

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****WRIT PETITION (STAMP) NO.7797 OF 2024**

Prakash Mohile

*....Petitioner***V/s.**

The State of Maharashtra

*....Respondent***WITH****INTERIM APPLICATION NO.2326 OF 2024****IN****CRIMINAL REVISION APPLICATION (stamp) NO.11091 OF 2024**

The State of Maharashtra

*....Applicant***V/s.**

Prakash Balakdas Mohile

....Respondent

Mr. Ajinkya A. Badar for Petitioner in WPST/7797/2024 and Respondent in IA/2326/2024.

Mr. Mayur Sonavane, APP for Respondent -State in WPST/7797/2024 and for the Applicant in IA/2326/2024.

Mr. Arundhati Yelve, PI, ACB, Navi Mumbai Unit, present.

CORAM : SANDEEP V. MARNE, J.**Dated : 3 July 2024.**

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1) Criminal Revision Application (stamp) No.11091 of 2024 is filed challenging the order dated 14 December 2023 passed by the Additional Sessions Judge, Panvel-Raigad, allowing the application filed by the

Respondent-accused for return of ornaments seized on 27 September 2022. The learned Sessions Judge has allowed the application and has directed return of 18 ornaments subject to condition of the accused executing a *supurtnama* of Rs.55,00,000/- and filing an undertaking that he would not change nature, design, make of the ornaments and that he shall preserve the same by not selling, mortgaging or parting with possession thereof.

2) Interim Application No.2326 of 2024 is filed for condonation of delay of 49 days in filing the revision application. For the reasons stated in the application, the same is allowed. Delay in filing the Criminal Revision Application is condoned.

3) The Interim Application No.2326 of 2024 stands disposed of.

4) Criminal Writ Petition (stamp) 7797 of 2024 is filed by the accused seeking compliance of order dated 14 December 2023 passed by the learned Sessions Judge.

5) I have heard Mr. Mayur Sonavane, the learned APP appearing for the Applicant-State in Criminal Revision Application and for the Respondent in the Writ Petition and Mr. Ajinkya Badar, the learned counsel appearing for the accused, who is the Respondent in Criminal Revision Application and the Petitioner in the Writ Petition.

6) A perusal of the impugned order dated 14 December 2023 passed by the learned Sessions Judge would indicate that the main reason which weighed by the learned Sessions Judge for allowing the application was non-

charging of the accused for officer of acquisition of disproportionate assets.

The learned Sessions Judge held in paragraph 8 as under:-

Now if the say of the investigation officer is considered, then at this stage, yet charge-sheet is not filed. The applicant accused is charged only for the offence p/u/sec.7(a) and 12 of the Act. Admittedly he is not charged for acquiring disproportionate assets. As per the submission of investigation officer, such charges may be leveled in future.

7) Learned APP has taken me through the reply filed by the Police Inspector, Anti Corruption Bureau, Navi Mumbai on 8 December 2023 opposing the application filed by the accused. In the last paragraph of the said reply, it was contended as under:-

त्याअनुषंगाने आरोपी प्रकाश बालकदास मोहीले यांच्या मालमत्तेच्या व मिळून आलेल्या सोन्या चांदीच्या दागिन्याबाबत उघड चौकशी करण्यासाठीचे आदेश मिळण्याकरीता मा. महासंचालक अँटी करप्शन ब्युरो महाराष्ट्र राज्य मुंबई यांना पत्रव्यवहार करण्यात आलेला आहे. आरोपी प्रकाश बालकदास मोहीले यांच्याकडे मिळून आलेले सदरचे दागिने हे अपसंपदा असण्याची दाट शक्यता असल्यामुळे अर्जदार प्रकाश बालकदास मोहीले यांनी मा. विशेष न्यायालय पनवेल जि. रायगड येथे केलेला अर्ज नामंजूर होणेस विनंती आहे.

8) Thus, a specific plea was raised in the reply that correspondence was made for conduct of open enquiry with the Director General of Police, Anti Corruption Bureau, Maharashtra. However, this aspect is apparently not taken into consideration by the learned Sessions Judge while passing order dated 14 December 2023. Instead, what is observed in the order is that '*As per the submission of the Investigation Officer, such charges may be leveled in the future.*'

9) The learned APP has placed on record copy of letter dated 19 June 2024 issued by the office of Director General of Police, ACB, Maharashtra

State, granting permission for conduct of open enquiry against the accused. The office of superintendent of police, ACB, Thane has forwarded the said letter dated 19 June 2024 to the concerned Investigating Officer with a direction to conduct open enquiry and submit a report.

10) In my view therefore, the State has initiated steps for conduct of open enquiry for the purpose of charging the accused for having acquired assets disproportionate to the known sources of his income. This aspect needs to be taken into consideration by the learned Judge. For that purpose, it would be necessary to set aside order dated 14 December 2023 and to restore the application at Exhibit-1 on the file of Additional Sessions Judge, Panvel-Raigad, so that the last paragraph of the reply filed by the Investigating Officer on 8 December 2023 together with subsequent events in the form of letter dated 19 June 2024 issued by the Director General of Police, ACB, Maharashtra, are taken into consideration for passing a fresh order on the said application.

11) Accordingly, order dated 14 December 2023 passed by the learned Additional Sessions Judge, Panvel-Raigad on application at Exhibit-1 is set aside and the application filed by the accused at Exhibit-1 is restored.

12) The learned Sessions Judge, Panvel-Raigad shall proceed to decide the application at Exhibit-1 afresh after taking into consideration the stand taken in the last paragraph of reply dated 8 December 2023 filed by the Investigating Officer as well as the subsequent event of issuance of sanction for conduct of an open enquiry by the Director General of Police, ACB,

Maharashtra, vide letter dated 19 June 2024. The learned Sessions Judge shall not be influenced by any of the observations made by this Court in the present order and shall proceed to decide the application on its own merits as expeditiously as possible, preferably within a period of three months.

13) With the above observations, Criminal Revision Application (stamp) No.11091 of 2024 is disposed of.

14) Since the order dated 14 December 2023 is set aside and the matter is remanded before the learned Sessions Judge, Raigad-Panvel, nothing would survive in Writ Petition (stamp) No.7797 of 2024, same is accordingly disposed of.

[SANDEEP V. MARNE, J.]