

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.368 OF 2026

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Nimesh Navinchandra Shah,]
R/o. Simla House, Nepeansea Road, Mumbai] .. Petitioner

Versus

1. Central Bureau of Investigation,]
BS & FB Branch, Bandra, Mumbai]
2. State of Maharashtra]
3. Union of India,]
Office at Aaykar Bhavan, Mumbai] .. Respondents

Mr. Bhavesh Thakur, Advocate for the Petitioner.

Mr. Amit Munde, Special Public Prosecutor with Ms. Jai Vohra,
Advocate for Respondent No.1-CBI.

Mrs. M.M. Deshmukh, In-Charge Public Prosecutor with Mr. J.P.
Yagnik, Additional Public Prosecutor for Respondent No.2-State of
Maharashtra.

**CORAM : SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.**

DATE : 3rd FEBRUARY 2026.

Per, Shree Chandrashekhar, CJ :

Mr. Bhavesh Thakur, the learned counsel for the petitioner tenders written note of arguments. The same is taken on record. The learned counsel for the petitioner states that the petitioner has filed Writ Petition (L) No.2020 of 2026 to challenge the look out circular/notice issued at the behest of the Bank of Baroda, which is pending before a co-ordinate Bench of this Court.

2. The petitioner has made the following prayers in this writ petition:-

“a) That this Hon’ble Court be pleased to hold and decalre that the Respondent No. 1 action of issuing a lookout circular/notice against the Petitioner without any show cause notice and/or hearing is illegal, unlawful, arbitrary and violative of the Petitioner’s right under Article 21 of the Constitution of India;

b) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other writ, order or direction under Article 226 of the Constitution of India and quash and set aside the lookout circular/notice issued against the Petitioner;

c) That pending the hearing and final disposal of the petition this Hon’ble Court be pleased to stay the operation, effect and implementationof the lookout ciruclar issued against the Petitioner;

d) For interim and ad-interim relief in terms of prayer clause (b) and (c).”

3. The petitioner states that he was restrained at the Airport by the Immigration Authority on 14th May 2025 who informed him that a look-out circular/notice has been issued against him by the Central Bureau of Investigation (in short, CBI) and the Bank of Baroda, which is a member of Consortium of Banks. He has invoked the jurisdiction of this Court under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita 2023 to challenge the said action of the CBI-respondent no.1 in issuing a look out circular/notice against him which is illegal, unlawful and arbitrary decision.

4. The petitioner states that a company in the name and style of M/s. Max Traders was incorporated by Mr. Mansukhlal Jobalia and his family members which is engaged in the business of trade of various types of films including papers, photographic x-ray and graphic art films etc. He joined M/s. Silver Digigraph Private Limited at the request of his friend, namely, Mr. Hitesh Jobalia who started the said company with the same family business. The petitioner further states that the business of M/s. Max Converters, M/s. Max Traders and M/s. Silver Graphics was

acquired by Mr. Hitesh Jobalia but the company's account was declared as Non Performing Asset and the recovery proceedings were initiated in contravention of the Reserve Bank of India's Master Circulars.

5. A crime was registered by the CBI on 7th November 2022 vide First Information Report No.RC0772022E0006 under sections 120B and 420 of the Indian Penal Code read with sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. In the course of investigation, a search was conducted at the petitioner's house on 9th November 2022 and his bank statements, locker keys, papers relating to recovery proceedings etc. were seized by the CBI. The petitioner was issued section 41A Cr.P.C. notice on 20th July 2023 and he attended the office of the CBI on 2nd August 2023 and 20th May 2025. In the meantime, an ECIR was registered by the Enforcement Directorate vide No.ECIR/MBZO-I/73/2022 on 13th December 2022 and a search was again conducted at his premises.

6. The learned counsel for the petitioner submits that the petitioner co-operated with the investigation in the criminal case as also the enquiry under the ECIR registered by the Enforcement Directorate. The petitioner appeared before the Special Court and has been granted bail in the CBI case. The learned counsel for the petitioner further states that the petitioner travelled abroad on several occasions and came to India but no default or misconduct was reported against him. The Court has granted permission to the petitioner in PMLA Special Case no.313 of 2025 with certain conditions and there is no reason even to assume that the petitioner is evading arrest or may evade the process of the Court if he travels abroad. The learned counsel for the petitioner refers to the decision in *"Showik Indrajit Chakraborty v. The Additional*

Superintendent of Police, Central Bureau of Investigation & Ors.”¹ and submits that the law laid down in the said case is a binding precedent and applies squarely in this case. The learned counsel for the petitioner referred to paragraph nos.16, 17 and 18 of “*Showik Indrajit Chakraborty*” to submit that a look out circular/notice can be issued against a person who deliberately evades arrest or is not appearing in the trial Court despite non-bailable warrants and other coercive measures taken against him. The learned counsel for the petitioner has relied heavily on paragraph no.27 of the said judgment and submitted that the petitioner’s right to travel, which is a fundamental right, cannot be curtailed in an illegal and arbitrary manner. The learned counsel for the petitioner has also relied on the decisions in (i) “*Showik Indrajit Chakraborty v. The Additional Superintendent of Police, Central Bureau of Investigation & Ors.*”², (ii) “*The Additional Superintendent of Police & Ors. v. Showik Indrajit Chakraborty*”³, (iii) “*Om Prakash Bhatt v. State of Maharashtra & Ors.*”⁴, (iv) “*Siddhartha Sudhir Moravekar v. Serious Fraud Investigation Office (SFIO) & Ors.*”⁵, (v) “*Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer, New Delhi & Ors.*”⁶ and (vi) “*Priya Parameswaran Pillai v. Union of India & Ors.*”⁷.

7. In the first place, we need to record that there is no law of precedence in a criminal case as held by the Hon’ble Supreme Court in “*Willie (William) Slaney v. State of Madhya Pradesh*”⁸ : “*But these are matters of fact which will be special to each different case and no conclusion on these questions of fact in any one case*

1 2024 (2) Bom.C.R.(Cri.) 267

2 2024 (2) Bom.C.R.(Cri.) 267

3 Special Leave Petition (Criminal) Diary No.43258/2024 – Order dated 25th October 2024

4 Criminal Writ Petition No.111 of 2021 – Order dated 8th April 2021.

5 Criminal Writ Petition No.523 of 2023 – Oral Judgment dated 16th July 2024

6 (1967) 3 SCR 525

7 2015 SCC OnLine Del 7987

8 (1955) 2 SCC 340

can ever be regarded as a precedent or a guide for a conclusion of fact in another, because the facts can never be alike in any two cases “however” alike they may seem. There is no such thing as a judicial precedent on facts though counsel, and even Judges, are sometimes prone to argue and to act as if there were.”

8. The judgment in a case has to be understood in the background facts and the applicable statutory provisions in the case. There is no doubt that a little difference in the facts may lead to different conclusion and therefore what is *ratio decidendi* in a case has to be gathered on the reading of the whole judgment and not on mere showing some paragraphs here and there. No right, even a fundamental right, is absolute. Any right guaranteed to a citizen of this country can be curtailed by and under a procedure which is just, fair and reasonable. But then all these legal considerations may arise only if there is pleading on record in this regard. This writ petition is bereft of foundational facts. This writ petition also suffers from suppression of material documents. The petitioner nowhere states that he made enquiries and asked for a copy of the look out circular/notice from the Immigration Authority and his request was declined. No such prayer for the production of the look out notice has been made in this writ petition. According to the petitioner, it was on 15th May 2025 that he came to know about the issuance of a look out circular/notice against him by the CBI and the Bank of Baroda. There is no explanation by him for such huge delay in approaching this Court to challenge the look out circular/notice. He states in paragraph no.3.9 of the petition that he has to attend a family wedding at Abu Dhabi, U.A.E. in March 2026. This seems to be a reason, though not stated specifically, that the petitioner wants to travel abroad.

9. The petitioner moved the PMLA Special Court seeking

permission to travel abroad in May, 2025. At that point in time, the CBI case was pending and he is on bail in the said case. He was required to seek permission from the CBI Court but the learned counsel for the petitioner states that the petitioner cannot move any application and he is, in fact, not required to move the CBI Court because his passport has not been seized. This submission least to say is completely misconceived. This is an implied condition in every order granting bail that the accused shall remain present within the jurisdiction of the Court and shall not leave the country without the permission of the Court. We find that even a copy of the order granting bail is not on record.

10. In the First Information Report registered by the CBI on the basis of a complaint made by the State Bank of India, Stressed Assets Management Branch-I, Mumbai, the petitioner's designation is reflected as Director and Guarantor. The specific charge against him is of (a) fudging of books of accounts with disproportionate increase in debtors and inventories and substantial write off, (b) siphoning off funds to related parties and (c) diversion of funds to entities related to directors and employees (at page no.32 of the paper book). He along with others caused wrongful loss of Rs.464.41 crores to Consortium group of State Bank of India (Lead Bank) and eight other Consortium member banks. It is alleged that M/s. Max Flex & Imaging Systems Ltd., and other accused persons named above, during the period 01.04.2011 to 31.03.2016 were party to a criminal conspiracy to cheat Consortium group of State Bank of India (Lead Bank) and eight member banks. We do not know and it is not appearing on a glance at the order dated 9th May 2025, if these facts were brought to the notice of the PMLA Court. The petitioner who is alleged to have committed such offences and against whom a Prosecution Complaint has been filed in the PMLA Court cannot take exception

to a look out circular/notice issued against him. Merely because he was co-operating with the investigation, granted bail and got permission to travel abroad on several times, in our opinion, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India or under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to challenge the look out notice against him.

11. The power under Article 226 of the Constitution of India is an equitable jurisdiction which the writ Court may decline to exercise even where an arguable case has been made out. We understand that the petitioner has raised a bogey of violation of his fundamental rights but then this Court cannot be oblivious of the registration of a case against him by the CBI and filing of Prosecution Complaint by the Enforcement Directorate. The offence of siphoning of public money must be viewed very seriously by the Court because such offences seriously challenge the financial stability of the country. The petitioner has no justifiable reason and, that too, on such pleadings to invoke the jurisdiction of this Court under Article 226 of the Constitution of India or the inherent powers under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

12. Writ Petition no.368 of 2026 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]