

BDP-SPS-

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2024.04.12
12:25:59 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.868 OF 2024
IN
CRIMINAL WRIT PETITION NO.1225 OF 2023**

Bablu Sonkar
V/s
Directorate of Enforcement
Through its
Deputy Director and Ors.
.... Applicant.
..... Respondents.

**ALONGWITH
INTERIM APPLICATION (STAMP) NO. 7528 OF 2024
IN
WRIT PETITION NO.1225 OF 2023**

Shrichand Aswani
.... Applicant.

In the matter between

Bablu Sonkar
V/s
Directorate of Enforcement & Ors.
.... Petitioner.
.... Respondents.

Mr. S. S. Bedekar a/w Mr Sarfaraj J. Shaikh i/b Mr. Harshad Inamdar
for the Applicant.

Mr. H. S. Venegaonkar a/w Aayush Kedia for the Respondent Nos.1
and 2.

Mr. Tapan Thate i/b Mr. Satyam Pille for the Intervener in IA(St)
No.7528 of 2024.

Mr. Ajay Patil, APP for Respondent No.3/State.

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

Date on which arguments were heard: 04/04/2024

Date on which the order is pronounced: 12/04/2024

P.C.:-

1] By this Interim Application the applicant prays for his release on interim bail in connection with ECIR/MBZO-II/10/2021 registered by the Directorate of Enforcement.

2] The applicant has been arraigned as an accused in ECIR/MBZO-II/10/2021. By filing Writ Petition No.1225 of 2023, the Petitioner has sought quashment of the said proceedings with a further declaration that the arrest of the applicant by the Directorate of Enforcement on 22/03/2023 was illegal. It is not in dispute that the aforesaid writ petition was heard earlier and the judgment was reserved in the said matter. As the judgment could not be pronounced on 26/06/2023 the present applicant was directed to be released on interim bail subject to conditions mentioned in the order. This order was the subject matter of challenge before the Supreme Court in SLP (Crl) No.16226 of 2023. By the judgment dated 09/02/2024, the Supreme Court set aside the order dated 26/6/2023 releasing the applicant on interim bail on the

ground that when the said order was passed, the Division Bench was not assigned with the subject roster and hence it could not have passed that order. The applicant was granted time of two weeks to surrender and liberty was then reserved in favour of the applicant to move an application for interim relief. In accordance with the directions of the Supreme Court, the applicant surrendered before the learned Special Judge on 23/2/2024 and thereafter as per the liberty granted, the applicant has filed this Interim Application with a prayer to release him on interim bail.

3] Mr. S. S. Bedekar the learned Counsel for the applicant submitted that the applicant had been kept under illegal detention for a period exceeding 24 hours which resulted in his arrest being illegal. Though the applicant was arrested on 22/03/2023 he was produced before the learned Special Judge only on 24/03/2023 which was beyond the period of 24 hours. The learned Counsel referred to the remand application as well as the order passed thereon and submitted that since the applicant was in the confines of the Enforcement Directorate since 22/03/2023 pursuant to the summons received at 11.45 p.m., he ought to have been produced before the learned Special Judge within a

period of 24 hours which came to an end on 23/03/2023. Since the arrest of the applicant itself was illegal, he was entitled to be released on interim bail. The learned Counsel for the applicant referred to various provisions of the Prevention of Money-Laundering Act, 2002 (for short, the Act of 2002) and especially Section 19 thereof to contend that various safeguards referred to therein had not been complied with. Since an order of protection was granted to the main accused, the applicant was entitled to benefit thereof. Reference was made to the registration of FIR No.0213 on 01/04/2023 at Worli Police Station under Sections 120-B, 379, 406, 411, 414 and 447 of the Indian Penal Code to contend that such registration of the FIR was by way of an afterthought. Without challenging the remand order, the writ petition was filed immediately on 30/03/2023. The learned Counsel referred to the judgment of the Supreme Court in *Vijay Mandanlal Choudhary and Others vs Union of India and Others*, **2022 SCC OnLine SC 929** to urge that the law laid down therein had been breached in the matter of arraigning the applicant as an accused and thereafter arresting him. Reference was also made to the decision of the Madras High Court in *R.K. M. Powergen Pvt. Ltd. Vs. The Assistant Director* - Writ Petition No.24700 of 2021 and decision of the Delhi

High Court in *Prakash Industries Ltd. vs. Union of India* **2023 SC OnLine Del 336**. Since the applicant was hardly aged 25 years and had spent more than three months in custody, a case was made out to release him on interim bail. The totality of circumstances were required to be considered and on that basis the applicant was entitled for interim bail.

4] Mr. H. S. Venegaonkar, learned Counsel appearing for Respondent Nos. 1 and 2 opposed the prayer for grant of interim bail to the applicant. According to him, the arrest of the applicant was not illegal and that within 24 hours of his arrest on 23/03/2023 at 11.15 p.m. he was produced before the learned Judge of the Special Court after which the remand order was passed. Referring to the summons issued to the applicant on 22/03/2023 under Section 50 of the Act of 2002, it was submitted that the said summons came to be served on the applicant at 11.45 p.m.. on 22/03/2023. Voluntary statement of the applicant was thereafter recorded and it was only on 23/03/2023 at 11.15 p.m. that the applicant was arrested in exercise of powers under Section 19(1) of the Act of 2002. Referring to the provisions of Section 3 of the Act of 2002 it was submitted that there was sufficient material

to implicate the applicant and thereafter arrest the applicant as an accused in ECIR/MBZO-II/10/2021. The learned Counsel also referred to the remand orders passed by the learned Judge of the Special Court to submit that a finding was recorded that the applicant had been produced before the learned Judge within 24 hours of his arrest. It therefore could not be said that the arrest of the applicant was illegal so as to entitle him to seek his release on interim bail. It was further submitted that the ECIR/MBZO-II/10/2021 was not registered solely on the basis of FIR No.163 of 2018 wherein C Summary had been filed. There were other First Information Reports registered in the year 2021 and these FIRs had been subsumed in the present ECIR/MBZO-II/10/2021. Hence, filing of C Summary in FIR No.163 of 2018 was of no consequence. It was open for the applicant to apply for grant of bail under Section 45 of the Act of 2002 wherein all relevant aspects could be considered by the Special Court. Without exhausting that remedy, the applicant could not seek his release on the ground that his arrest was illegal. It was thus submitted that the application was liable to be rejected.

5] Interim Application (Stamp) No.7528 of 2024 has been filed by

one Mr. Shrichand Aswani seeking permission to intervene in the present proceedings on the premise that he was a victim of the scam that resulted in registration of the present ECIR/MBZO-II/10/2021. Since an offence under Section 3 of the Act of 2002 had been prima facie shown to have been made out, the intervenor urges that the applicant was not entitled for his release on interim bail.

6] We have heard the learned Counsel for the parties and we have perused the documents on record. The applicant has filed Writ Petition No.1225 of 2023 seeking quashing of ECIR/MBZO-II/10/2021 in so far as he was concerned. The applicant has also sought a declaration that his arrest in connection with the aforesaid ECIR on 23/03/2023 was illegal. This Interim Application has been preferred seeking grant of interim bail on the premise that the applicant's arrest is illegal and that he was produced before the learned Judge of the Special Court after 24 hours of his arrest. The Summons bearing serial No.2245 seeking attendance of the applicant under Section 50(2) and (3) of the Act of 2002 dated 22/03/2023 has been produced before us by the learned Counsel for Respondent Nos. 1 and 2. The same bears the acknowledgment of the applicant as having received the same at

11.45 P.M. on 22/03/2023. It is pointed out that thereafter applicant's statement under Section 50 of the Act of 2002 was recorded. The arrest order dated 23/03/2023 has also been produced before us. The same indicates that the applicant was arrested at 11.15 p.m. on 23/03/2023 . The remand order dated 24/03/2023 passed by the learned Judge of the Special Court under the Act of 2002 records satisfaction that the applicant was produced before the Court within 24 hours. On prima facie consideration of these documents, we find that though the applicant was summoned under Section 50 of the Act of 2002 for appearing before the Enforcement Directorate on 22/03/2023, he was actually arrested only on 23/03/2023 at 11.15 p.m. It therefore prima facie cannot be said that the applicant was produced before the learned Judge of the Special Court after a lapse of 24 hours from his arrest.

7] According to the learned Counsel for the applicant, the applicant was in the confines of Enforcement Directorate since 22/03/2023 pursuant to the summons issued seeking his presence. Hence, for all purposes the applicant was in the custody of Enforcement Directorate. On this basis it was sought to be urged that the production of the

applicant before the learned Judge of the Special Court on 24/03/2023 was beyond 24 hours of his arrest. At this prima facie stage we are not in a position to accept this contention in the light of the copy of the summons and the arrest order produced before us. On this count, therefore, we do not find that arrest of the applicant is illegal for enabling him to seek his release on interim bail.

8] As regards the contention of filing of C Summary in FIR No.163 of 2018 is concerned, it is seen from the affidavit in reply filed by Respondent Nos. 1 and 2 in the writ petition that the said FIR was not the sole basis for registering an offence under Section 3 of the Act of 2002. There are subsequent First Information Reports registered and according to the said Respondents, they have been subsumed in the present ECIR/MBZO-II/10/2021. The applicant contends that such course is not permissible. We find that this issue requires consideration in the writ petition where the applicant has sought quashing of the present ECIR/MBZO-II/10/2021 and the same cannot form the basis for releasing the applicant on interim bail.

9] It is to be noted that the applicant has not sought his release on

bail by moving the Special Court under Section 45 of the Act of 2002. Therein all grounds seeking his release on bail can be urged. That liberty can always be availed by the applicant.

10] For the aforesaid reasons, we do not find any case made out to release the applicant on interim bail on the premise that his arrest is illegal. The Interim Application therefore stands rejected.

It is clarified that the applicant is free to move the Special Court seeking his release on bail under Section 45 of the Act of 2002. In case such an application is made, observations made in this order shall not come in the way of the applicant and all contentions on merit are kept open for being urged therein. Order accordingly.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]