

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL REVISION APPLICATION NO. 583 OF 2024**

Central Bureau Of Investigation

... Applicant

Versus

Sunil Bajaranglal Varma & Anr.

... Respondents

.....

Mr. Kuldeep S. Patil, a/w. Mr. Dhavalsinh V. Patil and Ms. Sanika V. Joshi,
Advocates for the Applicant – CBI.

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Ashutosh Thipsay, Mr. Omkar
Mulekar and Ms. Sakshi Jogdand, Advocates for the Respondent no.1.

Mr. K.C.Shinde, APP for Respondent No.2 - State.

CORAM : SHIVKUMAR DIGE, J.**DATED : 28th APRIL, 2025.****P. C. :**

1. The present revision application is preferred by applicant /CBI challenging the orders dated 20.07.2024 and 26.07.2024 passed by CBI Special Court (supplementary charge-sheet) in case No. 641 of 2024 in Special Case No. 38 of 2018. The first order dated 20.07.2024 is passed below Exhibit-51, it was an application preferred by the applicant / CBI seeking police custody remand of the accused No.22 i.e. respondent No.1. The second impugned order dated 26.07.2024 is passed below Exhibit-55 on application preferred by applicant / CBI for arrest of the respondent

No.1.

2. It is prosecution's case that on 05.02.2018 Mr. Avneesh Nepalia, Deputy General Manager of Punjab National Bank, Zonal Office, Mumbai, filed written complaint against Gokulnath Shetty, Deputy Manager of Punjab National Bank and 15 other persons under Section 120-B r/w. Section 409, 420 of Indian Penal Code and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 (for short "**PC.Act**") and substantive offences thereof. Thereafter, on 22.02.2018 and 04.03.2018 Punjab National Bank gave additional complaints. It is alleged that during the period from year 2015 to year 2018, all accused mentioned in complaint conspired together to defraud the Punjab National Bank (for short "PNB") by fraudulently issuing letter of Undertaking (LOU) / Foreign Letter of Credit through Accused No.3 M/s. Geetanjali Gems Ltd., accused No.4 M/s. Gili India Ltd., accused No.5 M/s. Nakshtra Brands Ltd., by dishonestly misrepresenting and submitting documents to the bank and misappropriating funds of bank. Total loss caused to PNB is around Rs.7,080 Crores. Allegations against the respondent No.1 is that he has played active role in said fraud at behest of the accused No.6 (Mehul Chokshi).

3. It is contention of learned Special Public Prosecutor for the applicant that respondent No.1 is an accused in the fraud committed with PNB to the

tune of Rs.7080.86 Crores. During investigation it is revealed that the respondent No.1 has played an active role in commission of the present crime. He was international head of M/s. Gitanjali Group of Companies and he was party to the criminal conspiracy at the behest of Shri. Mehul Chokshi, (accused No.6). The respondent No.1 has established overseas dummy companies and controlled their activities. He was actively involved in circular trade transactions between Hong Kong based entities viz. M/s. Crown Air Ltd., M/s. 4C's Diamond Distributors and M/s. Shanyao Gong SI Limited and Gitanjali Group of companies in India. He used to pass instructions to the dummy Directors, Partners, Authorised Signatories of Hong Kong based companies on regular basis. The banking, accounts, inventory, shipping operations and LC documentation work and dismantling of jewellery were being done on his instructions at the behest of Shri. Mehul Choksi (accused No.6). Learned Special P. P. further submitted that in supplementary charge-sheet the respondent No.1 is shown as absconding and provision of further investigation is kept open. After filing supplementary charge-sheet, summons was served on father of the respondent No.1 as respondent No.1 was settled in U.S.A. with his family. When the respondent No.1 failed to appear after service of summons, NBW was issued against him. Thereafter, the respondent No.1 approached this Court for cancellation of NBW by filing criminal Writ

Petition. During the hearing of the Writ Petition, the learned Advocate for the respondent No.1 made submission before this Court that the respondent No.1 is ready to surrender before the learned Special Court. Hence, this Court canceled NBW and directed respondent No.1 to surrender before the Special Court. The respondent No.1 surrendered before the learned Special Court on 18.07.2024. On same day, the applicant had filed an application before learned Special Court, seeking police custody remand of the respondent No.1 as he had played an active role in commission of crime, thus his custodial interrogation was required. However, the said application was rejected by the learned Special Court by order dated 20.07.2024. On the same day, another application was filed by the applicant for seeking permission to arrest the respondent No.1. However, the said application was also rejected by order dated 26.07.2024. Learned Special PP further submitted that the impugned orders passed by the Special Court are bad in law. The custodial interrogation of the respondent No.1 is required as he has played active role in the said crime. The CBI could not interrogate the respondent No.1, as he was absconding, hence requested to allow the application. He relied on :

- (i) *Niranjan Singh & Anr. Vs. Prabhakar Rajaram Kharote & Ors. (1980) 2 SCC 559*
- (ii) *State through CBI Vs. Dawood Ibrahim Kaskar and Ors. (1997) Cri. L.J. 2989*
- (iii) *The Central Bureau of Investigation Vs. Rathin Dandapat & Ors. (2016) 1 SCC 507*

- (iv) Tarsem Lal Vs. Directorate of Enforcement Jalandhar Zonal Office (2024) 7 SCC 61*
- (v) Satender Kumar Antil Vs. CBI & Anr. AIR 2022 SCC 3386*
- (vi) Siddharth Vs. Sate of Uttar Pradesh & Anr. (2022) 1 SCC 676*

4. It is contention of learned Senior counsel for the respondent No.1 that when the respondent No.1 left India in year 2017, there was no chargesheet against him, therefore, it cannot be said that he had fled away from criminal proceedings. Learned Counsel further submitted that after filing supplementary chargesheet against the respondent No.1, the learned Special Court took cognizance on 11.06.2021 and process was issued by way of summons. Learned Counsel further submitted that Section 167 of Criminal Procedure Code (for short “**Cr.P.C.**”) is supplementary to Section 57 of Cr.P.C. The Section 167 of Cr.P.C. comes into play, when a person is arrested or either an investigation has started or yet to start, but if it appears that it cannot be completed within 24 hours, the Magistrate may authorise further detention of such accused person, otherwise than in the custody of the police, thereby allowing police remand. Learned counsel further submitted that once cognizance is taken, the case has to be proceeded for framing of charge. Learned counsel further submitted that when charge- sheet is filed and cognizance is taken, the Court cannot exercise power u/s. 167(2) of Cr.P.C. Section 309 of Cr.P.C. gives power to the Court to postpone or adjourn proceedings. If accused is not in custody,

he is allowed to go or attend on the next date of hearing. Learned counsel further submitted that the learned Special Court has rejected the custody application vide order dated 20.07.2024 with reasons stated therein. The said order was accepted by the CBI and thereafter other application seeking permission to arrest the respondent No.1 was filed, it shows first order is accepted by the applicant, hence it is not open for them to challenge it by way of Revision Application. Learned counsel further submitted that this Court has not directed to the respondent No.1 to surrender before the Special Court but has directed to appear.

5. Learned Counsel further submitted that it is settled law that for the purposes of further investigation, new, fresh oral or documentary evidence be made available before the Court. In the present case, no more material has been placed on record to show further investigation is required or grounds for arrest of the respondent No.1. The personal liberty is an important aspect of our Constitutional mandate. Learned Counsel further submitted that there is no perversity or patent defect or error in the impugned orders, hence requested to reject the application. He relied on :

- (i) *Jagannath Choudhary and Ors. Vs. Ramayan Singh and Anr.*
(2002) 5 SCC 659
- (ii) *K. Vadivel Vs. Shanthi & Ors.*
2024 SCC OnLine SC 2643
- (iii) *Mariam Fasihuddin and Anr. Vs. State*
2024 SCC OnLine SC 58
- (iv) *State of Karnataka and Anr. Vs. Pastor P. Raju*
(2006) 6 SCC 728

- (v) *Natbar Parida Vs. State of Orissa*
(1975) 2 SCC 220
- (vi) *CBI Vs. Dawood Ibrahim Kaskar and Ors.*
(2000) 10 SCC 438
- (vii) *Pradeep Ram Vs. State of Jharkhand and Anr.*
(2019) 17 SCC 326
- (viii) *Sanjay Dutt Vs. State Through CBI*
(1994) 5 SCC 410
- (ix) *Mithabhai Pashabhai Patel and Ors. Vs. State of Gujarat*
(2009) 6 SCC 332
- (x) *M.C. Abraham and Anr. Vs. State of Maharashtra*
(2003) 2 SCC 649
- (xi) *Siddharth Vs. State of Uttar Pradesh and Anr.*
(2022) 1 SCC 676

6. I have heard both the learned counsel. Perused impugned orders. It is alleged that the respondent No.1 and co-accused have defrauded the PNB to the tune of around Rs.7080.86 Crores. The allegations against the respondent No.1 are that he was international business head of M/s.Gitanjali Group of Companies and at the behest of main conspirator, Shri. Mehul Chokshi (Accused No.6), he established overseas dummy companies and controlled their activities. It appears from record that on 30.03.2018 summons was issued during investigation to secure presence of the respondent No.1 but he did not remain present. On 10.06.2021 supplementary charge-sheet was filed against him showing as absconding. During further investigation a supplementary chargesheet was filed against him before the Special Court. After filing supplementary charge-sheet, summons was issued against him on his residential address. The summons

could not be served on him as he was settled in USA. Due to non service of summons learned Special Judge issued NBW against the respondent No.1, which was returned unexecuted. Thereafter, the respondent No.1 filed criminal Writ Petition before this Court to quash and set aside the NBW. This Court cancelled the said NBW and directed him to appear before the Special Court. Accordingly, he appeared before the Special Court. After appearing before the Special Court, the applications were filed by the applicant to arrest him and getting his police custody. The Special Court has rejected both the applications on the ground that supplementary charge-sheet is filed against the respondent No.1 and the Court had taken cognizance of the offence and the respondent No.1 appeared before the Court in response to summons issued by Special Court and as per *Tarsem Lal's* ' case his appearance before the Special Court does not amount to custody. Learned Special Court further observed that as per Section 167(2) of Cr.P.C. for seeking custody, accused must have been arrested and detained. In present case, he was not arrested or detained. The Section 167(2) of Cr.P.C. comes in to play at pre-cognizance stage. In my view, the observations of the Special Court are erroneous. As admittedly, summons was issued to the respondent No.1 during investigation but he was not available, then supplementary charge-sheet was filed against him. Initially, the respondent No.1's name was not mentioned in the FIR. In

investigation his role was revealed, in commission of crime. There are allegations against the respondent No.1, that he has played crucial role in fraud of thousands of crores with the PNB, it is public money. *Prima facie* it appears that the respondent No.1 was actively involved in present crime. Considering allegation against him, his custodial interrogation is required but he was not available for the interrogation. The respondent No.1 did not appear before the learned Special Court in response to summons. When his NBW was canceled, this Court had directed him to appear before the Special Court in failure, the NBW would revive. It shows the respondent No.1 appeared before the Special Court under compulsion. As the respondent No. 1 was not available for the investigation and appeared before the Trial Court as per direction of this Court, it tantamounts to surrender. The Hon'ble Apex Court in the case of ***Tarsem Lal*** (supra) has held that if ED wants custody of the accused who appears after service of summons for conducting further investigation in the same offence, ED will have to seek custody of the accused by applying to the Special Court. After hearing the accused, the Special Court must pass an order on the application. The Trial Court may permit custody only if it is satisfied that custodial interrogation at that stage is required even though accused was not arrested under Section 19. The learned Special Court has relied on this Judgment but has not considered the view taken by Hon'ble Apex Court

that, after appearance before the Court in response to summons the ED can file application for custody and Trial Court can decide said application on its own merits. The Hon'ble Apex Court in the case of ***CBI Vs. Dawood Ibrahim Kaskar and Ors.*** (*supra*) has held that :

"We are therefore of the opinion that the words "accused if in custody" appearing in Section 309(2) refer and relate to an accused who was before the Court when cognizance was taken or when enquiry or trial was being held in respect of him and not to an accused who is subsequently arrested in course of further category is concerned he can be remanded to judicial custody only in view of Section 309(2), but he who come under the second category will be governed by Section 167 so long as further investigation continues. That necessarily means that in respect of the latter the Court which has taken cognizance of the offence may exercise its power to detain him in police custody, subject to the fulfillment of the requirements and the limitation of Section 167."

It is contention of learned Senior Counsel for respondent No.1 that once cognizance is taken and charge-sheet is filed, police custody cannot be granted. In my view, the respondent No.1 was never arrested. He is shown as absconding in the supplementary charge-sheet. The appearance of the applicant before the Special Court was under compulsion hence police custody can be granted. The learned Special Court has observed that after taking cognizance, custody of the accused is only judicial custody as envisaged under Section 309 of Cr.P.C. In my view, it is erroneous interpretation as it will be give an undue advantage to the absconding accused against whom a charge-sheet under Section 299 of Cr.P.C. has been filed. Considering allegations against the applicant, his custodial interrogation is required. I have gone through the case laws cited by the

learned Senior counsel for the respondent No.1. The facts of cited case and present case are different, as in the present case, when supplementary charge-sheet was filed, the respondent No.1 was absconding. He never appeared before the Investigating Officer. He appeared before the Special Court as per direction of this Court after cancellation of NBW hence his appearance tantamount to surrender. The Special Court has rejected the police custody of the respondent No.1 on the ground that no new ground has been mentioned. In my view, the allegations against the respondent No.1 are already mentioned in supplementary charge-sheet. While granting police custody the learned Special Court should have considered about grounds for it but before that the application of police custody was rejected. One of the purpose of remanding the accused to police custody is to enable the police to effectively investigate the case, thus rejecting the police custody of the respondent No.1 amounts to putting clog on wheels of investigation.

7. In view of above, I pass following order:

ORDER

- i. The Revision Application is allowed.
- ii. The impugned orders dated 20.07.2024 and 26.07.2024 passed by learned CBI Court are quashed and set aside.
- iii. The applicant shall file application before the Special

Court for getting police custody of the respondent No.1. The Special Court shall decide, if custodial interrogation of the respondent No.1 is required or not. The said application be decided on its own merit.

- iv. The Respondent No.1 shall remain present before the Special Court while hearing the custody application.
- v. The learned counsel for the respondent No.1 requested to stay the order. Learned Special P.P. strongly objected for stay. The impugned orders are passed in July-2024 and the respondent No.1 wants to take recourse against the order passed by this Court. Considering this fact the present order is stayed for three weeks after uploading of this order.

(SHIVKUMAR DIGE, J.)