laptop of H.P Company and two mobile phones of Apple and Samsung were seized from him along with a cash amount of Rs.30 lakhs. It is the specific submission advanced on behalf of the applicant that there is absolutely no material to connect the cash recovery of Rs.30 lakhs with the alleged offences u/s.7.

3 The applicant preferred an application before the Sessions Court, seeking return of cash as well as his laptop and mobile phone, but on 25/8/2021, it was rejected on the ground that the investigation is in progress.

This is the second Application moved by the applicant on the ground that after his arrest on 25/3/2021, a search was carried in his office as well as in the house, and a cash amount of Rs.30 lakhs was seized, and the applicant has an explanation for being in possession of the said cash amount which was kept in the ordinary course of business, as for the reasons offered, it was not deposited with the Bank.

4 An Application seek return of this amount as per Section 451 r/w Section 457 of the Code of Criminal Procedure on such terms and conditions as the Court may deem fit.

The application is vehemently opposed by Mr.Venegavkar on the ground that the CBI, ACB, Mumbai has registered an FIR u/s.7 of the P.C. Act, 1988 against the Superintendent, CGST, Mumbai, for not enhancing the GST Evasion/Tax liability and for not arresting the complainant.

5 During the trap proceedings, accused Hemant was caught red-handed while accepting the bribe amount from the complainant at the instance of the applicant and on behalf of Shri Amit Dalal.

Mr.Venegavkar would submit that the source of cash recovered from the applicant's house and office is being looked into and unless and until the report of analysis of the data from the laptop and the mobile phone is made available, the amount could not be returned to him.

It is evident that the applicant is arraigned as an accused and face charge for an offence punishable u/s.7 of the P.C. Act and he do not face a charge for disproportionate assets. As per the prosecution, the trap was laid, which resulted in the bribe amount being recovered from the co-accused Hemant to be handed over to Mr.Amit Dalal. The prosecution alleged that Amit Dalal had called the applicant for a favour to collect a parcel from someone known to him and therefore, send his peon Hemant to collect the same. It is the defence of the applicant that he was unaware of the contents of the parcel and therefore, on bonafide belief, he instructed his peon to collect the same. The parcel was collected from the given address and the applicant admitted that the parcel was requested to be collected by Mr. Dalal and thereafter, the trap was led to deliver it to him and this is how he face an accusation. The cash amount recovered from his office/house *prima facie* has no connect with the charge-sheet filed.

6 The submission of Mr.Venegavkar that the CBI intend to find out whether this amount was also received as a bribe amount, has no merit and deserve a rejection, since the case of the prosecution as laid down in the charge-sheet is specific that the accused no.1 Amit Dalal had demanded the bribe amount and it was accepted at the instance of the present applicant on his behalf.

7 In the wake of the above, there is no justification in retaining the amount of Rs.30 lakhs and by setting aside the impugned order, the Special Judge, CBI shall ensure return of the cash amount to the applicant within a period of four weeks.

(SMT.BHARATI DANGRE, J)

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