IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2101 OF 2024

Hasanand Nanani	)	
Age 75 years, residing at D-1202	)	
The Palm Springs, Sector 54	)	
Gurgaon, Haryana 122002	)	.. Petitioner

vs.

State of Maharashtra, Through	)	
Central Bureau of Investigation	)	
(B.S. & F.C. Mumbai)	)	.. Respondent

Mr. Rajiv Patil Senior Advocate a/w. Mr. Sameer Singh and Mr. Ojas Kocharekar for the Petitioner.
Ms. D. Krishnaiyar, APP for the Respondent-State.

CORAM : SHYAM C. CHANDAK, J.

RESERVED ON : 6th AUGUST, 2024
PRONOUNCED ON : 21st AUGUST, 2024

JUDGMENT:-

. Present petition filed under Article 227 of the Constitution of India r/w. Section 482 of Criminal Procedure Code,1973 (for short "Cr.P.C.") seeks quashing and setting aside of the Orders dated 31st July, 2023 and 5th March, 2024 passed by learned Special Judge (C.B.I.) Greater Bombay. By the said Orders, the learned Special Judge rejected the Application Nos.941/2023 and 177/2024 respectively, seeking release of a locker

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No.131 along with its Key No.94, maintained with IndusInd Bank, Sector 54 Branch, Gurgaon, Haryana. Said locker and the Key have been sealed and seized by the Respondent.

2) Heard Mr. Rajiv Patil learned Senior Advocate for the Petitioner and Ms. D. Krishnaiyar, learned APP for the Respondent-State. Perused the Petition.

3) Rule. Rule is made returnable forthwith. By consent of the respective parties, heard finally.

4) Facts giving rise to the filing of this petition are that, said FIR No.RC 0772023E0007 dated 17th May, 2023 was lodged with CBI-BS & FB Police Station and registered for the offences punishable under Sections 120B and 420 of the Indian Penal Code and under Sections 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988. The Petitioner has been arraigned as accused No.5 in the FIR. That during investigation of the FIR, the Respondent sealed the said locker No.131 and seized its key No.94.

5) In the meanwhile, the officials of the Respondent visited the said Bank on 22nd May, 2023 and in presence of Petitioner as well as the Bank employees, prepared an inventory of the valuable items found inside the locker. Then the said locker was sealed and its key was retained by the Respondent, with instructions to the Bank, not to let anyone open and use

the locker etc. The said locker was in the name of Petitioner's wife.

6) Therefore, the Petitioner filed the Application No.941/2023 on 9th June, 2023 for release of the locker and the key on the ground that, the locker and the key are in the name of Petitioner's wife Smt. Neelam Nanani; that the valuable jewellary and ornaments in the locker belong to Neelam Nanani; that Neelam Nanani is unable to use the said property as the same is in the seized locker; that said Neelam Nanani is not an accused in the FIR; that the Applicant is ready to abide by any condition for release of the locker and the key.

6.1) The Respondent resisted this Application by its say on the grounds that the huge loan amount obtained by the Accused No.1 has been misappropriated and Petitioner is one of its directors; that the investigation is at initial stage; that it is not clarified as to whether the valuables lying in the locker were purchased from the fraud amount or not. Impressed with these reasons and additionally that, the said valuables are material piece of evidence, the learned Special Judge rejected the said Application by the impugned Order dated 31st July, 2023.

7) Thereafter, the Petitioner filed the Application No.177/2024 on similar grounds but adding that, the Petitioner was an Independent Director of the Accused No.1, however, he was not in-charge of the day-to-day affairs

of the management of the Accused No.1; that he received monthly Rs.20,000/- as sitting fees; that he has not signed the papers for the loan amount which was allegedly misappropriated; that he was unaware of the fraud etc.

7.1) The Respondent resisted this subsequent Application by its say but on the same grounds as the investigation was in progress and that, no invoices/bills of purchase of the valuables are produced. Therefore, the learned Special Judge rejected the said Application by the impugned Order dated 5th March 2024, for the same reasons and adding that, there is no 'change in circumstances'. Hence this Petition.

8) Mr. Patil, learned Senior Advocate for the Petitioner submits that, the said locker and the Key are in the name of Petitioner's wife, who is not named as accused in the FIR; that the valuable property lying in the seized locker belongs to the Petitioner's wife; that it was purchased much before the registration of the alleged crime and mostly at the time of wedding of the Petitioner; that no evidence revealed during investigation indicating that, the jewellery and ornaments found in the subject locker were purchased with the amount wrongfully gained out of the crime; that the Petitioner's wife is unable to use the jewellery and ornaments since it is lying in the sealed locker.

8.1) He submits that, the Petitioner has fully co-operated in the investigation; that he himself disclosed the locker to the Respondent during the investigation. He submits that, the Petitioner was an independent non-executive director of the Accused No.1; that he was not in charge of the day-to-day affairs or the Management of the Accused No.1; that he was unaware of the defaults committed by the Accused No.1. He submits that, the lockers and keys of other Directors of Accused No.1, who are accused in the crime, are not seized; that the Petitioner is ready to provide sufficient indemnity, furnish necessary undertaking and would abide by any condition that may be imposed by the trial Court for the release of the locker and its key. In this background there was no hurdle to release the locker and the key. However, the learned Special Judge did not consider the said grounds. As such the impugned Orders are illegal and the same may be quashed and set aside with a direction to release the locker and the key in the interim custody of the Petitioner.

9) Learned APP submits that, at the relevant time the Petitioner was a Director of Accused No.1-M/s. Leeway Logistics Limited. During the period from the year 2013 to 2016, the Accused No.1 along with its directors Sanjay Sinha, Ms. Namita Sinha, Ms.Akanksha Srivastava, Petitioner, Gurantors of Accused No.1 and others conspired to cheat the Bank of India

and consortium banks by way of availing Working Capital Fund Based Limits and NFB limits to the tune of Rs.167.50 Crores. She submits that, in pursuance of the criminal conspiracy, the accused party cheated the group of banks and siphoned off the funds resulting into non payment of the loans to the tune of Rs.173.18 Crores and corresponding wrongful gains to the accused. She submits that, Petitioner is also benefited out the said gains. Thus, there is *prima facie* case of serious offence against the Petitioner and others. Therefore, and for other reasons pointed by the Respondent, the learned Special Judge rejected the said Applications by the impugned Order. As such, the said rejections cannot be said as faulty. In this background, learned APP submits that, the Petition may be dismissed.

10) Undisputedly, the sealed locker and its key is in the name of Petitioner's wife Neelima Nanani. The Petitioner is one of the accused in the said crime involving the offence of cheating and misappropriation of the huge loan amount. Said loan amount was 'public money'. The Petitioner has not produced any document to show that the jewellery and ornaments lying in the seized locker were purchased before 2013 or before registration of this crime; that, the Petitioner's wife was earning reasonable income; that the price of the jewellery and ornaments was paid either by Petitioner or his wife. Therefore, it is essential for the respondent to investigate and ascertain

as to whether the said valuables have been purchased out of the money illegally gained from this crime or not. If the answer is yes, then the said valuables would be a material piece of evidence against the Petitioner. The investigation is in progress. The fraud amount is huge. The offence is committed by hatching a criminal conspiracy. The Petitioner has not produced any document to show that, he and his wife have been jointly holding the said locker and that, he was authotised by his wife to file the said Applications before the Special Court.

11) As such rejection of Misc. Application No.941/2023 and Misc. Application No.177 of 2024 by the impugned Order dated 31st July 2023 and Order dated 5th March 2024 respectively by the learned Special Judge, is not faulty or erroneous. Said Orders, therefore, do not call for an interference in this Petition. In view thereof, the Petition is liable to be dismissed and is accordingly dismissed.

12) Rule is discharged.

(SHYAM C. CHANDAK,J.)