

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 670 OF 2018**

Central Bureau of Investigation .. Applicant
Versus
Bishnubrata Mishra and Anr. .. Respondents
...

Mr. Hiten S. Venegavkar for the applicant.
Mr. Aditya Mithe for Respondent No.1 in APPLN 670/2018

**CORAM: BHARATI DANGRE, J.
DATED : 16th MARCH, 2023**

P.C:-

1 The application is filed by the Central Bureau of Investigation, under Section 439(2) of Cr.P.C seeking cancellation of bail granted in favour of the respondent by the Special Judge CBI on 2/08/2018, on the ground of wrongful exercise of power to grant bail.

2 The application came to be filed in the year 2018 and when listed before me in the year 2023, my attention is invited to an order passed by the learned Single Judge (Justice. A.S. Gadkari) of this Court on 8/07/2022 in Criminal Application No. 669 of 2018, a similar application filed by CBI seeking cancellation of bail of one of the accused in CBI Special Case No. 37 of 2018.

After recording the finding, that the trial court has passed a reasoned order to the effect that there is no direct

material indicating that the applicant was directly involved in preparation of the alleged LOU's and LOC's. Apart this, the Court was also impressed by another facet of the matter, the pendency of the application for last 4 years.

3 On taking cognizance of the fact that the CBI did not take any steps to circulate the application, it was recorded as under:

“There is another facet to the present Application. The impugned Order was passed on 4th August, 2018. Present Application under Section 439(2) impugning the said Order was filed on 3rd December 2018 and till 14th January, 2021, the Applicant-CBI did not take any steps to even circulate the present Application before any Bench. That, on 14th January, 2021 for the first time at the instance of learned Advocate for the Respondent No.1, who had also filed a Bail Application No. 1243 of 2018, present Application was circulated before the co-ordinate Bench and the same was thereafter adjourned to 28th January, 2021. The Applicant-CBI thereafter also did not take any steps to get the present Application listed before the concerned Bench and on 8th June, 2022, this Court listed old Applications pertaining to the year 2018 for hearing. It therefore indicates that, the Applicant was not seriously interested in pursuing the present Application”.

4 I have heard Mr. Venegavkar, the learned counsel for CBI and the counsel for the respondent.

I have perused the impugned order, under which the Applicant/Respondent herein is released on bail.

5 As far as the respondent is concerned, he was working as Chief Internal Auditor from April, 2011 to October, 2015 and it was alleged that he was responsible for checking all

foreign exchange transactions along with Maker-Checker Controls and he is accused of having nexus with the accused public servant and avoided checking SWIFT entries, which perpetuated the fraud.

6 The learned Special Judge, while considering the application, has recorded that he is not directly connected with the master minds of the offence, nor is there any material on record to show that he had any connection with the absconding accused Nirav Modi and Neeshal Modi and other partners or employees of M/s. Diamond R US, M/s. Solar Exports and M/s. Stellar Diamonds directly. Since on considering the role in the whole conspiracy, he was released on bail, on being arrested on 1/03/2018.

7 I do not see any legal infirmity in the said order and, particularly, when the observations in para 8 of the order 8/07/2022 are equally applicable to the present case, as the prosecution has not bothered to move the application and it is more than 5 years that the application has been filed.

It would not therefore be in the interest of justice, without any apparent illegality being attributed in the impugned order, to cancel the bail, after a period of more than 4 years.

Hence the application is rejected.

(SMT. BHARATI DANGRE, J.)